Debates in Committee of the Whole on

BILL OF RIGHTS

(Article I)

Chairman: CHARLES H. SILVA

JUNE 1, 1950 • Morning Session

CHAIRMAN: The committee will come to order. The subject at hand is Standing Committee Report No. 20. What is the pleasure of the committee? Will the chairman of the Committee on the Bill of Rights care to proceed at this time to explain the report to the Convention?

MIZUHA: Thank you, Mr. Chairman.

CHAIRMAN: Mr. Mizuha is recognized by the Chair.

MIZUHA: I'm not going to take too much time. I believe it is proper at this time, with deference to all the attorneys in the Convention here, that it is well for us to review the thoughts of our Founding Fathers at the time they established the Federal Constitution. At that time there were 13 colonies, who were afraid of a strong central government, and because of their fear of the central government overrunning the rights of the people in the states, they drew up a list of prohibitions against the Federal Government which was incorporated into the Bill of Rights, the first ten Amendments of the Constitution. And we must be keeping that in mind as we discuss our Bill of Rights at this time; that the Bill of Rights of the Federal Constitution was a prohibition against the Federal Government; and the 13 colonies when they organized themselves into states had their own Bill of Rights which was a prohibition against the state government. We in Hawaii, over the past 50 years, had our Organic Act which served as our Constitution, but all the prohibitions against the Federal Government listed in the ten Amendments of the Constitution were prohibitions against the government of the Territory of Hawaii.

We have often heard the remark made that why should we have a Constitution enumerating certain rights? The reason is that when we become a state it must be written into our State Constitution certain prohibitions against state actions in behalf of the people. Over the years the Federal Government has found that it must limit state action, and as a result of that, after the Civil War we had three basic amendments, the Thirteenth Amendment, the Fourteenth Amendment, and the Fifteenth Amendment. The Thirteenth Amendment, as you know, abolished slavery. The Fourteenth Amendment contains three basic prohibitions against state action. First of all, that the rights and privileges of the citizens of the various states shall never be abridged by the state; second, that life, liberty and property shall not be taken away without due process of law by the state; and third, that no state shall deny equal protection of the laws. Then we come to the Fifteenth Amendment, which states that no person shall be denied the right to vote because of race, color, or previous condition of servitude.

With that background, your Committee on the Bill of Rights endeavored to write into the Constitution of the future State of Hawaii certain rights which would accrue to all of the people of Hawaii, and they are presented to you in Committee Proposals No. 3* and No. 4.

*For draft of CP No. 3 here under discussion, see Appendix.

At the outset it is proper for the spokesman of the committee to say that if there is any argument as to form or style your committee is willing to acquiesce to the "supreme court," or any other court here, that the Style Committee shall rewrite it, as we feel that perhaps that distinguished body will be able to present it in a form that will be satisfactory to all of our authors here. So if you have any objections on the basis of form or style, please state your objection, that it does not refer to substance at all, and then we can just have that in the record for the Style Committee to consider, and save a lot of time on argument.

Likewise there are some points here which the Committee on the Bill of Rights would like to add to the various sections and, when the time comes in the consideration of the individual sections, certain additions as suggested will be brought forth, brought before the Committee of the Whole. At this time, Mr. Chairman, in order to start the ball rolling, I move for the adoption by the Committee of the Whole of Section 1 of the Bill of Rights.

HEEN: I rise to a point of information. I note that this matter is pending on a committee proposal, together with the report upon the committee proposal. Just wondering whether or not the record shows that this committee proposal passed first reading.

CHAIRMAN: Will the Clerk -- It has passed first reading, as been informed by the Clerk. It's on second reading now, Senator.

HEEN: Very well.

MIZUHA: In order -- I withdraw that motion temporarily. I will move that the Committee of the Whole consider Committee Proposal No. 3 by individual sections.

DELEGATE: Second that motion.

NIELSEN: I second the motion.

CHAIRMAN: The Chair suggests that Standing Committee Report No. 3, Section 1, that that first section be discussed, then if it's immediately approved we go on to the next section. Will the members of this Convention turn to Committee Proposal No. 3, Exhibit A, Partial Committee Proposal on the Bill of Rights, Article -- Bill of Rights, Section 1. Any discussion on Section 1?

MIZUHA: I move for the adoption of Section 1.

DELEGATE: Second the motion.

CHAIRMAN: The motion has been made and seconded that we adopt Section 1 of Exhibit A, Bill of Rights. Question? All those in favor say "aye." Contrary minded. Unanimous.

We'll now go on to Section 2.

MIZUHA: I move for the adoption of Section 2, and at this time I would like to ask that the Chair recognize Delegate Larsen of the Bill of Rights Committee, who has cer-

tain thoughts to express to the delegates as a whole, and who has a proposed amendment. And I move for the adoption of Section 2.

NIELSEN: I'll second the motion.

CHAIRMAN: The motion's been made that we adopt Section 2. Will -- Delegate Larsen is not present.

LARSEN: No, right here, right here.

CHAIRMAN: Oh. You care to have the floor, Delegate Larsen? Because after all you'll speak for yourself.

LARSEN: No, I'm speaking for the committee. Yesterday when the committee met I said I didn't want to make this amendment to Section 2 unless we had the majority of the committee with us, and the majority of the committee asked me if I would not speak for myself, but speak for the committee.

CHAIRMAN: I mean you gained the floor.

LARSEN: Why, thank you.

CHAIRMAN: Someone suggested that you be given the floor.

LARSEN: This has been discussed at some length, the question of how can we maintain rights. And the question of maintaining these rights was what we are all after. In going back over many constitutions, we called attention for instance to the early constitutions wherever rights were mentioned, and also recognized the thought that unless there were obligations with these rights they became lifeless. And the threat today was that we forget the simple principle that with rights, in order to maintain them and keep them, we must have obligations. I'll just read one of these early -- the State Constitution of Massachusetts. In three of its sections, it calls attention, but in this one that's more like Section 2 than any other, I read as follows: "Each individual in society has a right to be protected by it in the enjoyment of life, liberty, property, according to standing laws." He is obliged," in the same section, "consequently, to contribute his share to the expense of this protection, to give a service, and equivalent when necessary," and so on; and another section that tells about how he shall maintain temperance, industry and frugality for the good of the state.

In one other, I just want to mention just a report that I think you all have, but I just want to remind you how this growing tendency has been upsetting the rights which maintain freedom. In society, there are disquietingly large number of groups and people who look upon the state as a kind of fairy godmother. Rights cannot last unless people make a corresponding contribution of obligations and responsibilities on which rights must be built and maintained.

The committee, therefore, felt it would actually enhance what we mean by Section 2 on rights if we add this sentence at the end, "However, these rights cannot last unless the people recognize corresponding obligations and responsibilities." And I would like to move that we have that as an amendment to Section 2.

CHAIRMAN: I would suggest -- the Chair suggests that you make the amendment and discuss the amendment after you make the amendment.

DELEGATE: I'll second that amendment.

HEEN: Mr. Chairman.

CHAIRMAN: Has the amendment been read?

HEEN: Mr. Chairman.

CHAIRMAN: Delegate Heen's recognized.

HEEN: I have a printed copy of this proposed amendment before me. "However, these rights cannot last unless the people recognize corresponding obligations and responsibilities." Just wondering whether the word "endure" instead of "last" would be a preferable word. Our rights cannot endure unless the people recognize corresponding obligations and responsibilities.

CHAIRMAN: Wouldn't it be a matter for the Style Committee, I mean as far as that's concerned, the word "last" and "endure"?

MIZUHA: The committee's willing to accept Senator Heen's suggestion. I believe it's a more appropriate word after consideration here and we'll defer to the Judge's recommendation.

CHAIRMAN: All those in favor of accepting the word "endure" in preference to the word "last" signify by saying "aye."

CASTRO: Point of information, please. This is the first time I've heard of this amendment, and I'd appreciate it if it were read again slower so I could write it down before we discuss it.

CHAIRMAN: You'd like to be recognized before you do that? The Chair recognizes Mr. Castro.

CASTRO: I'm sorry, I thought you recognized me.

MIZUHA: I shall be happy to read the amendment, as suggested. "However, these rights cannot endure unless the people recognize corresponding obligations and responsibilities."

DELEGATE: Again.

MIZUHA: "However, these rights cannot endure unless the people recognize corresponding obligations and responsibilities."

CHAIRMAN: The only change is the word "last." Delete the word "last" and insert in lieu thereof the word "endure."

MIZUHA: I move the previous question.

ASHFORD: I move to amend the amendment by striking out the word "However" and the comma following it.

PHILLIPS: I second the motion.

CHAIRMAN: Well, there's a motion made to delete the word "However," and insert in lieu thereof --

MIZUHA: Will the -- Mr. Chairman, I'd like to ask Miss -- delegate from Maui, a question. Isn't this a question of style?

ASHFORD: I think it is, but I also think "endure" as a substitute for "last" is a question of style.

MIZUHA: That is correct, but in order -- the delegate from fourth district did not think it was a question of style, That is why the committee did acquiesce to his suggestion. However, inasmuch as the delegate from Maui believes it is a question of style, we are willing to just acquiesce to her remarks and let the Style Committee handle the matter.

TAVARES: Before you move the previous -- before the previous question is seconded, I'd like to ask another question. It is my understanding, and if I'm wrong I'd like to be corrected, that the expression "all persons are born free from political oppression," which is a rather unusual wording for that clause, means really that they're born with the right to be free. That's the way I read it. Is that correct?

LARSEN: If I may answer. That was discussed at length, and the words "all men are born free and equal" is so obviously wrong, and what the meaning of this clause was, they are born free of political oppression, was the reason for trying to get the words into what the meaning had become. That was the reason for the change.

FONG: Taking up from there, I'd like to ask the committee why did they put the word "from political oppression"? Now, I can visualize that persons may be free from economic oppression, from social oppression, why do we restrict it just to political oppression? I'm afraid that if you put this word "political," it more or less excludes economic, social and other things.

LARSEN: Well, the committee, after considerable discussion, felt the only thing a state can promise is freedom from political oppression, and we didn't want to put in the statements that had been made so many times about being born free and equal. A child born into a drunkard's home or into a feeble-minded home is certainly not born free and equal. And the idea was to put into our State Constitution only those things that a state can be responsible for. And I think that has become the general meaning of this section.

FONG: Well, it may be the general meaning of it, but I'm afraid that by putting political oppression in here and not mentioning the other things which probably -- I feel that we should be free from economic oppression, I feel that we should be free from social oppression. Now by putting in just political oppression, I'm afraid we're limiting it a little too much. Now, what is the committee's thought on that?

LARSEN: Well, the thought, of course, was that's the only thing a state can promise. However, if you read the next, "They shall remain equal in their inherent rights," that a state can only promise certain -- a state can't promise that you're free of economic oppression.

FONG: Now if we're going to limit it just to political oppression why put it in?

LARSEN: Because that's the only thing a state can promise, and if we are free of political oppression, the other things become natural.

FONG: To me this seems like a curtailment of our rights, a curtailment of other freedoms.

LARSEN: May I ask the speaker what other things a state can promise?

PORTEUS: It can promise freedom from religious persecution.

LARSEN: That's already promised down below.

CHAIRMAN: That would be political.

LARSEN: They're not born free of religious, economic, or other oppressions; but they can be born free from political oppression. I don't believe there is anything else you can be born free of as far as the state's concerned.

MAU: I wonder if the chairman or the last delegate who spoke in behalf of the Committee of the Bill of Rights is announcing a political philosophy when he states that people may not be born free of economic oppression. As I understand it, the present national administration is charged in some quarters as sponsoring what they call the welfare state. Some of the more vigorous opponents call it the trend towards socialism. Is that thought in the minds of the members of the Committee on Bill of Rights when they explain that those of us who are citizens born in this state are only free from political oppression, and not from economic oppression?

MIZUHA: Certainly the Committee on the Bill of Rights did not have the kind of thoughts expressed by the delegate from the fifth district.

MAU: Well, then, if that is the answer to my question, why not leave out --

CHAIRMAN: Everybody born a millionaire.

MAU: Why not leave out the word, the expression "political oppression," and have it carry its general meaning as it is in the Federal Constitution?

MIZUHA: In defense of the Section 2 as it stands at the present time, I believe it was the belief of my committee that the words "political oppression" were not intended to limit it entirely to the political field. It is, if we study the section in its entirety, is a section on inherent rights, and the expression "political oppression" was inserted, and we could consider it as being mere surplusage in this statement of political -- of this section on inherent rights. Certainly the Federal Constitution has that famous phrase, "all men are born free and equal," or something to that effect, and the expression "political oppression" here was added for emphasis maybe, but primarily to show, as Delegate Larsen has expressed, that today because we are -- some of us are born in homes that are handicapped and feeble-minded and other illnesses, that perhaps we are not born free, to the general term expressed, and equal.

LEE: Mr. Chairman.

MAU: Mr. Chairman, I have not yet --

CHAIRMAN: Senator Lee.

MAU: Mr. Chairman, this is an answer to my question, I have not yet completed my --

LEE: Yes, will Delegate Mau yield to an expansion on that same point. I'd like to state that the committee was not unanimous on this particular clause, but as far as I was concerned, on several of these I had been absent, as you know, in going to Washington. I'd like to state that, however, I understand the philosophy back of this clause, which is inherent particularly in the mind of one of our delegates on the committee, Delegate Larsen, on the feeling, from a medical standpoint, from other personal standpoints, I suppose, that the idea that men are born free and equal is a fiction. However, I had pointed out to the committee that it is a philosophy that is expressed, an ideal which the U. S. Constitution has propounded and has proved to be one of the shining lights characterizing our American democracy as compared with the other nations. I, myself, can see the point raised by Delegate Fong. I think it would be a limitation. And I believe that the section on the -- on this section here on the inherent rights, which the subcommittee of the Statehood Commission had proposed, would be more satisfactory. I'd like to state that at this particular time that I believe those points raised by Delegate Fong and Delegate Mau are -- could be answered by the adoption of the clause contained in the Model Constitution.

DELEGATE: [Part of speech not on tape.] . . . free and equal, free and independent.

KELLERMAN: May I speak to that point please?

MAU: I have not quite finished my -- I wonder whether it be wise to go to another portion of it or to stick to this

one sentence. Would the Chair desire to rule on that matter? It would be less confusing, I think, if we stuck to this first sentence in Section 2 of the proposal.

CHAIRMAN: Right now there's nothing before the Convention but discussions.

MAU: Yes.

CHAIRMAN: No motion has been put as yet.

MAU: That's correct. But I want to get to the Chair this thought. I have some other questions - -

WIRTZ: Point of order.

MAU: - - to ask about other sentences.

CHAIRMAN: State your point.

WIRTZ: My point of order is: the motion has been put to adopt Section 2, and that motion has been amended, I mean the section has been amended by another motion. There is a motion before the house.

MAU: What is the - - If the amendment is to add a new sentence to the - -

CHAIRMAN: One motion is to delete the word "last" and add the word "endure," and another motion to amend that motion was to delete the word "however."

MAU: Well, I would like to leave it to the Chair which is the best procedure to follow, so that we won't be all confused. Shall we take up these amendments and then later on ask questions on other portions of Section 2?

CHAIRMAN: Well, what is the pleasure of the Convention?

A. TRASK: I move that we take this first sentence first and then come to the second sentence, and I ask at this time that the movant for the amendment, Doctor Larsen, defer his motion until we've first dealt with the first sentence. I do think with the other delegates who have talked that the first sentence is charged with a lot of matters that should be explained.

I for one want to know whether or not there's been any judicial determination of the word "political oppression" and its implications. We've heard from the learned doctor say and cite the Constitution from the colony of Massachusetts, but we have not heard whether there has been any judicial determination of the word "political oppression" which Delegates Fong and Mau are bothered with.

CHAIRMAN: Would Delegate Larsen desire to withdraw his motion?

MIZUHA: With the consent of the chairman I'd like to have Delegate Kellerman from the Committee on the Bill of Rights make a point here, and then the Chairman of the Committee of the Bill of Rights will make a statement which will clarify the whole situation.

CHAIRMAN: Well, the Chair will suggest that we continue as we've done. Kellerman is recognized.

KELLERMAN: I would like to speak to you just a moment on the reasoning back of changing the words "free and equal" to "free from political oppression and equal." As you all know, when the Federal Constitution was adopted, it was very largely based upon the philosophy expressed by Rousseau's *Social Contract*. That philosophy was based upon the premise that men lived free and individually in a totally unorganized society, in fact they did not live in a society. The world apparently in its beginning, or whatever original organization was ever created, was made up by the voluntary consent of a detached, unorganized group of individual human beings; each having his complete freedom and independence; each agreeing with each other to renounce certain of those complete freedoms and independence for the benefit of obtaining the protection and security of others in a group. The words "free and equal" relate directly to that philosophy and that premise.

But in denouncing or in giving up certain of those complete freedoms of the individual for protection and security, they were giving up politically, they were forming a political organization. They were not forming just an economic organization or a social organization. As we saw it, they were giving up certain of their - - a certain degree of their inherent rights for the greater protection and security from the group. They organized themselves politically. Therefore, we thought the Constitution itself is not an economic document, it is not a social document, it is a political document. And it declares in a political document that men are born free. It seems to me a natural conclusion that it means free politically. It is expressed in a political instrument, not in a social or economic instrument.

In order to make it clear that we felt the intention was political and also to make it clear that we do not believe that all people are as a matter of fact born free—we have seen them not born free and equal in too many circumstances—that we were simply clarifying the meaning of a general term which has been held up as an impossible statement of a dream, and very far from actuality, if you mean freedom in all respects. It was for that reason that it was defined, "freedom from political oppression," and that's what we understood in the actual fact the freedom to mean.

Now if you are adverse to putting in that definition, on the feeling that it may be misconstrued, or will not have this explanation, will not know what we're driving at, or feel that we may be taking away from a basic tenet of American political thought, I don't think the committee would feel, well I don't think they would insist upon putting it in. I don't think they feel the matter that strongly. It was an attempt to be realistic and to define the term as we saw its historical, philosophical and political background.

MIZUHA: I believe that Delegate Kellerman has expressed the philosophy of the committee. It was - - there was nothing in recommending Section 2 to change the basic, American philosophy with reference to inherent rights, and we are agreed that it's a question of style, and anything that the Style Committee wishes to bring forth with reference to this language as to what our inherent rights are, that all men are born free and equal, the committee will be willing to acquiesce to that point, and I make that point very clearly for the record, for delegates from the fifth district, both Mau, Fong and Trask, that we are not changing that basic philosophy upon which our government was founded, as to the rights of human beings. I think you should be agreed on that point.

CHAIRMAN: Is there any other delegate?

MAU: I think that the subject matter we are discussing is not just merely a matter of form or style. It goes right to the heart of a very, very important situation; of a very important provision in the Constitution of the future State of Hawaii, so that we could not very well agree with the Chairman of the Bill of Rights Committee that this phrase "political oppression" could be left to the Style Committee to change. I think it is so fundamental that this Convention must deal with it. As my understanding, the explanation made by Delegate Kellerman, the committee itself would

have no particular objection if the Convention felt that if the phrase might be misinterpreted, that that clause be left out. Am I correct in that explanation?

MIZUHA: That is clear.

MAU: Is that so?

MIZUHA: That is clear.

MAU: Then I would suggest that we amend the first sentence of Section 2 to read as follows: "All persons are born free and equal in their inherent rights." Now, if that is satisfactory with the committee, I suggest that after we dispose of the motion and two amendments before the Committee of the Whole, that we go into the first sentence later. That is just a suggestion.

Now, I want to make this clear that I don't believe that the explanation made as to the effect of the Federal Constitution being purely a political document is completely correct. From all the decisions of the Supreme Court of the United States they have, out of interpretation, dealt with the economic and social life of the nation. And in that respect has taken it out of the field of purely politics, and I mean science of government.

And also, as I understand, all the constitutional authorities have made the statement time and time again that the Federal Constitution is a living document, so framed that it can meet all of the changing times; and so when we go back to explanations to the time when the Federal Constitution was drafted, and to the time when they, some of the proponents at that time of the then first draft of the Constitution, in stating that it was a purely political doctrine, that philosophy has changed and broadened as we have come down through the years.

MIZUHA: Mr. Chairman, we have to answer Delegate Mau - -

MAU: Very well, I - -

MIZUHA: - - and, I believe all this delay in that matter need not be confined to speechmaking on the Federal Constitution itself. We have to answer him, and we'll have, and I ask at this time for, a short recess to prepare Section 2 for the - -

CHAIRMAN: Well, the Chair would suggest, I think the amendment that Mau suggests is only the deletion "from political oppression" and remain. Delete those words and you have "all persons are born free and equal in their inherent rights." Is that the amendment?

MAU: Yes, but we'd be happy to get together with the - -

MIZUHA: Yes, I believe that the five minute recess in order - - until - -

DELEGATE: I second the motion to recess, Mr. President.

CHAIRMAN: Recess is declared for five minutes.

(RECESS)

[Part of the debate was not taped. Delegate Heen moved to defer Section 2. A motion was made to adopt Section 3.]

ROBERTS: As I got the statements made by the previous two speakers, the meaning of the term "by the law of the land" is the same as, or indentical with, "due process of law." Would there be any objection to using the term "due process of law"? It's a question as to - -

KELLERMAN: It's a matter of history largely, using the two terms. We have - - they're both taken from the Federal Constitution.

CHAIRMAN: Will you yield the Chair, Mr. Roberts, to Mrs. Kellerman?

KELLERMAN: I was answering, trying to answer Mr. Roberts' suggestion. The "law of the land" is a - - it's a historical term used in connection with that provision in other constitutions. "Due process of law" is the historical term used in the Federal Constitution in connection with the deprivation of life, liberty and property. They mean the same. I presume they could be put together, and you'd get exactly the same constitutional result. It's just a matter of style plus the historical reference. They are both terms that are used in practically every constitution.

DELEGATE: Mr. Chairman, I would - -

CHAIRMAN: If there is no amendment offered, the Chair would suggest that I put the motion. All those in favor of Section 3 as written say "aye." Contrary minded. Section 3 is passed.

DELEGATE: Of course, Mr. Chairman, that's with the understanding that the "e n" is eliminated from the final draft.

CHAIRMAN: This is for approval, only for approval. Section 3 has been approved by the committee.

BRYAN: I'll move the adoption of Section 4.

DOWSON: I second the motion.

CHAIRMAN: The motion's been made that we adopt Section 4. Open for discussion. Hearing no questions, the - - I'll put the motion. All those in favor of adopting Section 4 say "aye." Contrary minded. Section 4 is carried, unanimously.

Now proceed to Section 5.

BRYAN: Mr. Chairman.

WOOLAWAY: Mr. Chairman.

CHAIRMAN: Mr. Bryan is recognized, he's the motion maker for this committee.

BRYAN: I move the adoption of Section 5.

DOWSON: I second the motion.

CHAIRMAN: The motion's been made that we adopt Section 5.

AKAU: In number five here, I'd just like to say that, very briefly, there has been some discussion through the press that President Truman may possibly recall the representative of United States, the missionary, or whatever you call the person who represents us, from the Vatican. Now, in view of that, whether that means anything or not I'm not here to say, but I'm wondering, in this particular section, has there been any delineation of the church and the state? And I'd like very much for one of the members of the committee to clarify that.

MIZUHA: In answer to the delegate from the fifth district, the Section 5 incorporates the first clause of the first amendment of the Federal Constitution, and I believe the separation of the state and the church has already been clarified by decisions of the Supreme Court, and it would be well for this future State of Hawaii to follow that clarification.

LEE: I might add to that that this speaks merely to the establishment of a religion, not to the matter of separation of state from church, which is an entirely different subject.

CHAIRMAN: All those in favor of approving Section 5, adopting Section 5, say "aye." Contrary minded. Carried unanimously.

Section 6.

BRYAN: I move the adoption of Section 7.

VOICE: No, no, Section 7. Section 7, Mr. Chairman.

MIZUHA: Section 7, Section 7.

DELEGATE: I second the motion to adopt Section 7.

TAVARES: I -- this went so fast on the last section, I didn't get a chance to speak. I do not want to be understood --

CHAIRMAN: On Section 6?

TAVARES: On the religion. I do not want to be understood, and I don't want this Convention to be understood as agreeing with the last speaker that it does not provide for the separation of church and state. I believe that's exactly what it does, and I don't think it should go down in the record unchallenged.

CHAIRMAN: Well, I think that was pointed out by the chairman of our committee.

MIZUHA: Definitely, we -- I believe the committee agrees with the point of view of delegate from the fourth district. The Supreme Court in its interpretation on all matters pertaining to religion has definitely, in interpreting the first clause of the first amendment, has brought that out in all of its decisions.

CHAIRMAN: It's not before the house, it's Section 7.

MIZUHA: Section 7.

CHAIRMAN: We now proceed with Section 7, No --

MIZUHA: Section 6 will come up tomorrow. Section 6 will come up tomorrow, inasmuch as it hasn't laid on the table for four days on Committee Proposal No. 4.

CHAIRMAN: All those in favor of adoption of Section 7 say "aye." Contrary minded. Carried unanimously.

BRYAN: If I may, I move the adoption of Section 8.

DOWSON: I second the motion to adopt Section 8.

CHAIRMAN: Motion's been made and seconded that we adopt Section 8. Now open for discussion. Hearing no discussion, the Chair will have to put the motion. All those in favor of adopting Section 8 say "aye." Contrary minded. Carried unanimously.

BRYAN: It's my pleasure to move for the adoption of Section 9.

DOWSON: I second the motion to adopt Section 9.

CHAIRMAN: Same motion, same second. All those in favor of --

MIZUHA: I would like to call on the delegate from the fourth district. A question was raised as to whether Section 9 would provide for prosecution of a felony by information, as it is now in the Territory of Hawaii. Delegate -- I would like to ask the Chairman to recognize Delegate Heen.

HEEN: I have grave doubts that you can prosecute a person by information, except in cases involving misdemeanors. I would like to have this -- action on this deferred until later.

DELEGATE: Second it.

HEEN: I think some thoughts really should be given to this particular section. I so move that action upon this section be deferred until later in the calendar.

DELEGATE: Second the motion.

A. TRASK: Mr. Chairman.

CHAIRMAN: All those in --

A. TRASK: Mr. Chairman.

CHAIRMAN: Speaking on the deferment?

A. TRASK: No.

CHAIRMAN: All those to have it deferred later on in the calendar say "aye." Contrary minded. Carried.

MIZUHA: May I make a statement with reference to Section 9? Section 9 is --

CHAIRMAN: Section 9 has been deferred to later on in the calendar.

MIZUHA: Yes, but, just a -- with the permission of the Chairman, in order -- the reasons for deferment.

CHAIRMAN: You're out of order, unless you would like to go on to Section 10.

CHAIRMAN: The Chair will rule that --

A. TRASK: Mr. Chairman. I would like to have --

CHAIRMAN: -- Section 9 has been deferred.

A. TRASK: I would like to have a reconsideration of Section 8. There is a recent decision of the Supreme Court --

CHAIRMAN: You'll have to move for reconsideration first --

A. TRASK: Yes.

CHAIRMAN: -- and after it's been considered then you can discuss.

A. TRASK: Yes, I'd like to move for reconsideration of Section 8 at this time.

DELEGATE: Second the motion.

DELEGATE: Don't you think we should go through it and get as many of these sections okayed, and then go back for any reconsiderations so we'll --

CHAIRMAN: I'll have to put the motion as put to the Chair. The motion has been made that we reconsider our action on Section 8. All those in favor say "aye." Contrary minded. The ayes have it. Section 8 is now open for discussion.

A. TRASK: There has been just recently what appears to be a reversal in the historic stand of the Supreme Court with respect to this case. It involves a question of search and seizures, and whereby a person need not have probable cause to even get a search warrant before a search is made. I would like -- like the request made by Senator Heen, to have Section 8 deferred, if you please.

BRYAN: I think that the reason that our rules call for this delay on the table for four days is to preclude any necessity for deferment when it comes up for the Committee of the Whole. I would ask the delegates in the future to --

CHAIRMAN: The deferment is only to later on in the calendar, is what you asked, the deferment?

A. TRASK: Yes. Deferred in the same manner that Section 9 has been deferred on the motion of Delegate Heen from the fourth district.

CHAIRMAN: Later on in the same day.

MIZUHA: Again I would like to speak to Section 8 and Section 9. Both sections were taken from the Federal Constitution and if incorporated in the State Constitution will naturally follow decisions of the Federal Supreme Court. Now - -

A. TRASK: Will the - -

MIZUHA: Now, if it is the desire of the delegates here to change the wording in the Supreme Court, in our - - the wording in the Federal Constitution to our State Constitution and then proceed from that matter, well it will take a long line of judicial decisions in order to settle the question of search and seizures and what is covered in Section 9. That is why I believe, and I think the committee believes so, that if we follow the Federal Constitution as far as the State of Hawaii is concerned, then we will not run into the kind of difficulty that will be involved in our courts for a long, long time.

CHAIRMAN: The Chair recognizes the fact. The Chair feels that since deferment has been asked on both of these sections, in all probability it will be accepted in its entirety, but for the courtesy of the members of this Convention who asked for deferment, that we extend the courtesy to them. Section 8 has been asked for deferment until later on in the calendar. All those in favor of having it deferred until later on in the calendar say "aye." Contrary minded.

We'll now go on to Section 10 - - 11.

VOICE: Section 11.

CHAIRMAN: Section 11.

BRYAN: I move the adoption of Section 11 as written.

DOWSON: I move - - I second the motion for the adoption of Section 11.

CHAIRMAN: Same motion, same second.

MIZUHA: With reference to Section 11, we refer to judicial circuits. Of course that will be changed by the Style Committee perhaps to conform with anything that the Judiciary Committee reports out with reference to judicial circuits or districts here in the future State of Hawaii.

CHAIRMAN: Any questions on Section 11? All those in favor of Section 11 say "aye." Contrary minded. Carried unanimously. Section 12.

BRYAN: I move the adoption of Section 12.

DOWSON: Mr. Chairman. I - -

CHAIRMAN: Same motion, same second. All those in - -

DOWSON: I second the motion to adopt Section 12.

CHAIRMAN: Any question on Section 12? Hearing no question, all those in favor of Section 12 - -

MAU: I just want to inquire of the chairman whether this is - - this language used is the same as in the Federal Constitution.

MIZUHA: If you will read the report, Delegate Mau, on page two of our committee report, it says in Section 12, "incorporates the eighth amendment of the Federal Constitution, with an additional sentence with reference to the detention of witnesses." And that is why we have committee reports.

FUKUSHIMA: I don't believe the committee report is too clear. It says - - the only thing it says about 12 is "incorporates the eighth amendment of the Federal Constitution, with an additional sentence with reference to the detention of witnesses." I would like to know - -

CHAIRMAN: Would you care to have that sentence explained to you, the additional sentences?

FUKUSHIMA: Yes. I would like to know whether that was inserted there to take care of the 48-hour law that we have at the present time.

MIZUHA: No. The 48-hour law on the law of arrests was the subject of several proposals introduced by Delegates Trask and Trask, and at that time the committee voted that it was a legislative matter. However, it also voted that the committee recognized that there were several instances where the law was abused, and perhaps this statutory law of arrest of the Territory, if we become a state, should be revised, and has so incorporated in this report, the last report.

A. TRASK: I'd like to have an explanation of that second sentence of Section 12, quote: "Witnesses shall not be unreasonably detained or confined." Now, why has the committee deemed that this second sentence was necessary?

MIZUHA: I would not like to be a one-man supreme court on the question here, but the unreasonable detention of witnesses specifically refers to witnesses who are picked up with - - in connection with a felony and are brought down to the police station and held there for a long time and then, with the promise on the part of the police department to go easy with them and so forth, they are finally released. And that is also associated with the law of arrest in Hawaii. You know you can arrest them for 48 hours on mere suspicion with reference to a crime. If a man is a witness to the crime, I - - the committee believes that he should not be kept at the police station for 24 hours, 12 hours, or 20 hours for that matter, under our law of arrest. And this is a recourse for such witnesses to bring action on whatever the legislature will see fit with reference to statutory laws on any course of action they may have if they are unreasonably detained or confined. Of course, our word "unreasonable" is subject to definition by our courts, and we do not attempt at this time to write that definition in the Constitution.

A. TRASK: I'd like at this time to have Section - - that second sentence, "Witnesses shall not be unreasonably detained or confined" of Section 12 stricken. And my reason for that is just plainly this. According to our law, a witness, as defined in our statute, is a person who is called to give testimony either for or - - for the plaintiff or for the defendant, or for the government or for the defendant in a criminal case. He has the right to refuse to come unless his mileage or money is paid to him at the time he is served with papers. This reference that the chairman of the committee gives is a type of securing evidence which is not sanctioned at all and is no part of the law of the land at all. The policemen have exercised their right of bringing people in, but people should get a good attorney and sue the police department. But that has no part in the Constitution as such. Counsel is referring perhaps to an honored practice on the island of Kauai, but as far as I know we don't have that in Honolulu much.

The question, therefore, is a substantial one of witnesses as defined by our law, which is "a person called," and he must be paid and he can defy the police or any other authority. So I do not see where this is pertinent.

The second reason is this: by having a witness who is -- who responds to a subpoena after he is paid, he comes to court. If you're going to leave that section in, that he's not unreasonably detained. "Unreasonably detained" may be considered from many angles. He may be wanted -- want to get married the next day. If he's going to be called in a suit that may reasonably go over three or four months, his marriage would have to be detained. I think that's unreasonable. Now, that's from the witness' standpoint.

From the litigant's standpoint, some cases may be -- may have interference with many other things. A juror, or several jurors, may be ill; the judge may be ill; counsel may be ill; the defendant may be ill. Now, what is unreasonable? You will be throwing a very unreasonable sentence, as I see it, into a very, very important part of the Constitution, which has to do with the question of his trial, with the question of detention, with the question of bail, with the question of fines. I think, therefore, that it has no, no, no reason to be in, and I renew my motion that the second sentence be stricken.

HEEN: I rise to a point of information. I'm wondering just what was intended by this sentence. Was it intended to apply to criminal cases where as I observed in other jurisdictions, witnesses have been arrested and detained, held for criminal cases?

CHAIRMAN: That's right. Felonies, misdemeanors.

HEEN: I don't think this was intended or is intended for civil cases at all.

MIZUHA: That is correct.

HEEN: By having it in the Constitution in this language, it implies that a witness may be imprisoned or kept in jail in order to secure his appearance, especially in criminal cases. Otherwise, you may lose a witness who leaves the jurisdiction and you cannot prosecute a person who is accused of crime.

MIZUHA: The last sentence here, it started off with the first sentence with reference to excessive bail, and we think of bail in terms of all criminal offenses. Delegate from the fifth district has raised a fine point. Perhaps that is a statutory matter that should be covered. However, it was in line with his thinking with reference to other matters, with reference to our laws of arrest and detention, that this sentence crept into the section.

There was also the thought that some of our criminal -- witnesses were confined together with criminals and the objection was raised to the practice on the part of the police to place them in cells with other criminals when they were not criminals themselves. I believe the Territory at the present time has a statute where witnesses in capital cases can be detained. I may be wrong on that point. Maybe some of the practicing attorneys here in town can verify that situation or that section in our law where witnesses in capital cases can be detained.

A. TRASK: I'd like to supply that bit of information. Many years ago, I think it was 1865, one of the early statutes was, there --

CHAIRMAN: I don't remember that far.

A. TRASK: -- shall be no writ ne exeat. Ne exeat means that you shall not detain any person for any trial, criminal or civil, as Judge Heen has suggested. That is a distinctive situation. If the committee, I think with reference to that principle of ne exeat being the state shall not detain, or any person has -- shall not have the power to detain any other person for any litigation. I think we should defer action on Section 2 until your committee would consider that collateral important right, together with Section 12. And so, I would move, therefore, perhaps at this time, in view of the remarks of the chairman, to defer action on Section 12.

ASHFORD: May I state my view of the writ --

CHAIRMAN: You may proceed.

ASHFORD: -- of ne exeat? The writ is ne exeat regno, and it used to be in existence here. It was forbidden by our Organic Act. That writ was not to detain witnesses, it was to forbid a man from leaving the realm.

CHAIRMAN: Senator Heen is recognized.

HEEN: We do have in the statute a provision which reads, "The Attorney General or other prosecuting officer may require of any judge of a court of record, at chambers, that witnesses material for the prosecution of any criminal indictment preferred, or about to be preferred, be bound by recognizance to appear and testify at the trial of such indictment, or that such witnesses be committed to jail for that purpose, and it shall be lawful for the judge so applied to, to make such order."

MIZUHA: Thank you.

CHAIRMAN: All the discussion? The Chair will now put the motion. Shall Section 12 be adopted as written by the committee?

HEEN: I think, for the purpose of clarity, that this sentence might be amended to read "Witnesses in criminal cases shall not be unreasonably detained or confined."

CHAIRMAN: Then probably deferment is in order, if someone second the motion for deferment, we'll be glad --

DELEGATE: I second the motion.

CHAIRMAN: The motion has been made to defer this section till later on in the calendar. All those in favor say "aye." Contrary minded. Carried.

Now proceed to Section 13.

BRYAN: I move the adoption of Section 6 -- 13 as written.

DOWSON: I second the motion to adopt --

CHAIRMAN: The motion, same motion, same second.

DOWSON: -- Section 13 as written.

CHAIRMAN: Section 13 is now open for discussion. Hearing no question, all those in favor of adopting Section 13 as written by the committee, say "aye."

ASHFORD: I have a question there. Why should we put in the provision, "and a reasonable amount of the property of individuals may be exempted from seizure or sale for payment of any debts or liabilities."

CHAIRMAN: To keep it from going broke.

ASHFORD: Isn't that properly a legislative matter, solely?

MIZUHA: Well, that is a reason why it was inserted for the -- as a basis for legislation that will exempt a certain amount of property from seizure. I believe there are states in the Union even at the present time that provide for imprisonment for debt and, likewise, it was felt that if a man

had a judgment against him, he should have the kind of exemption continued as he has under present statutory law. And that would be the basis for this provision.

ASHFORD: Mr. - -

KAUHANE: Mr. Chairman.

CHAIRMAN: She still has the floor, she just asked a question.

ASHFORD: May I call to the attention of the chairman of the Bill of Rights Committee that it is just an authorization, an authorization which would exist without its expression. In other words, a reasonable amount of the property of individuals may be exempted from seizure and sale. And is it not true that it could be exempted from seizure or sale without writing that into the Constitution?

MIZUHA: I don't believe so. I may be wrong. Probably if it was not so stated in the Constitution, the legislature might go ahead and make all property subject for attachment for the payment of debts. If the states in the Union, as we know, can provide for imprisonment of debts, certainly I believe in those states there's no exemption at all. And this is a constitutional basis for legislation. And I believe provision in the Constitution here would be a safeguard from any future legislatures from going astray. Of course, this is not a mandatory provision at all, but the provision as written would serve the basis for legislation to that effect.

KAUHANE: I'd like to ask the committee a question. Whether Section 13 protects an individual who appears before the divorce court and is ordered by the court to pay an alimony? Upon his refusal to pay an alimony, which I contend is a debt that he has to pay, the court then issues a contempt proceeding and sends the man to imprisonment for failing to pay a debt which is legally termed an alimony. Whether this section protects the individual?

CHAIRMAN: The Chair agrees with you. The Chair feels that in divorce cases a man is allowed to hang on to his shirt.

MIZUHA: The question was asked of the delegate from Maui, Judge Wirtz, the question raised by delegate from the fifth district. I believe we discussed that in the committee with you, at that time.

DELEGATE: A ruling from the bench.

KAUHANE: I couldn't understand the speaker, whatever he said was only heard by himself, and those who are around him. But I'd like to be enlightened as to the statement he made with reference to my request for an answer, whether the individual is being protected under divorce proceedings where he has to pay a legally termed debt classified as alimony. And I also feel that if and when he refuse - - fails to pay such alimony or debt, his property may be seized and the court shall issue such order of seizure of his property for failing to pay a legal termed debt under the definition of alimony, and his property is put up for sale for the payment of such debt.

TAVARES: I don't think that the question of a contempt proceeding to enforce payment of alimony is usually covered by this type of provision. In fact, I know it isn't. The theory of the contempt proceeding in a divorce matter is this: that married people have certain obligations to the family which it's in the interest of the state to protect and preserve and enforce. And that when people go into the marriage relationship, they cannot escape those - - some of those responsibilities by getting a divorce. And so when a man is required to pay alimony and doesn't pay it, he goes before the court and the question is not only whether he shall or can - - shall or shall not pay, but whether he can pay and refuses to do so unreasonably. And that is always the question before the divorce court.

Because that social obligation that he assumes from marriage is so great, so important to the state, that it has to be taken care of in a special manner. And it's not considered a debt, it is an order of the court, which he - - if he doesn't pay, he doesn't - - can't be punished for, unless he unreasonably refuses to do so. And if he does, and it's taken up on appeal and the Supreme Court finds that the court was wrong in saying that he could pay and refused unreasonably to do so, then it's reversed. It has no relationship to this type of provision, and I don't think that should be affected in any way.

SHIMAMURA: The courts have actually construed such a section, and have held that such a provision is not a prohibition against the court's imposition of a fine or imprisonment for contempt. However, I believe for clarity's sake that the committee report should include a statement to that effect, that it is not intended that this section shall prohibit imprisonment on contempt.

CHAIRMAN: Is that in your report?

MIZUHA: I believe the committee report originally stated that it was not intended to prevent imprisonment for contempt of court.

ANTHONY: As far as I am aware, there is only one state in the Union that has imprisonment for debt. Am I correct in that, Mr. Mizuha?

MIZUHA: I am - -

ANTHONY: Massachusetts.

MIZUHA: No, New Hampshire, I believe, is the state that has imprisonment for debt.

CHAIRMAN: Well, whatever it is, it's just one state.

ANTHONY: However, I agree with the delegate from Molokai in regard to her statement as to the inclusion of what would more appropriately be a rightful subject of legislation. Most states have a statutory provision for exemption against execution - - from execution of certain property. It arose chiefly in connection with the homestead laws. You'll find throughout the Union, particularly in the West, that homesteads are exempt. Now, it seems to me that we have never grown up in the tradition of homesteads such as they know them in the West, and we are perfectly safe in letting to the legislature the preservation of existing exemptions.

In other words, this particular language: "A reasonable amount of the property of individuals may be exempted from seizure or sale for the payment of any debts or liabilities," that I am quite sure is not necessary to deposit a grant of legislative power in the legislature to make such an exemption. Therefore, it seems to me that if the Convention wants to continue the prohibition against the imprisonment for debt, the section might very well end with the word "debt," putting a period after "debt." The legislature would then be free, as it is under existing law, to make such exemptions as it may choose, limiting garnishments, limiting the amount of attachment, providing that household furniture will be exempt. I don't think that this adds a thing to it, and it may result in some confusion.

CHAIRMAN: You ask for deferment that later on you may make the proper amendment?

ANTHONY: I would like to -- I would move that Section 13 be amended to read as follows: "There shall be no imprisonment for debt," eliminating the next two sentences and a half.

DELEGATE: I second that motion.

CHAIRMAN: Motion's been made and seconded that the remaining -- "There shall be no imprisonment for debt;" the remaining sentence, following sentence be deleted. All those in favor say "aye." Contrary minded.

Since there is some doubt in the Chair's opinion as to this amendment, I would suggest that deferment of this section be made to later on, and that the proper amendment be drawn for discussion by the Committee of the Whole.

MAU: So moved, so moved, Mr. Chairman.

CHAIRMAN: All those in favor of having this section deferred till later on in the calendar say "aye." Contrary minded. The motion has been made. Carried. Deferred.

We'll now proceed to Section 14.

BRYAN: I move the adoption of Section 14.

DOWSON: I second the motion to adopt --

CHAIRMAN: Same motion, same second.

DOWSON: -- Section 14.

MIZUHA: May I make an explanation of Section 14 --

CHAIRMAN: You may proceed.

MIZUHA: -- and the recommendation from the office of the Attorney General with reference to Section 14. The Attorney General's office has recommended that we eliminate the second clause of Section 14: "Nor shall the laws or the execution of the laws be suspended." They were afraid that in times of emergency, for instance, if there was the bubonic plague here in Honolulu, and the governor and the legislature ordered the people out of the district, and when the time came for them to return, the governor could suspend the law to enable them to return to a particular district; this would prohibit him from doing so. And I believe after discussion with the office there that it could be deleted from this section without any difficulty and without encroaching upon the intent of the writ of habeas corpus.

AKAU: I have read the report of the committee on Section 14, stating that it comes from the Federal Constitution, Section 9, Article 1. Now then, the way it's worded here, does this recognize or not recognize the right of a military government to impose military government or rule upon the civilian population, thus taking away the writ of habeas corpus? And then, in your last line, when you say "prescribed by the legislature," how far could the legislature go and how far would this power go?

MIZUHA: When the Attorney General raised the question as to the deletion of the second sentence, I did say at that time that we could delete the last sentence also, so that the section would read as follows: "The privilege of the writ of habeas corpus shall not be suspended unless in case of rebellion or invasion when the public safety requires it."

ANTHONY: I think it's essential to preserve the language that the committee has preserved, namely, "prescribed by the legislature" for this reason. Under the Federal Constitution that expression is not found, and it took 50 years to discover whether or not the executive or the legislature had the power to suspend the privilege of a writ. And it was only after Ex parte Merryman that it was found that President Lincoln did not have the power to suspend the privilege of the writ. This makes it perfectly clear that that power resides in the legislature, not in the executive.

Answering my friend in the turban on my left, this would not in any respect interfere with the power of the federal government in case of a national emergency operating under the appropriate section of the Federal Constitution to suspend the privilege of the writ of habeas corpus by action of the Congress.

I have some doubt about the deletion of the committee's present language: "Nor shall the laws -- Nor shall the execution of the laws be suspended." You'll recall during the war period we enacted the Hawaii Defense Act, and that had a very questionable provision in it, authorizing the governor to suspend laws. Now traditionally that has been the great anathema of democratic processes. It went back to the reign of George the Third, where George the Third endeavored to and did in fact suspend acts of the Parliament. That's why that language is found in many of the constitutions, and I think we ought to go slow in eliminating that language from the committee's proposal.

I, therefore, think we should defer this until the delegates have had opportunity to consider the suggested amendments of the committee's own proposal.

MIZUHA: I presented this to the floor in deference to the office of the Attorney General. And if the delegate from the fourth district believes that this would not interfere with the kind of situation just mentioned, and prohibit the governor from acting in those cases as mentioned, in case of a dire emergency when there was a plague or something like that, where he could suspend the laws so that the people could return to a particular district, if it is his belief that this would not interfere with the governor's powers, then the committee would like to see the proposal as is. But in deference to the office of the Attorney General I thought I would -- we should present this for the delegates for consideration.

TAVARES: I believe that this section should be deferred because I think there are other angles that we ought to discuss, perhaps some of us, without taking up all the time of this Convention.

CHAIRMAN: Put in the form of a motion?

TAVARES: One of the things that occurs to me, I'd like to explain why, is this. In these days of the atom bomb it may be too late if you wait for actual invasion before you suspend the writ of a habeas corpus and do these other things. We ought to consider the other angle, too, it may be too late then. Under the Federal Constitution today, apparently there must be actual invasion or actual rebellion before you do this. Whether the danger of an atom bomb explosion or invasion here is such as to constitute invasion is an open question. I think we ought to discuss it a little further, and I move to defer.

DELEGATE: Second.

CHAIRMAN: The motion's been made and seconded for deferment. All those in favor say "aye." Carried.

We'll now proceed to Section 15.

BRYAN: It's my distinct pleasure to move the adoption of Section 16 -- 15.

DELEGATE: I'm afraid of a personal interest.

DOWSON: It is also my distinct pleasure to second the motion.

CHAIRMAN: It's my distinct pleasure to announce that the same motion has been made by the same members.

[Any] discussion, Section 15? All those in favor of Section 15 - -

TAVARES: I object to this railroading. This is a provision that I object to very violently. I think it's utterly unnecessary, and I have not yet been shown satisfactory authorities to the effect that under this provision we can regulate with safety or we can be sure that our present laws on regulating of firearms will be valid. I think there ought to be extended discussion and we ought to be shown this.

CHAIRMAN: Well, the Chair would like to remind the delegate that there is no railroading. The motion has been put and the Chair will have to put the motion for discussion. You care to discuss the motion, you may. The railroads of the territory have been dispensed with.

TAVARES: But, Mr. Chairman, I think we ought to be given at least about two seconds to get on our feet before the question is put.

CHAIRMAN: The proper procedure is to put the question, then you get up and get on your feet. Do you want to ask for deferment? You should ask for deferment, otherwise I'll have to put the question.

MIZUHA: Well, I think the chairman has been unfairly criticized on this matter.

CHAIRMAN: I - - well, you can have your thinking, I'll keep to my thinking.

TAVARES: Well, if I have unfairly criticized the Chair, I apologize.

CHAIRMAN: I accept your apology.

A. TRASK: Let's understand clearly. This thing, I don't say it's well greased, I think it's a slick job. But it should be done. The two militia men from Ewa over here are - - got their particular duty. Other people have got their particular duty. Lawyers, I think, are somewhat handicapped today in getting on their feet. So, let us understand, I think it's only by way of getting this thing fully - -

CHAIRMAN: The Chair never asked for a vote. The Chair just put the question, and the privilege is up to any of the delegates to ask for deferment.

DELEGATE: I think there ought to be a little time, Mr. Chairman, to give the handicapped attorneys some time to get on their feet.

CHAIRMAN: Well, I see two of them on the floor, in fact 90 per cent of the time nothing but attorneys have been on the floor besides delegates, besides the other delegates, pardon me.

TAVARES: This is a serious question. It's not - - it is of great moment. We have on our books today a law requiring registration of firearms. I have asked a question. I am not sure that the provision as now worded will permit our legislature or will - - to continue such a law in effect or will not render that law unconstitutional. I have been shown some authorities which are not conclusive. And I think it's well worth considering, because I think that is a very proper and necessary law.

MIZUHA: I believe the delegate from the fourth district has raised a good point. I would like to read from the committee report on Section 15. "Section 15 incorporates the Second Amendment of the Federal Constitution. In adopting this language it was the intention of the committee that the language should not be construed as to prevent the State legislature from passing legislation imposing reasonable restrictions upon the right of the people to keep and bear arms." The committee had before it representatives of various clubs, rifle clubs, gun clubs and so forth, to express their opinions about the present registration laws of the Territory. It had before it the representatives of the Honolulu Police Department, the Attorney General's office, and the City and County Prosecutor's Office. And after careful deliberation on the subject, it felt that this provision in the State Constitution would not prevent the State legislature from passing reasonable restrictions on the right to keep and bear arms.

ANTHONY: I think the chairman of the committee is correct in that. In the case of Robertson vs. Baldwin, 165 U. S. 275 —that arose under the Federal Constitution, and an act of Congress had prohibited the carrying of concealed weapons—that was upheld as not an abridgment of the Second Amendment and I think there are many other authorities.

I think the only thing the delegate from the fourth district wants to do is wants to have sufficient time to look into the question, and satisfy himself, which I think we all should do. We shouldn't hurry this through until we are satisfied that this is a correct application of the law.

PHILLIPS: I'd like to ask the chairman of the committee a question. When you say "people" do you mean all the people or do you mean each individual in a state?

MIZUHA: Well, I believe it applies to all persons here in the territory.

PHILLIPS: To each individual or to them as a group?

MIZUHA: I did not understand the question.

PHILLIPS: Well, you say, well, "the militia," and then the - - after the comma, "the right of the people to keep and bear arms." Do you mean there the right of the individual or the right of the - -

CHAIRMAN: The individual; individual right.

PHILLIPS: - - of all individuals?

MIZUHA: All individuals.

PHILLIPS: All individuals.

CHAIRMAN: Individual rights, the Constitution is for individuals. What is the pleasure of the committee?

TAVARES: I'll be satisfied if I ask - - if perhaps get two or three more satisfactory answers in the record on this. It's my understanding that under this interpretation then, which we are to be considered as acting upon, if this amendment - - if this provision is approved the legislature can by law provide for a registration act such as we have today, at least in substance.

MIZUHA: That is correct. It was the understanding of the committee.

ANTHONY: Mr. Chairman. Just to fortify - -

CHAIRMAN: Do you yield to a - -

TAVARES: I yield.

ANTHONY: The State of Massachusetts has an elaborate statute regulating the carrying of weapons, arms. The Massachusetts Constitutional provision, Article 17, provides: "The people shall have a right to keep and to bear arms for the common defense, and as in time of peace armies are dangerous to liberty, they ought not to be maintained without the consent of the legislature, and the military power shall always be held in exact subordination to the civil authority

and be governed by it." Under that constitutional provision, the Massachusetts General Court for years has maintained one of the most up-to-date statutes in regard to the registration and the carrying of firearms. I don't think there's any danger in that regard.

TAVARES: Well, Mr. Chairman, some of the authorities I have looked at say that the provision of the Federal Constitution and of many state constitutions was to be read in the light of conditions existing at the time the constitution was adopted. In those good old days, when they adopted these ancient provisions, many of which states do not even have them in their constitutions any more, the firearms were considered as the musket and the -- some other things like that, old-fashioned firearms. Today, is the word arms going to be considered that way or are we going to consider arms as machine guns and everything else? We don't -- we want to have our legislature empowered to prohibit entirely the possession of machine guns, except by government officials, police, and so forth. We want them to be able to prohibit entirely the possession of atomic weapons, and various other things. And that should be made very clear here, because it's not clear in the report as to what the word "arms" means. Does it mean we can only regulate the possession of atomic weapons or machine guns, or does it mean we can utterly prohibit those? That is not clear, and I would like to make it very clear if we vote on it that we have the right to prohibit entirely the use of that type of lethal weapons.

BRYAN: I think it would clarify the record a little bit. As I recall in the committee when we discussed this, it was pointed out that there is a federal regulation concerning automatic weapons and things of that nature that you spoke of. Also, that the committee felt in passing this that the present method of registration would be allowed, if the legislature so desired. Is that correct, Mr. Chairman?

MIZUHA: That is correct.

HEEN: In construing this particular section you might take into consideration Section 24.

CHAIRMAN: It so pleases this Convention.

HEEN: "The rights and privileges hereby secured shall not be construed to justify acts inconsistent with the peace or safety of this state." I'm wondering whether or not some thought has been given -- further thought has been given to an amendment of that Section 24 so that it might read: "The rights and privileges hereby secured shall not be construed to be absolute."

MIZUHA: That is a suggestion that was made to the chairman by the office of the Attorney General, and when we arrived at that section that recommendation was to be made, Senator Heen, and that was discussed with you previously I believe.

HEEN: That's right. I think if you use that language, "shall not be considered to be absolute" you've covered everything. In other words, you may have the right to bear arms, but that is not an absolute right, that right may be regulated by, say, the enactment of legislation prohibiting the keeping of machine guns, automatic rifles, and so forth.

CHAIRMAN: Tear gas.

TAVARES: If I am -- if I get an answer from the chairman of that committee that that is so and we are acting on that understanding, I will vote for the measure. I wanted to make it very clear because it's my understanding that the power of Congress to regulate these weapons depends somewhat on the Interstate Commerce Clause, and inside the state, intrastate, we might need that power. If the chairman says that is his understanding, I'm satisfied.

MIZUHA: That is my understanding.

CHAIRMAN: The Chair recognizes the Secretary of this Convention.

PORTEUS: Perhaps for clarity's sake, we might agree that if I'm in order, I'll make the motion, that when the Committee of the Whole report is written, that it be presented in such form as to show that it is the intent of this body to permit regulation and registration of firearms including the forbidding of the having of such weapons as bombs, machine guns and other automatic weapons of a similar nature. Now, if someone would second that motion I'm sure that we would perhaps dispose of this question.

ANTHONY: I move that the section pass on the understanding -- is that before the house?

CHAIRMAN: It's before the house.

DELEGATE: I second.

CHAIRMAN: On the approval of the -- Section 15 as approved as written by the committee. All those in favor of Section 15 as written by the committee say "aye." Contrary minded. Carried unanimously.

DELEGATE: No.

CHAIRMAN: No? You wanted to register your vote?

GILLILAND: I think that --

CHAIRMAN: Carried.

GILLILAND: -- from the reading of Section 15 that it's the purpose of everybody that joins the national guard, so he can carry arms with them. In other words, I take it from the wording here, the phraseology of this Section 15, if a man belongs to the national guard he can go around unmolested with a gun. Well, I think there should be some modification in section about that, whether or not everybody has a right or only members of the national guard have the right or who shall have the right to go around armed.

MIZUHA: I believe with reference to membership in the national guard, you are subject to military law as imposed by the national guard and they will limit the right of their men to bear arms.

SAKAKIHARA: During the 1949 session of the legislature a bill was sponsored by the Police Department of the City and County of Honolulu to regulate the possession of firearms and a method of registration of the same. Discussion was held in the Judiciary Committee of the House, finally the law was enacted. Subsequent to the enactment of that law, a judge of the court of record of this Territory made public statement in a public assembly holding that law to be unconstitutional, invalid, because it was in violation of Amendment Two of the United States Constitution, holding that the right of the people to keep and bear arms has been infringed.

Question of that nature was brought before the committee. Nevertheless, the Committee of the -- Judiciary Committee of the House felt in the interest of public welfare and a protection to the public from denying irresponsible people from bearing arms or having firearms in possession, enacted such law as the law of this Territory. It now dawns on me whether that question may not come before the courts of this Territory, any federal law to the contrary notwithstanding. I, therefore, move, Mr. Speaker, that Section 15 -- action on Section 15 be deferred.

CHAIRMAN: The Chair will have to rule that Section 15 has been adopted by this Convention. But the Chair recognizes the fact that this being an informal discussion we've allowed two people to speak on the amendment, but the vote was taken - -

SAKAKIHARA: May I move that - -

CHAIRMAN: - - and I'll have to rule that the motion was put and it was carried, it was adopted unless you ask for reconsideration of that motion.

SAKAKIHARA: May I move for a reconsideration on the Committee of the Whole action on Section 15 on those grounds.

MIZUHA: May I state at this time - -

PHILLIPS: Second the motion.

MIZUHA: - - that the provisions of the first ten amendments of the Federal Constitution are only prohibitions against the federal government. If we write into the State Constitution a provision like this, it's a prohibition against the state, and we are not guided by the Second Amendment of the Federal Constitution, and if this committee, the Committee of the Whole, in its report states that it was not intended to deny the state legislature from imposing reasonable restrictions upon the right to keep and bear arms, then there is no question of unconstitutional - - unconstitutionality involved with reference to the type of legislation we have at the present time.

CHAIRMAN: The motion has been duly made and seconded to reconsider our action on Section 15. All those in favor say "aye." Contrary minded. The noes have it. Section 15 approved by this Conv - - by the Committee of the Whole.
We'll now proceed to Section 16.

DOWSON: Without any thought of deleting discussion, and without request from anyone, I move for the adoption of Section 16.

BRYAN: With an equally free mind, I second the motion.

CHAIRMAN: Same motion put in reverse. Section 16 is now open for discussion. All those - -

LARSEN: [Inaudible] but the order has been reversed.

CHAIRMAN: - - in favor of Section 16. All those in favor of Section 16 say "aye." Contrary minded. Section 16 has been approved. Carried.
Now proceed to Section 17.

BRYAN: I move the adoption of Section 17.

DOWSON: I second the motion.

CHAIRMAN: The motion's been put in the proper order, as usual. All those in favor say - -

AKAU: I'd just like to ask a question. We state here "the military power"—would it be a little clearer for the - - for constitutional purposes 20 years hence to say "of the state"?

MIZUHA: I believe this is going to be a State Constitution and part of the Bill of Rights and we're referring to the state at all times. This [is a] question of style, if the Style Committee desires to put in the "power of the state," I believe the committee will acquiesce on that point.

A. TRASK: Point of information.

CHAIRMAN: Information has been asked.

A. TRASK: Is there, what provision, if any, has been made in the legislative branch, legislative committee, with respect to military power in order that - -

MIZUHA: I believe Senator - -

A. TRASK: - - the [inaudible] may be rounded?

MIZUHA: I believe the chairman of the Legislative Committee can answer that question.

CHAIRMAN: Senator Heen's recognized.

HEEN: There's no specific reference to any military power, but the proposed article on legislative power will have a provision that the legislative power shall extend to all rightful subjects of legislation. Broad enough to cover everything.

ANTHONY: Point of information. What is the status - -

CHAIRMAN: State your point.

ANTHONY: What is the status of Section 15?

CHAIRMAN: Section 13 has been deferred.

ANTHONY: Fifteen?

CHAIRMAN: Fifteen? O.K. Carried.

ANTHONY: I'd like to move to reconsider. I voted to - - I'd like to move to reconsider Section 15.

DELEGATE: A move to reconsider was lost.

CHAIRMAN: The motion was made to reconsider the action of the committee - - Convention, and - -

ANTHONY: Well, at that time, I was then discussing a problem with two members of the Bill of Rights Committee, and I would like the consent of the body to - -

CHAIRMAN: Well, did you vote with those not to reconsider?

ANTHONY: I voted - -

CHAIRMAN: Well, you can reconsider.

BRYAN: Point of order. Isn't there a motion before the house?

CHAIRMAN: The only motion before the house now is that we adopt Section 17.

ANTHONY: I ask for unanimous consent to reopen.

CHAIRMAN: The Chair will put the motion on Section 17 and ask that you extend the courtesy to the Chair and ask for reconsideration on Section 15 after 17. All those in favor of adopting Section 17 say "aye." Contrary minded. Carried. Section 17 is carried.
Now, Mr. Anthony.

ANTHONY: I ask the unanimous consent of the body to reconsider Section 15.

CHAIRMAN: You don't have to get unanimous consent.

ANTHONY: I move that that section be deleted from the proposal. The reason for it I'd like to - - unless - -

CHAIRMAN: I'll have to wait for you to ask. If you ask for reconsideration, someone'll second your motion. That'll put that motion first.

SAKAKIHARA: I second the motion.

CHAIRMAN: The motion has been made and seconded that we reconsider our action on Section 15. All those in favor say "aye."

ROBERTS: Point of information.

CHAIRMAN: Make it.

ROBERTS: I assume we had a question before on reconsideration. Can we put two questions on reconsideration on the same time after they've lost?

CHAIRMAN: The first question for reconsideration was put - -

ROBERTS: Question for the reconsideration of this section, which lost.

CHAIRMAN: - - was lost, and - -

ROBERTS: They're now making another - -

CHAIRMAN: - - anyone voting in the majority may ask for reconsideration.

ROBERTS: After a motion for reconsideration had lost prior?

CHAIRMAN: Having voted in the majority. The Chair will so rule. That's Fong, Fong, and Fong.

HEEN: Now in order to expedite matters, if there is no objection on the part of any delegate, may we reopen discussion on Section 15?

CHAIRMAN: Fifteen. All those in favor of reconsidering our action on Section 15 say "aye." Contrary minded. Carried.

Section 15 is now open for discussion.

ANTHONY: Thank you. Section 15 was originally incorporated in the early constitutions of the 13 states, and it found its way into the Federal Constitution at a time when there were Indians in the back yard, and people had to have rifles and muskets and whatnot in order to provide for the common defense. It has no relation to our modern conditions of living. Therefore, I think that it is an archaic provision.

Even though we do like to preserve the simplicity and the pattern of the Federal Constitution, this is one point in which I think we may well eliminate it. That would not mean that any rifle club would be prohibited, any person at all would be prohibited from bearing arms; it would simply mean that the legislature would be free in the exercise of legislative power to regulate the carrying of arms. And what harm can be done in that? We don't need them for our common defense. We've got an army and a navy and an air force that takes care of that.

It seems to me that with the ills of society such as there are today, interstate crime and local crime and machine guns and things of that nature, the legislature should be free, within reasonable limits, to pass legislation on that and this is not going to basically infringe anybody's civil liberties. If I want to keep a rifle or a shot gun, all I have to do is to go down to the police station and register it. Our legislature is not going to be silly enough to pass a law that'll prevent these duck shooters from carrying their shotguns around or anything else that is reasonable and proper. But it would afford complete legislative scope.

MAU: It may be true that we don't have Indians around here, but there're some people in this territory who believe that there are some different kind of reds under each bed in each house of the territory.

NIELSEN: I take exception with - - to some of the statements that've been made. Thirty-three states out of the 48 have the identical provision that's in the Federal Constitution. Another thing is the fact that you don't just go down and get the gun registered. The - - most policemen believe that they're the only ones that had - - should own a gun of any kind, and no one else should have any. And the proof that this is wrong is the fact that you have to go down and get a permit, subject yourself to a cross-examination as to where you're going to use this weapon, what you want to use it for, and everything else; then you have to go to the dealer, present this permit to get it, then you take it back down and it's registered. Then, until the last session, if you loaned it to a man, why, it could be taken over by the game warden or anyone else. There's all kinds of restrictions that are not reasonable.

Now, I think that our country would be a whole lot better prepared for the next war if our young men learn to shoot. We had some in the Hawaii National - - Hawaii Guards at our monitoring station [at] the volcano, and they shot holes in the roof of the ceiling just playing with their guns. Others had to be taught, and finally they had to put wires on the triggers so they couldn't play with them. Now, if our citizenry is educated to the use of weapons, we're in a whole lot of better way to defend ourselves, if they go into the army knowing something about a gun.

In addition to that, what happened in Czechoslovakia. The registration cards were all in the box, and when the communists moved in the first thing they grabbed was the registration of all the guns, and went out and took them away from the people, and they couldn't offer any resistance. I think it's only right that American citizens, the same as in all the other states in the Union, should be able to own a shotgun or a rifle, and if they want to carry it, certainly they have to get a permit. All police regulations are still in effect.

BRYAN: I'd like to speak briefly on that point. I think the reason that this is in here is because we don't want to see the legislature pass a law absolutely prohibiting the use or the ownership of firearms by the citizens. You'll find in history that it is the illegally armed minority that actually we're faced with as far as the trouble is concerned. The legally armed majority are the ones that should have the right to protect themselves and I believe that this provision gives it to them. I think lacking this it would be entirely possible for the legislature to pass a law saying that there should be no firearms in the territory, and in that case you know who will have them, the people that want to use them for lawbreaking.

I think that the law-abiding citizens of this territory are entitled to have firearms for their own protection, for sportsmanship, for target practice and so forth. That's why I would like to see this provision remain. I think that it's been so worded and, with investigation into the court action on similar provisions, it is so worded that the police will not be left with their hands tied on this subject. Regulation can be imposed.

CHAIRMAN: The original motion is still in order.

FUKUSHIMA: I'd like to speak to the retention of Section 15, also. There is this danger that we must observe. By including in our Constitution such a section, Section 15 will protect all the people from keeping and bearing arms, subject of course to reasonable restrictions. If we did not have such a section in, the legislature can very well go ahead and discriminate non-citizens from citizens. This has been attempted many and many a time. In fact in the last session of the legislature such a bill was introduced and after it was called to their attention that perhaps it may be unconstitutional, by the attorney general's office, then the bill was amended to include all persons. I feel that all aliens, all

persons, regardless of whether they're citizens or aliens, should be entitled to bear arms if it is under a reasonable restriction and if it's used for sportsmanship. They desire the same type of sport as a citizen, and to prevent the legislature from enacting any type of bill of that nature, I feel that Section 15 should be well included in our Constitution.

CHAIRMAN: The original motion is still in order. The Chair will now put the question. Shall Section 15 be adopted as written by the committee?

DELEGATE: Question.

CHAIRMAN: Question. All those in favor say "aye." Contrary minded. Carried.

MIZUHA: Mr. Chairman. I move for a five minute recess.

CHAIRMAN: Short recess has been asked for. All those in favor of a short recess say "aye." Subject to the call of the Chair. Declared.

(RECESS)

CHAIRMAN: Sergeant at Arms will please have the delegates brought before the Convention - - Committee of the Whole. Committee of the Whole come to order. We'll now proceed with Section 18.

ASHFORD: I move that Section 18 be deleted from the article.

BRYAN: Solely for the purpose of bringing it before the Convention, although I'm not in favor of the motion, I will second it.

MIZUHA: In presenting Section 18 on treason it was the intention of the committee, perhaps it wasn't clearly written into the report, that this section should be brought to the floor of the Convention, and if the delegates assembled here desire to delete same or adopt same, I believe I speak for the majority of the committee, that the committee does not have any objections.

TAVARES: Just so that the members of the Convention may know why we object to this clause, I should like to point out a few of the defects. First of all historically, the reason why this provision was adopted as shown by the history of it was that at that time under the common law of England and the statutes of England, there were 17 different acts constituting treason which were punishable by such barbarous methods, not so long before that, of hanging, drawing and quartering and so forth. And the colonists who were so horrified by those 17 acts of treason, and with that in mind, they limited the definition of treason and how treason could be proved. Actually they did not in any way limit the power of Congress to define any other acts without calling them treason. So actually even under the Federal Constitution today it is possible for Congress to pass other laws making acts that are not treason subject to the death penalty. So, therefore you are - - all you're doing is defining one crime when you have thousands of other crimes that you're not defining.

In the first place, it's illogical to just single out one crime. In the second place, remember, this thing was adopted in eighteen seventy something [sic] and was adopted with reference to the conditions then, and what has happened since? In those days you did not have atom bombs, you did not have guided missiles, you didn't have poison gas, you didn't have germ warfare. Levying war - - in order to levy war you had to actually send men to physically invade a country before there was war. So that it was quite possible and quite reasonable to wait till they got into your shore and started waging war before you could hold them guilty of treason. As this thing stands, if you adopt it, we cannot define treason against the state until somebody had landed and committed an overt act here, which may then be too late.

Secondly, it defines the punishment, or rather the proof - - the way you can prove treason in a manner that goes back to 1876 [sic] and around that time. In those days they hadn't thought of circumstantial evidence being very good. They didn't know about finger prints, they didn't know about the examination under the fluoroscope of different materials and so forth, all the different aids today that make circumstantial evidence more reliable than eye witness testimony today. If you adopt this thing, then, if somebody comes in here with an atom bomb and you find his finger prints on it, you find his clothes with it, you find his valise, you find everything there, but you don't find and nobody sees him with their own eyes, two people don't see him with their own eyes, you cannot convict him of treason. What's the sense of such a provision? Are we going to adopt a thing that's a 150 or 200 years old, a mode of proof and a definition, or are we going to take into consideration modern conditions and leave our legislature free with treason as you are leaving it free with murder and every other provision, any other crime, to define it as the people from time to time see fit. They are protected by the others, the due process clause, the jury trial, all the other safeguards we give in our Constitution, will protect those people and give them a fair trial. Why tie the hands of your legislature to the definition of one crime in a manner that won't meet the condition today.

I say the provision should go out and many states don't have it. I say it's utterly outmoded, it's utterly old-fashioned and should be dispensed with.

NIELSEN: More than half of our states have this in their constitution, thirty to be the exact number. And the latest one to put it in their new constitution is New Jersey in 1947, just three years ago. I think it's a good thing because this communist thing may develop here when we go to war with Russia; so we'll need something like this and need it quick and handy right here in the State of Hawaii. And I see that it's perfectly harmless not [sic] to have it in there, so we can take care of the situation when it develops.

KELLERMAN: I wanted to supplement Mr. Tavares' statement with respect to this clause. I don't see any need for having it in the Constitution because all the legislature has to do is to call an act by a different name—call it sedition, or criminal conspiracy and sedition—and can put any provisions in it that it sees reasonably justified to define the circumstances of a crime which otherwise would come under the definition of treason. So it's completely outmoded and it's just an artificial thing. I would agree in deleting it from the Constitution.

ANTHONY: I think what the delegate from Kona wants to safeguard against will be defeated rather than advanced by the inclusion of this section in the Constitution. As I gathered his remarks were to this effect, he wanted the legislature to be free to take care of the situation where our enemies might subvert us either covertly or openly. Now, if you have this treason provision in, it is a limitation. In other words you're doing just exactly what you don't want to do.

I should also like to point out, in addition to this being a rather old and antiquated provision, it does deal with a - - in a sphere in which the Congress, the national government is supreme. In other words treason in reality is treason

against the United States. We have ample laws and we have the treason section of the Federal Constitution. We have the Smith Act, an act of Congress of unlawful conspiracies to overthrow the government of the United States. I see no occasion for including this in the Constitution, despite the fact that New Jersey as recently as 1947 has included it in the Constitution.

I might call the delegates' attention to the Massachusetts section on this which simply says "No subject ought in any case or in any time be declared guilty of treason or felony by the legislature." That's all the Massachusetts section says on it. Therefore, I agree with the previous speakers that the clause be might very well be deleted.

CHAIRMAN: The motion before the committee itself, Section 18 be deleted. All those in favor of deleting Section 18 and renumbering the rest of the sections say "aye." Contrary minded. Section 18 is now deleted. We will now renumber the rest of them I suppose and call --

Proceed to Section 21.

ANTHONY: Could we keep the same numbering for purposes of facility?

CHAIRMAN: Section 19. That's right.

ANTHONY: Could we keep the same numbering so the delegates will all know what we're talking about?

MIZUHA: That is why the sections were numbered. Section nine -- 18, 19.

BRYAN: I move the adoption of Section -- the section that is now numbered 19.

CHAIRMAN: Nineteen.

DOWSON: I second that motion.

CHAIRMAN: Same motion, same second. Section 19 is open for discussion. Questions? Shall Section 19 be adopted? All those in favor say "aye." Contrary minded. Carried unanimously.

Section 21.

BRYAN: I move the adoption of Section 21 as written.

DOWSON: I second that motion.

CHAIRMAN: Heard the motion. Open for discussion, Section 21. All those in favor of adopting Section 21 say "aye." Contrary minded. Carried unanimously.

BRYAN: I move the adoption -- [Laughter]

CHAIRMAN: I can't hear very well.

BRYAN: Little decorum please. I move the adoption of Section 22.

WOOLAWAY: Second.

DOWSON: I second the motion.

CHAIRMAN: Twenty-two is now open for discussion.

MIZUHA: The language in Section 22 contains the -- in the last phrase you might say "because of race, nationality, creed, or religion" may not be the kind of language that would be incorporated in other sections of the Constitution and that would be for the Style Committee to put it in its proper order. This proposal was submitted by a distinguished gentleman from the island of Hawaii and I believe he should be given an opportunity to speak in behalf of this section. Delegate Doi.

DELEGATE: Is he single or married?

DOI: I'd like to make a correction first before I proceed and that is, this proposal here was introduced by three men, all from the island of Hawaii. Two of the three men are married. I think we all agree that the statement made in Section 22 is a basic civil right of all citizens in a democracy. There has been some talk that this section should not go in the Constitution because in Hawaii there has been no abridgement of such a principle. In answer we might say that it is also the same case with freedom of speech, religion and other basic rights which we have already approved. There have been no abridgement of those rights.

I think there is, in addition to that fact, another reason why this section should go into the Constitution and that is, should we look at the fact as it exists in the world and as it exists in the United States of America. First, should we look to England, the mother country of our United States of America, we find the case of Seretse much talked about down in South Africa today. He's a Negro who is married to a white woman. There is a question of whether he should be seated as head of the Bechuanaland section of South Africa.

Then we come to America from whom we in Hawaii have borrowed our basic democratic principles, and we find that there are 25 states in the Union who have statutory provisions prohibiting the marriages -- marriage between different kinds of races. And we find in addition five states in the Union also having constitutional provisions prohibiting marriages between races. And two of those 30 states it a felony should they marry, and one makes it a gross misdemeanor.

DELEGATE: Gross cheat.

DOI: And in view of that fact, I think it is not a principle so well understood even in the democracies. And therefore I would like to see a restatement of this principle in our Constitution, not intended as an admission that this problem does exist in Hawaii, and also not intended that this is to cure an existing evil, but inserted with the intention that it is a statement of a -- affirming the present status as it exists in Hawaii. And I urge that we vote "yes" on this Section 22.

HEEN: I am just wondering whether it would be a good policy on our part to write this particular provision in the Constitution. This Constitution will go before the Congress of the United States for approval and I can see where these representatives from the southern states, senators from the southern states may not approve this provision and may not approve the entire Constitution and admit this Hawaii into the -- as a state because if they approve this Constitution then they will be approving this particular provision which is not in vogue in the southern states.

MAU: I think the elder statesman has a good point there from a practical standpoint. But I'm wondering, I understand that this provision is contained in the United Nations Charter. If that is correct, that is a national policy so far as our nation is concerned, and if that be correct, even from the practical standpoint I believe that this is one of the basic rights and should remain -- be a part of the Constitution of Hawaii. Will someone answer whether that is so?

ROBERTS: I'd like to speak in favor of the inclusion of this section in our Constitution. I believe it's fairly important that we obtain approval of the Constitution by the Congress. I think, however, there are some things that we have to take a chance on. There are some things we've got to stand for and it seems to me that the Congress, if it takes the position that they will not give us statehood because of this section, there might be some question as to whether

we'd want it. I'd like to support very strongly the inclusion of this section in our Constitution.

MAU: I'd like to have my question answered. I asked for information - -

CHAIRMAN: You yielded the chair, you yielded when you sat - -

MAU: No, but I asked - -

MIZUHA: Will you state the question?

CHAIRMAN: The question was, "Will someone answer this question?" Then you sat down.

MAU: No, I didn't, Mr. Chairman.

CHAIRMAN: Roberts made an endeavor to answer your question.

MAU: Well, may I rise to a point of information then?

CHAIRMAN: You may.

MAU: I'd like to ask, if anybody can answer it, whether or not this provision is not in the United Nations Charter?

KAWAHARA: In answer to the question and as one of the fathers of this proposal, the answer is yes, it is. The principle is embodied in the preamble of the United Nations Charter.

CHAIRMAN: Maybe the preamble of the United Nations Charter had nothing to do with the Constitution.

ANTHONY: I think there's a good deal in what Senator Heen has said and I think we can accomplish what the proponents of the measure desire to accomplish if we include in the report a construction of Section 4. Section 4 says, "No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws." Now, I don't believe that the miscegenation statutes have ever been upheld in face of an outright attack under the due process clause. And I venture the prediction that in such a case, there is a serious constitutional question as to the validity of those statutes.

Now why could not we accomplish what the proponents of the measure desire to accomplish, and with which I am in hardy accord, by having the committee, this Committee of the Whole, act upon this by deleting it, stating in the committee's report that we have never had miscegenation statutes here, we would never stand for it, and that this Convention goes on record that that would be a denial of due process of law within the meaning of the Section 4 of the Constitution. Would that not accomplish what the proponents of the measure seek to accomplish and still avoid getting us tangled up in this FEPC wrangle back in Washington?

KELLERMAN: May I answer that point please? House Bill 49 provides in part as follows: "The Constitution must be republican in form and make no distinction in civil or political rights on account of race, color or sex." It seems to me that that certainly points the picture against any discrimination, racial discrimination which of course is the essence of the miscegenation statutes.

In the second place, may I speak for my benighted brothers from the South. They are firm adherents to the principle of states' rights. If in those states they don't want to see races mixed in marriage they think it's their business, whether or not constitutional, but they would be the last, as I understand their political philosophy, to deny the people of this state the right to decide whether they want their races mixed or not. And I don't believe they would raise that question in the Senate at all. Not under states' rights. I am in favor of leaving the provision in the Constitution of Hawaii.

CHAIRMAN: The Chair recognized that fact. In Washington during the hearing Representative Larcade of Louisiana so stated that if the people of Hawaii saw fit to live the way we do here, it was our business. Leave them - - to let them live as they wanted down South and they'd leave us alone the way we wanted to live.

ASHFORD: May I call the attention of the delegates to the fact that in Section 6, which is covered by the later report and therefore is not before us, there is that provision requiring - - called for by HR 49 requiring that there shall be no distinction by reason of race, color, creed and so forth in civil - - the enjoyment of civil rights, and marriage is certainly a civil right.

A. TRASK: I would like to say that the section I think should be deleted. In the first place, it seems to infer that our life in Hawaii has more or less been ruled by a sense of miscegenation, that the races and people here have been opposed to mixed marriage, and such is not a fact. What we're concerned about writing a constitution is to seek to correct what may be a teaming misuse or misconduct or what might tend to be. We are evolving a civilization and as we all personally know, several years ago this group didn't want their children to marry into that group. We are breaking down practically all the barriers and there are none left.

What we should be also acquainted with, that this section should be read in connection with Section 2, namely second sentence: "Among these inherent and inalienable rights are life, liberty, and the pursuit of happiness." Some recent time ago *Life Magazine* presented quite a discussion forum on the expression, during the celebration of Jefferson's birthday last year, the question of pursuit of happiness. And one of the greatest things about that was personal life. I cannot go along with the learned counsel from Hawaii, Nelson Doi, that it's like freedom of speech. It seems to me marriage takes - - it's a dual situation. It's not only - - it's not left up to one person altogether.

I do think from the question of probably a very wise and more careful submission of this Constitution, that we should not be unaware, however rightly the lady from North Carolina says, we are aware certainly of certain forces that seeing this Section 22 there, their personal, emotional reaction may be more severe and we're not there to stop them. So I think this suggestion that there shall be no denial would raise in the minds of some people, well, there's a right - - is the marriage of the right - - the right to marry somewhat infringed in Hawaii, if not legally, at least by racial undercurrent reactions? I think we have succeeded in eliminating, and we have, and we're evolving a very happy situation. So I do not think it's necessary, even though the United Nations Constitution may have that provision. They're dealing with an utterly different situation. And so I'd like to be on the side of those who are voting to delete this provision.

LARSEN: If we're going to lose this Constitution because this sentence is in, we're going to lose it anyway for many other sentences. It seems to me here's one chance where we can show we're a little ahead of the parade, rather than behind it. Eventually all the nations and all the states, I think, will attain the United Nations Charter. But here's one place where I think we've shown by our actions that we already believe in it. It seems to be a basic right; I'm for keeping it in.

SHIMAMURA: Two speakers have referred to life, liberty and property in discussing this provision. We speak of the bonds of matrimony. I've always felt it was a surrender of liberty rather than an acquisition of it.

But joking aside, I believe that this provision is declaratory of a natural God-given right. And I think it is a very wholesome thing to have it in the Constitution.

HEEN: One part of the Bill of Rights refers to the right to own property. Now, the old view was when you marry your wife she was a piece of property and - -

CHAIRMAN: Now maybe the other way too.

HEEN: Well, I am in accord with what the delegate from Molokai stated a moment ago in Section 6. The second paragraph of that section which is in Exhibit A of Committee Report No. 24, " No person shall be denied the enjoyment of the civil rights nor be discriminated against in the exercise of the civil rights because of religious principles, race, sex, color, ancestry, or national origin." I think that particular paragraph will cover the whole situation.

DELEGATE: That's Section 2.

HOLROYDE: A point of information on the previous speaker's first statement. I wonder if he still considers that to be factual. I suggest you read paragraph 24.

HEEN: What I said, that was the old view, ancient view. Now I don't want to be misunderstood. I am heartily in accord with this particular section we are discussing at the present time. But from a matter of policy, I think if we point this out in the Constitution to those people who are against mixed marriages they might vote against the approval of this Constitution.

DELEGATE: I don't think so.

WIRTZ: I am likewise in accord with the expression stated by the last speaker and I'd like to move to defer action on Section 22 until we consider Section 6 which is in the Committee Report No. 24 and is Committee Proposal No. 4, which was slated to come up tomorrow, because I think the subject is - - can be covered by that section.

ANTHONY: I second the motion.

CHAIRMAN: Motion to defer action on Section 22 until Section 6 is brought before this committee. All those in favor of that motion say "aye." Contrary minded. Still carried. Motion deferred. There's one or two yelling loudly, but it didn't carry. Section 23.

BRYAN: I move the adoption of Section 23 as written.

WOOLAWAY: Second.

DOWSON: I second the motion.

CHAIRMAN: Motion made and seconded. Open for discussion, Section 23. No railroading at this or any time.

A. TRASK: May I ask Jack Mizuha whether or not any consideration was given with this section with relation to public sightliness and good order?

MIZUHA: Evidently, to be frank, no consideration was given with reference to public sightliness and good order as we did not know what the Committee on Health and Public Welfare will report. But if the Constitution does state that the power of the legislature will be such to pass reasonable regulations of private property in the interests of good - - of sightliness and good order, naturally the authority will be there under that provision in the Constitution and supported by this provision as well for legislative regulation of private property. The question will arise, perhaps, whether that regulation must be - - of private property must be compensated. That question is for the courts to decide on, not the Constitution.

CHAIRMAN: All those in favor of Section 23 say "aye."

FUKUSHIMA: I'd like to ask the chairman of the committee a question. In taking up Section 23 did the committee take into consideration the question of excess condemnation?

MIZUHA: The question of excess condemnation was considered. I would like to have one of the proponents of this provision explain what the thoughts were back of this provision here and I will call on a delegate from the fourth district, the former Attorney-General Tavares.

TAVARES: I don't know whether I fully understand the - - May I have the question restated?

CHAIRMAN: You may.

TAVARES: I'm sorry.

CHAIRMAN: Fukushima.

FUKUSHIMA: In considering Section 23 I wanted to know whether the question of excess condemnation was considered.

TAVARES: I can say this. Being a member of the Committee on Taxation and Finance, the question was considered in that committee, and of course some members of that committee, including the chairman I believe of Bill of Rights Committee is in - - were members on the Taxation and Finance Committee. Now as originally proposed, this section provided for that "Private property shall not be taken or damaged for public use without just compensation." The word " or damage" was pointed out to be a rather dangerous departure from the wording of the Federal Constitution and not having necessarily a very definite meaning, the states being sort of, well not fully - - the state courts not being fully agreed on the meaning of it. Therefore, the words " or damaged" were taken out and we've decided to rely - - the committee, I believe, decided to rely on the Federal Constitution's wording which is being gradually extended by interpretation of the courts to cover many of the matters which might be considered ordinarily to be covered by the word "damaged." In other words, we decided to adopt wording, or they decided to adopt wording that is, has been very well construed by the Supreme Court of the United States.

Now as to question of excess condemnation, it was considered in the Taxation and Finance Committee very thoroughly and on the advice of the attorney general as I understand it, we finally deleted from the taxation and finance section all mention of excess condemnation on the theory as proposed, as stated by the attorney general that a reasonable amount of excess condemnation is implied in the general powers given the legislature, and which the legislature can confer in connection with a project, and that it was therefore not necessary to provide expressly for excess condemnation in the taxation and finance article or in the Bill of Rights. That's my understanding of what the attorney general's advice was. If I'm mistaken I wish that the chairman of the Bill of Rights Committee would correct me.

MIZUHA: That is correct. May I - -

AKAU: Excuse me. Mr. Chairman, I'm wondering in this particular section if the thinking had taken place regarding whether say a case like our recent Nuuanu-Marks case. Now then, the question wasn't of compensation with

them, it was a desire not to take any compensation, not to sell the land, not to have the land condemned by the city and county. Is this something that would take care of that as -- from the constitutional point of view, or would something have to be added there?

TAVARES: It is one of the most ancient and honorable rules of government that private rights must be subordinated to the rights and needs of the public. Condemnation or eminent domain is one of those things in which private rights must yield to the public. The legislature has a reasonable discretion to determine within reasonable bounds what property and how much should be taken for a project. And I don't think you can lay down any rule other than that because I don't know how anybody can define it definitely enough to steer between exactly what's right and exactly what's wrong because no two people are going to agree on just how or where a project should go, just how much should be taken necessarily for the project and various other things. It's one of those things that has got to be left to the sound discretion of the legislature and if the legislature violates its discretion too strongly, too greatly, the courts then can be called upon to rule and prevent that. I don't think you can write down in this Constitution a rule that would take care of the objections of Mr. Marks, assuming that they are to some extent reasonably taken. And therefore I don't think that it's feasible to do anything about that situation.

HEEN: We now have a statute which provides that as follows: "and also to take such excess over that needed for such public use or public improvement in cases where small remnants would otherwise be left or where other justifiable cause necessitates such taking to protect and preserve the contemplated improvement, or public policy demands such taking in connection with such improvement."

BRYAN: Mr. Chairman.

DELEGATE: Mr. Chairman.

CHAIRMAN: Bryan's recognized. Let's have a civilian for a change. Bryan's recognized.

BRYAN: I think we should recognize that this is not granting a license. The provision for eminent domain and the legislative acts covering that are the license. This is the protection of the individual to make sure that that license is not exercised without compensation. Nothing more nor less.

A. TRASK: To follow up the learned judge here on his reference to the statute, I want the Convention to know that that statute is under attack, was under attack by learned counsel Joseph Hodgson, an applicant for the supreme court chief justiceship. The matter is now pending in the supreme court. Although Judge Matthewman did rule that the statute is constitutional, it was vigorously contended by Joseph Hodgson that the statute is unconstitutional.

So it becomes pertinent for some thinking on this provision with respect to this question, namely, if we do not provide for excess condemnation in the Constitution and will leave the matter up to the legislature and these statutes which probably will be reenacted as part of the law of the State of Hawaii. Should -- it would quite cause us some pain perhaps, if we did not perhaps put in the Constitution some provision with respect to excess condemnation. Of course, the Marks case in Nuuanu does present a very extraordinary situation because the road that goes through our highway, at least intended, creates a thorough cut whereby from the top to the bottom of the surface of the road it's probably a depth of 34 feet. There is no attempt, because this is a non access road, to have a road lead directly from the highway right to her property. The question here is to go down the road about a mile and a half and then create another road paved and paid for by the Territory to get to the Marks property which is way up in the sky. Now I am concerned in other words with this precise question—if we do not put a provision for excess condemnation in the Constitution and leave that only to the legislature, whether in the courts it may be successfully contended that excess condemnation is not properly covered in the Constitution. The Constitution is silent on it and therefore there is no authority for the State to condemn property which is in excess with what may be considered an ordinary condemnation proceeding.

WIRTZ: I quite agree with the speaker that we should have to provide for excess condemnation. However, I don't think the subject is properly before this Committee of the Whole. The only question that's before us is the question of Bill of Rights and that is to protect the individual property owner, and this provides that whatever method, condemnation power is given by this Constitution under appropriate section of legislative powers, that nevertheless the private owner will be compensated. And that's all this is intended to do.

TAVARES: I respectfully disagree with the delegate from Maui that this is not the appropriate place, if we are going to do it. It seems to me that regardless of whether the present statute is under attack in our courts under our Organic Act, if we adopt this provision and in the Committee of the Whole report, which I shall move we do, we state that we have not inserted a provision for excess condemnation because we believe that it is included as an incidental power of the general grant given. That will take care, it seems to me, of any doubt in the minds of the court in the future on that proposition, leaving it then to the courts to decide when the legislature goes so far in condemning excess property as to constitute taking it for something not a public purpose or some other violation of the Constitution.

LEE: I believe it's twelve o'clock now and there are several other sections. I believe this Committee of the Whole should rise and report progress and beg leave to sit again. We all got to eat. Just a question as to what's planned this afternoon or this evening or when to meet.

VOICE: Two o'clock.

PORTEUS: Mr. Chairman, I don't think it is convenient for us to meet this afternoon. As you will recall, tomorrow is the last day for the presenting of committee reports. It is my hope that you will not meet again today when you recess, which will allow the various committees to meet between now and ten o'clock tonight and try to get out their reports.

MIZUHA: As chairman of the Committee on the Bill of Rights I would like to suggest that we do rise, report progress and take leave to sit again on Monday, and I so move that we, the Committee of the Whole rise, report progress and ask leave to sit again on Monday at 9:30 a.m.

DELEGATE: Second the motion.

ARASHIRO: I second the motion.

PORTEUS: Second the motion.

CHAIRMAN: All those in favor of that motion say "aye." Contrary minded. Carried. Adjourned.

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CHAIRMAN: Committee of the Whole come to order. The Chair remembers correctly the last action taken up the previous meeting was Section 22 and that was deferred. It is the wishes of this committee that we proceed to Section 23. What is the wish?

DOWSON: Mr. Chairman, I move for the adoption of Section 24.

DELEGATE: Twenty-three.

DOWSON: I take that back, Section 23.

BRYAN: I second the motion.

CHAIRMAN: The motion has been made and seconded that we adopt Section 23. All those in favor say "aye."

TAVARES: I would like to ask a question. I realize that some time ago there was an argument in the Committee on Bill of Rights at which some attorneys were present, and I think I attended also, in which the words -- in which this section was worked over or added. But I'm wondering if the words "peace or safety of this state" are sufficient or whether we ought to throw in an extra provision about general welfare of the state.

MIZUHA: I'm sorry to interrupt the delegate from the fourth district. We are not on Section 24, we are on Section 23.

CHAIRMAN: That is correct.

TAVARES: I'm sorry, Mr. Chairman, the last movant mentioned 24, perhaps by an error.

CHAIRMAN: So we'll proceed with Section 23.

MAU: At the last seating of the Committee of the Whole, Section 23 was discussed rather thoroughly by the attorneys in this Convention. I'm wondering whether the opponents of this particular section care to restate their position. I think it ought to be restated before we take a vote on it.

CHAIRMAN: Well, it is their privilege and I've made -- the motion has been put and if nobody cares to express themselves, then it is the Chair's duty to put the motion. Shall Section 23 be adopted as amended? All those in favor say "aye." Contrary minded. Section 23 is adopted.
We'll now proceed to Section 24.

BRYAN: I'd like to move for the adoption of Section 24.

DOWSON: I second the motion.

CHAIRMAN: Same motion, same second.

ROBERTS: I'd like to speak to Section 24, and when I complete I will move to amend the motion by striking the section. I have examined many of the Bill of Rights' sections in the states' constitutions, and I have yet to find a provision in any of them which have a clause of this type at the end to indicate that all of the provisos shall be construed in such a manner that the rights and privileges which are listed in the Bill of Rights' sections are not to be construed to justify acts inconsistent with peace or safety of the state. I agree that in the general proposals on the Bill of Rights that none of the sections are absolute, that there are no absolute rights, that rights have to have corresponding responsibilities and duties. I believe, however, that such a section does not belong in the Bill of Rights' provisos. The courts will construe each of these sections on the Bill of Rights and those constructions will differ depending upon the sections before the court.

I know, for example, that the courts, Supreme Court particularly, have already construed the concept on the right of free speech, and the court has stated, and I'm quoting: "It is a fundamental principle long established that freedom of speech in the press, which is secured by the Constitution, does not confer an absolute right to speak or publish without responsibility whatever one may choose or an unrestricted and unbridled license that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom." I believe that the purpose of that section was to prevent license, unbridled license; was to prevent the idea that these are absolute rights, and I'm in accord with that basic idea. I believe that part can be met in the amendment which is already suggested for Section 2 of the section on the Bill of Rights.
As you recall in our discussion the other day that section was deferred, but during the discussion it was indicated that a phrase be added, and I assume that that phrase may later be included: "That these rights cannot endure unless the people recognize corresponding obligations and responsibilities."

MIZUHA: Mr. Chairman.

ROBERTS: I'm not through.

MIZUHA: Perhaps we can speed up matters if I concede a point to you and --

CHAIRMAN: Do you yield, Mr. Roberts?

MIZUHA: Do you yield just a minute?

ROBERTS: I yield for a question.

MIZUHA: At this time it would be proper if the Convention [sic] of the Whole pick up Section 2 as has been amended, which is before all the members of the committee, and perhaps if Section 2 is acted upon, perhaps it will facilitate the disposal of Section 24. Doctor, will the delegate of the fourth district yield to a discussion of -- deferment of Section 24 now, and taking up the consideration of Section 2 as amended?

ROBERTS: If that will facilitate the discussion, I'll be very glad to.

MIZUHA: Good.

CHAIRMAN: The Chair will have to rule that if it's the wishes of the Convention to defer action, someone will have to make a motion.

MIZUHA: I so move.

CHAIRMAN: Committee of the Whole defer action on Section 24.

MIZUHA: Twenty-four, and take up Section 2.

DELEGATE: Second that motion.

CHAIRMAN: The motion for deferment has been made. Section 24 be deferred.

ROBERTS: Well, Mr. Chairman, I assume that the deferment of Section 24 will include a discussion of Section 2 at the same time.

CHAIRMAN: Well, you can bring it up by another motion. All those in favor of deferring Section 24 say "aye." Contrary minded. Carried.

MIZUHA: I move for the adoption of Section 2 as amended which is before the delegates here.

DELEGATE: I'll second that motion.

ROBERTS: Would the proponent of the motion accept the word "duties" instead of the word "obligations"? I believe it's a little stronger word, and I think it accomplishes the same purpose.

WIRTZ: I rise to a point of information. On my desk I have two amended forms of Section 2 and I'd like to ask the Chair which of the amendments is now before the house?

CHAIRMAN: I think it's proper and fitting that Section 2, the section to be discussed, be read in its entirety.

MIZUHA: The Section 2 that I moved to adopt reads as follows: "All persons are by nature free and equal in their inherent and inalienable rights, among which are those of enjoying life, liberty and the pursuit of happiness and the right of acquiring and possessing property. These rights cannot endure unless the people recognize corresponding obligations and responsibilities."

With reference to the question raised by Doctor -- the delegate from the fourth district on changing the word "obligations" to "duties," I see no material difference between the two words. However, "obligations" carry broader implications, and I believe it would not be too amiss to have "obligations" there instead of "duties" inasmuch as the delegate from the fourth district did concede that all of our rights are not absolute.

AKAU: I want to speak against adding, whether its duties or obligations or responsibilities. I'm not against the idea of people being responsible or having obligations as citizens. I raise the question whether this is the place in a Constitution to make this statement. It seems to me that our obligations and responsibilities, while we do assume them, are the responsibilities of the home and the school and the church and not be worded in and put in a Constitution.

A second thought I have, and perhaps this may sound facetious, is that perhaps if other people elsewhere lead some kind of provincial life the feeling might be that this statement must be included because we here in Hawaii may be, let us say, a little unethical or even unmoral, the fact that we have to have a statement saying obligations and responsibilities. I would, therefore, be against inserting this last clause in Section 2.

CHAIRMAN: What is the pleasure of the committee?

KELLERMAN: The committee has gone into this matter at length. We have found in several of the first constitutions of the colonies, Massachusetts, New Hampshire, and one or two others, expressly spelled out the concept of responsibility to government and only on that responsibility can the government survive. The provisions of responsiblity are inserted in the Bill of Rights of those early constitutions. They are not put elsewhere. They are put in there as a recognition that only can rights survive if all recognize their responsibilities. I don't see how it can be construed that we are implying to the world that we are unethical or that we need to restate our responsibilities more than any other state. I think it's a matter of growth in political development. Our early fathers recognized those responsibilities as essential to good government and on that concept of responsibilities has our democracy survived where democracies have died throughout the rest of the world.

Today we are on trial again, a democracy against another ideology and it seems to me to be most apt and fitting that this first constitution to be drafted in nearly 50 years should restate a fundamental principle which has been the basis of the survival of our democracy which we now ask to join as a state.

SMITH: I'd like to call to the attention of the members of the Convention here that these rights cannot endure unless the people recognize the corresponding obligations and responsibilities. This is dealing with their inherent and inalienable rights, something we are born by nature, free and equal, inherent, inalienable rights. We cannot really contest the statement due to the fact that we are a democracy, and I am very strongly in favor of keeping this in. There was a question whether this should take -- be left out of Section 2 and be put in Section 25. We felt in the committee that it should be left with -- primarily with inherent and inalienable rights. The Section 24 which is going to come up and try to be argued out is an overall picture protecting the people.

KAWAHARA: May I ask the committee or the chairman of that committee a question as to why the word "born" is excluded in the proposed amendment. In the first draft, the wording "All persons are born" was included. In the other, the redraft, "All persons are by nature free" is rewritten and perhaps there was some reason for excluding the word "born" and I'd like to know.

HEEN: I rise to a point of information. Perhaps someone can explain this. This amendment reads: "All persons are by nature free in their inherent and inalienable rights." Just what does that mean, "free in their inherent rights"?

MIZUHA: I believe the delegate from the fourth district prepared the draft.

HEEN: I prepared the draft in this manner. "All persons are by nature free and are equal in their inherent and inalienable rights." Those are my notes.

MIZUHA: Then I believe it was an error in the printing and we'll accede to having the word "are" inserted after "and are equal in their inherent and inalienable rights." But first of all, Mr. Chairman, there's a question before the house propounded by the delegate from Hawaii as to why the words "are born free and are equal," "are born free" was not included. I believe Doctor Larsen, who was a member of our committee, can explain why that was omitted.

CHAIRMAN: Why the word "born" was omitted.

WIRTZ: Once again I rise to a point of information, that is why I originally addressed the Chair. There are two drafts of this proposed amendment and I think that the Convention or the Committee of the Whole should know which draft is being proposed.

CHAIRMAN: The draft in which -- that we're discussing was read by the chairman of the committee.

WIRTZ: That's correct and when he was asked the question by the delegate from the fourth district, he reported that the delegate from the fourth district drafted the amendment, whereupon the delegate from the fourth district called his attention to different words which appear in the other draft.

MIZUHA: In order to clarify the whole situation, I'll ask the delegate from the fourth district who had drafted the amendment to read whatever draft he considers his draft at the present time. I did not know that there was another section to have been circulated until right now.

HEEN: My draft, that is the first sentence, not the second, reads as follows: "All persons are by nature free and equal in their inherent and inalienable rights, among which are those of enjoying life, liberty and the pursuit of happiness, and the right of acquiring and possessing property."

CHAIRMAN: Is that the - -

MIZUHA: And qualify the additional clause "these rights cannot endure" and so forth.

CHAIRMAN: Well, will you - -

HEEN: Now, agreed to that last one except to suggest a change in one word, a change in the word "last" to the word "endure." It seemed to me that if we're going to have something along this line in this particular section it should read: "These rights carry with them certain corresponding duties to the state." That's the way it should read.

ROBERTS: I'll second that if the speaker will make that a motion; to substitute for the language: "These rights cannot endure unless the people recognize corresponding obligations and responsibilities" to read: "These rights carry with them certain corresponding duties to the state." Is that the intent of the motion?

HEEN: That's correct.

ROBERTS: I will second that.

MIZUHA: I believe the amendment as so stated would be very limited in its nature, and I believe in a statement of corresponding obligations and duties and responsibilities, it should be as broad as possible. The effect of the amendment just makes certain corresponding duties to the state which would be very limited in nature, and if we are going along with the philosophy that citizenship in our government carries with it certain obligations and responsibilities for the development of a free democracy where everyone can participate in, so that we can have the kind of government that we all cherish, limiting of those duties by that phrase will more or less give to the people loopholes and avoid the obligations of citizenship in our state.

ASHFORD: May I say that I am in agreement with the chairman of the Judiciary Committee upon that point, that the use of the word "certain" makes the language uncertain.

TAVARES: I think the reason why this language was first inserted, or language along this line, was due, as I recollect, to a feeling by the committee—of which I am not a member but I think I discovered that in listening to the arguments—that since we are providing in the Bill of Rights that one of the inherent rights is the right of acquiring and possessing property and so forth, too strong a statement that these carry with them corresponding duties and so forth might imply that it was our duty to go out and help everybody else get rich. And I think that was one of the reasons why the language was phrased in this negative or not so positive manner.

However, if language of the type now suggested is included, I think it should be clearly understood that it does not imply that type of duty. In other words, the corresponding duties and obligations which these rights carry with them are not duties and obligations to perpetuate or to build a welfare state, but simply the type of obligations which require us to do our duties as citizens, to recognize the rights of others, and to obey and live up to the laws and the good order of our society.

HEEN: While we are not considering Section 24, any effort that is to be made to have 24 included, that could take care of, I think, all of these problems by having that read: "The rights and privileges hereby secured shall not be construed as being absolute." We have it there, then we don't have to discuss this last - -

CHAIRMAN: Section 2.

HEEN: - - sentence in No. 2.

CHAIRMAN: It's up to the committee to decide.

MIZUHA: I was going to suggest that amendment by the delegate from the fourth district as a recommendation from the office of the attorney general for Section 24. However, Section 2 is an expression of philosophy on the part of the kind of government that we desire here in the future State of Hawaii, and in that expression of philosophy as to what good government means for all of us. Certainly if we go back to the days when the colonists first organized themselves in states and founded the state constitutions, we find, running through all of the discussions, that desire on the part of the people that their government should be not only the expression of rights, but also the expression of responsibility. And in these days when there are other ideologies creeping into our frame of government, here in Hawaii as well as in the United States, the time has come when all of us who are to write the Constitution for the State of Hawaii should realize that citizenship in the state and in the Union carries with them certain corresponding obligations and responsibilities for the building up of the State of Hawaii to the kind of State we desire as a member of the Federal Union. And I see no objection to the clause as written here—that these rights cannot endure unless the people recognize corresponding obligations and responsibilities—as being an expression of philosophy of government, the democratic form of government, under which we are living at the present time.

ANTHONY: Mr. Chairman and gentlemen, I agree with the last speaker that it's desirable to incorporate in the Constitution in an affirmative way that while we are declaring certain inalienable rights, we are saying also that these rights carry with them certain corresponding duties and obligations, and I think such a sentence should be included in the Constitution. I submit I'm not making this in the form of a motion at the moment—the last sentence might well read: "These rights carry with them corresponding obligations and duties." That eliminates the delegate from Molokai's uncertainty by eliminating the word "certain." And I think it will express the philosophy. "These rights carry with them corresponding obligations and duties." We usually in the law speak of duties and obligations or rights and duties rather than responsibilities. I think duties is a little better word.

CHAIRMAN: The Chair feels that the - -

LARSEN: I would hope that the delegates from the fourth district may concede that what we had in mind here was make it very clear, and I think that the discussions in the committee made it very clear, that we wanted to emphasize this fact of why rights and obligations were included in this paragraph, and it was because a rising number of people had forgotten that rights seem to be license - - or rather that rights didn't carry with them this, and therefore, we're emphasizing that philosophy, "rights cannot endure unless." They might say, "Oh yes, it carries corresponding obligations," but we felt it was a little clearer to say why we wanted obligations and responsibilities because rights cannot endure unless people recognize these responsibilities. It seems to me we're getting at the same thing but we're emphasizing the reason for including it.

MAU: I believe that the second sentence, or a provision similar to the second sentence is contained in the Model Constitution. Of course that provision is an unusual provision where you state certain rights in the Constitution. I understand that there might be one or two states that have

declared the duties and responsibilities of the citizens in relation to the rights that are preserved to the people. But, I am in agreement with the first speaker from the fourth district when he stated that this problem could be resolved if the amendment he suggested to Section 24 would be adopted, and we would then leave out the second sentence of Section 2. I want to say to the Convention that from the discussion there is no question that there are conflicting philosophies involved in particular reference to the declaration of the rights of the people.

You have heard the mention of welfare state again this morning. I am certain, unless the chairman of the Bill of Rights Committee desires to make the record clear, that there was no such discussion in his committee concerning a welfare state, and I would like to have the records clearly stated that any provision, even if the second sentence of Section 2 is adopted, has no reference by implication or by -- directly of anything concerning a welfare state. I don't like to have it in the record that we are in fear of what has been termed the welfare state. At this time, I would like to amend the amendment to Section 2 and move that the second sentence of Section 2 be deleted.

AKAU: I so move.

J. TRASK: Mr. Chairman.

TAVARES: Mr. Chairman, I rise to --

CHAIRMAN: Trask.

TAVARES: -- a point of personal privilege. I think the --

CHAIRMAN: Trask is recognized.

J. TRASK: I accede to the delegate from the fourth district.

ROBERTS: Mr. Chairman.

CHAIRMAN: Tavares. Tavares.

J. TRASK: I accede to the gentleman.

TAVARES: I think my word has been questioned here and I would like to have some members of the committee answer that whether or not the idea at least was discussed in the committee. I was so informed by members of the committee.

CHAIRMAN: Before we proceed the Chair would like to announce a brief pause. We have in the gallery Hawaii's School of Accountants, Mr. Uyeda, instructor. The Kapalama School, Mrs. Richmond Ellis, instructor and Mrs. Wright, instructor. Fifth and sixth grade.

LOPER: And Mrs. Carter, principal.

CHAIRMAN: We have paused and been refreshed. We may continue. Mr. Tavares is recognized. Do you care to proceed, Mr. Tavares?

TAVARES: In connection with discussions on this section with members of the committee, I was certainly given to believe that the matter was being considered as to whether too strong a statement of corresponding duties, rights, duties and obligations, might not carry with them the implication that it is the duty of every citizen to get out and help every other citizen acquire this property and so forth. And that is the basis for my statement which is along the line of not letting our youth grow up to believe that a constitution is just something that gives them everything; that there must be a feeling that they have to return something in duties and obligations and that it is not their duty necessarily to help create a socialistic society, but rather to so live that everybody has an equal chance with them.

CHAIRMAN: The Chair would like to remind the speaker that that was discussed in committee and those points brought out very thoroughly in the committee.

LARSEN: Every once in a while we get this question of welfare state. I always feel they look at me when they say that. I hope they don't because I think I've emphasized repeatedly when and if the philosophy of these people want a welfare state, we're going to have it; when and if we want socialism we are going to have it. There's no use arguing that. We're trying to argue here on the basis; how can we build a strong government and write a good constitution for the ways of today? I feel we don't have to battle it and I hope I'm over-sensitive when I think the delegates look at me whenever they say welfare state. I just feel that isn't a problem.

I'm wondering if some of these things are not a question of wording. I just recently read John Hershey's new book, "The Wall," and in this introduction he says, "I have spent two years editing this book." He said, "I could spend another 20 years and I still wouldn't be satisfied." And it seems to me that's what we have in some of our style here.

Now, probably "these rights carry with them corresponding obligations and duties" does give the same thought, but it seems to me we have discussed it so much and it seems as though we are agreed that rights—and we're talking now of the Bill of Rights—that rights cannot endure, and that's been the false interpretation, that rights are something that you can just grab. But rights are something we have to work for, and to emphasize the fact that this democracy will be destroyed unless we accept the principle that with rights we must have corresponding obligations and duties.

A. TRASK: I speak in favor of retaining the second sentence of Section 2. In the first place, we must read into this provision the simple fact that we have first established a common consent, an organization of men and women. Having established that, that organization declares that by nature free people are born free and equal in their inalienable rights. The question is, that there is an organization. You are not born free because you're isolated. You are born free because you're a member of a certain organization founded on the Christian principles.

I'm in favor secondly for the retention of the second sentence because there is reasonable doubt in the minds of all reasonable people that the reason why democracy is such a difficult pill to take for the people of the world is because they do not have that sense of corresponding responsibility and duties to the common consent of the people of the country. That is to me the very keystone of why democracy cannot sell itself as well as we want it to sell itself. We certainly must know that this question of persons are born free is a Christian principle, based upon the Christian doctrine that to get to God and get to heaven, you must personally save yourself. So this, the whole principle, is ingrained upon the Christian principle of man is born free and equal to God and he must attain heaven on his individual self-will and determination.

So it seems to me clear that if people who are not democratic-minded, are not of this government, not motivated by any principles or sense of knowledge of our history, if they will look upon this second sentence, it would come to mind immediately that their country and their people are not democratic, even though they may be striving for democratic way of life, because this second sentence says to them they must of themselves have a corresponding sense of duty and responsibility.

HOLROYDE: I think whether or not we want to include this philosophy in this article or not has been debated for at - - considerable extent, and now to find out just exactly the consensus of opinion of the delegates to the Convention, I would like to move that the amendment to delete this section be tabled.

CHAIRMAN: The motion - -

BRYAN: Second the motion.

CHAIRMAN: - - was not seconded.

BRYAN: I'll second it.

CHAIRMAN: Mr. Mau made the motion that it be deleted and Mrs. Akau also made the motion that it be deleted. No motion - -

BRYAN: Mr. Chairman.

CHAIRMAN: - - was seconded in the first place. There was no motion before the house to have that section deleted, as yet.

BRYAN: I'd like to rise to a - -

AKAU: Excuse me, Mr. Chairman.

BRYAN: - - point of information.

CHAIRMAN: I'd like to have the recording replayed to you. You moved that this section be adopted.

DELEGATE: That's right.

WOOLAWAY: Mrs. Akau said "I so move," Mr. Chairman.

DELEGATE: That's right.

BRYAN: A point of information. I'd like to know what motion is to be - -

CHAIRMAN: There is no motion before the house as yet.

BRYAN: - - before the house, the last amendment?

CHAIRMAN: Two of the motions were not seconded.

BRYAN: There's a motion to adopt this section. Other than the motion to adopt this section?

CHAIRMAN: That is correct. No other motion.

ANTHONY: I'm in favor of retaining this sentence. I think, however, it will be strengthened if you take out the word "recognize." You want people to do more than recognize. So I suggest that the last sentence be amended to read, "These rights carry with them corresponding duties."

MAU: Does the delegate make that as a motion?

ANTHONY: I make that as a motion.

MAU: I second the motion.

SMITH: Mr. Chairman. I would like to bring up one thing in the wording, obligations. The ideologies that are going around attacking the - - our democracy are very emphatic in not wanting to be obligated in any way. And you'll find that any time that they do come up against obligations, they fight it like cats and dogs. This right, corresponding obligations and responsibilities, being recognized in Section 2 is dealing with inherent and inalienable rights, something which—we're not the only ones, only people who want to become a state—have to really recognize that there are obligations and responsibilities. I think that they're getting away when they say "corresponding duties." We all know we have duties, but we have to recognize the fact that there are corresponding obligations and responsibilities.

CHAIRMAN: The Chair feels that by the process of elimination we'll probably come down to the sentence, "These rights carry with them corresponding duties."

ANTHONY: I might state, Mr. Chairman, the two words - -

CHAIRMAN: The motion has been made and seconded that the words read, "These rights carry with them corresponding duties."

ANTHONY: I want to just explain the matter raised by the last speaker. Obligations and duties are the same thing. One happens to be the Latin form obligateo, and the other the Anglo-Saxon. There's no need of having both. I prefer the simplicity of the Anglo-Saxon word, duties.

SHIMAMURA: Mr. Chairman. Mr. Chairman.

CHAIRMAN: Having taken up French, I'm not too familiar with the terminology.

A. TRASK: I think the key word in that second sentence is the word "unless." And that's why I cannot agree with the delegate from the fourth district. To me, we've got to have a word in there to show that for these rights to endure, they cannot endure, unless of these corresponding duties. So the word "unless" is important. And so I cannot - -

MIZUHA: I believe we are going far afield from where we started from. The reason for the second sentence here was not a direct statement that there would be certain duties along with these rights. It's the recognition of a philosophy of government, an expression of philosophy of government that says—in our second section in the Bill of Rights—that those rights that we are, or we possess, cannot endure unless the people recognize that there are certain corresponding obligations and responsibilities with reference to these rights. But as the amendment is now proposed, it will lay certain duties on the part of the people in connection with these rights. That's not the idea that the Bill of Rights Committee is trying to present to the Convention here. We are trying to present, in the second section, an expression of philosophy that with the inalienable and inherent rights of the people that it cannot endure unless there are corresponding obligations and responsibilities. And that is why I believe the short amendment as proposed from the delegate of the fourth district would defeat the intent of the committee in the recognition of a philosophy of government. And I move that the amendment be tabled.

DOWSON: I second the motion.

CHAIRMAN: The motion has been made and seconded that the last amendment be tabled. "These rights carry with them corresponding duties." All those in favor say "aye."

MAU: Roll call, Mr. Chairman.

DELEGATE: Roll call, request for a roll call.

CHAIRMAN: A roll call has been requested. All those in favor please raise their right hands. You haven't got sufficient votes for a roll call. Vote carries. The amendment has been tabled.

MIZUHA: I move the previous question.

HEEN: The question was put, and I think there was some "ayes" made, and - - but you didn't call for the noes.

CHAIRMAN: I didn't call for the noes? Well, the Chair will extend the courtesy by - - but I'm glad you reminded me about that. Contrary minded to the motion to

table. Two votes. No, there were five, three votes maybe. Still carries. Tabled.

PORTEUS: I'm not sure that there is a motion before the house with respect to this last sentence.

CHAIRMAN: The only motion before the house now is for the adoption as the second sentence as by the committee, as written by the committee.

MIZUHA: No, the motion before the house, as I understand it, is for the adoption of the whole section which reads as follows: "All persons are by nature free and are equal in their inherent and inalienable rights, among which are those of enjoying life, liberty, and the pursuit of happiness, and the right of acquiring and possessing property. These rights cannot endure unless the people recognize corresponding obligations and responsibilities."

The speaker would like to inform the delegates assembled here that this section is a rare expression of philosophy on the part of government, that it does not particularly care what the Style Committee does, so long as that philosophy is retained in the section as reported out from the Style Committee, and that it does not believe that there's too much substance in here for us to be wrangling about for two hours, and we'll defer to the Style Committee in the language of the last sentence.

PORTEUS: In order to bring this matter to the head as to the last sentence, I move that this Committee of the Whole go on record as approving in principle the last sentence of Section 2 reading: "These rights cannot endure unless the people recognize corresponding duties and responsibilities," and that it be left to the Committee on Style, the exact wording.

PHILLIPS: May I second that motion.

CHAIRMAN: That is an amendment because you are deleting the word "obligations."

PORTEUS: I thought that the committee chairman had accepted the use of the word "duties."

DELEGATE: No.

MIZUHA: We are now - -

HEEN: I move an amendment so that this sentence will read: "These rights cannot endure unless they carry with them corresponding duties."

MIZUHA: Mr. Chairman. Again may I speak to that amendment? That will change the substance of that last sentence. It will change - - the idea back of this last sentence is just a statement of principles of philosophy as we have previously expressed - -

KAUHANE: Point of order.

MIZUHA: - - that it carries with them corresponding obligations and responsibilities.

KAUHANE: A point of order has been raised and I wish - -

CHAIRMAN: State your point.

KAUHANE: - - the speaker would recognize the question of point of order.

CHAIRMAN: State your point. State your point.

KAUHANE: The motion made by Judge Heen is not seconded so, therefore, there is nothing before the - -

CHAIRMAN: That is correct.

KAUHANE: - - house for the chairman to start bellowing about.

CHAIRMAN: Well, just inform the Committee of the Whole.

KAUHANE: In order to accord that courtesy I second that motion made by Judge Heen.

ASHFORD: I move to amend the motion; to amend so that the sentence shall read as follows: "These rights carry with them corresponding duties without which they cannot endure."

CHAIRMAN: You get that, Clerk?

PHILLIPS: Second that motion.

SHIMAMURA: In my humble opinion, we're making a mountain out of a mole hill. Whichever draft we accept, there's no essential difference or distinction in any of them. I respectfully submit we're wasting a lot of time.

CHAIRMAN: The Chair partially agrees.

HEEN: I accept the amendment that was made by Delegate Ashford.

ARASHIRO: It seems to me that we agree in the retaining of the last sentence and to me it seems that we seem to agree as to the idea, the philosophy of insertion of the last sentence. It seems to me that there's only a disagreement of the word that we are trying to insert in the last sentence. So I therefore move that we recess temporarily for those people who do not agree on the word to get together and agree on something that we can agree.

KAUHANE: Second the motion.

CHAIRMAN: The Chair is slightly confused but since the motion for recess is in order the Chair will declare a short recess, subject to the call of the Chair.

(RECESS)

CHAIRMAN: Committee of the Whole please come to order.

DOWSON: I move to the previous question on - -

CROSSLEY: Second the motion.

DOWSON: Section 2.

CROSSLEY: Point of information.

CHAIRMAN: You're recognized. Point of information.

CROSSLEY: My understanding that the previous question would be the adoption of Section 2 in its entirety with the addition of the word "are" after "and" - - after the first "and" in the second sentence. Is that correct? Second line—second line.

CHAIRMAN: Second line. That is correct. We'll - - for the information of the - - previous question has been asked, but for the information of the members of this committee, I'll have the chairman of the Committee on Bill of Rights read Section 2 in its entirety as put for the previous question.

ASHFORD: Just before we went into recess there was a motion to amend which was seconded.

ARASHIRO: I moved that - -

CHAIRMAN: That is correct.

MIZUHA: I move to table the amendment.

J. TRASK: Second the motion.

CHAIRMAN: Motion to table is in order. Question? All those in favor of tabling amendment put by Miss Ashford and seconded by Senator Heen, say "aye." Contrary minded. The ayes have it.

ANTHONY: I rose to find out what the amendment was. I don't think the Chair ever announced what we were voting on.

CHAIRMAN: The amendment put, I mentioned the amendment, the amendment put by Miss Ashford and seconded by Judge Heen.

ANTHONY: What was it?

CHAIRMAN: The amendment, will you read the amendment, please?

CLERK: "These rights carry with them corresponding duties without which they cannot endure."

ANTHONY: I think the Convention ought to vote knowing what it was voting on, Mr. Chairman. I don't believe the Convention did.

CHAIRMAN: Well, that was -- they did vote and that was the question. The amendment was put by Senator Heen and I believe every delegate heard the amendment. Do you care to have the question reput?

DOWSON: I believe we're arguing over principles and I believe the delegates have stated their ideas. The Committee on Style will have a record of this debate. I, therefore, move to the previous question.

CROSSLEY: I second that.

KAWAHARA: I rise for a point of personal privilege.

CHAIRMAN: A motion of previous question has been asked.

KAWAHARA: I rise to the point of personal privilege. In the beginning of this discussion here I asked the committee why the word "born" was excluded. Nobody from the committee answered the question. Now there is a motion to previous --

LARSEN: Mr. Chairman, may I answer that question? It was an oversight, I'm sure.

CHAIRMAN: Highly irregular but it's all right.

LARSEN: I think we've discussed this before that -- we discussed the question "born free and equal" as being obviously so unrealistic that we wanted something more realistic. We then put down "all persons are born free," and someone facetiously said the only thing they are really born free of is clothes. But, nevertheless, then Senator Heen suggested that a better phrase rather than say "born" to say "are by nature," by the nature of circumstance and environment and so on, so we accepted "by nature." And we felt that was actually more according to what the meaning of this phrase had come to be after these centuries and, therefore, we had accepted "All persons are by nature free and are equal in their inherent and inalienable rights." Does that answer your question?

KAWAHARA: In your committee was there any discussion as to the statement that persons may not be born free? That is, somebody made reference to people --

LARSEN: When they said "born free and equal," there was much discussion because we obviously are not born free and equal. That was discussed, and that's why we changed it to this style.

CHAIRMAN: All those in favor of the previous question say "aye." Contrary minded.

Now reread the section for adoption. Section 2. In its entirety.

MIZUHA: Section 2 in its entirety reads as follows: "All persons are by nature free and are equal in their inherent and inalienable rights among which are those of enjoying life, liberty, and the pursuit of happiness and the right of acquiring and possessing property. These rights cannot endure unless the people recognize corresponding obligations and responsibilities."

CHAIRMAN: All those in favor of adopting Section 2 as amended say "aye." Contrary minded. Carried.

We'll now proceed to Section --

KAUHANE: Point of information. I believe, Mr. Chairman, when you -- before you allowed the chairman of the committee to move for the adoption of the section as he read, you asked whether the Convention would agree to the amendment made by Miss Ashford, and that was defeated.

CHAIRMAN: That's right.

KAUHANE: I believe that there is a pending motion or there was a pending motion which was made by Delegate Garner Anthony which was never put by the Chair.

CHAIRMAN: The motion -- it is a suggestion that -- he never put a motion.

KAUHANE: I seconded that motion, as I got up to say, to allow the chairman the opportunity to speak rather than to --

CHAIRMAN: Well, I believe your second was out of order. That was just a suggestion. He didn't put a motion. There was no motion.

KAUHANE: You recognized my second to the motion at that time to allow the chairman the right of the floor, which was raised by me on a point of order.

CHAIRMAN: Well, the Chair may have been out of order himself.

KAUHANE: Well then, the record --

J. TRASK: Point of order, Mr. Chairman.

KAUHANE: -- still shows, then the record still shows Mr. --

J. TRASK: A point of order.

CHAIRMAN: State your point.

J. TRASK: The motion was made by Judge Heen and then Chairman Mizuha made an explanation on the motion. Mr. Kauhane rose on a point of order and said that he would second Judge Heen's motion for -- so that we might have discussion on the floor. Marguerite Ashford moved that the -- she moved for the amendment to the amendment. And that was -- and Judge Heen stood up and mentioned that he accepted the amendment. So in moving to table Miss Ashford's motion, it automatically killed the motion.

KAUHANE: I stand to be correct, Chairman. But I still feel that the records will show the --

CHAIRMAN: The records will show that Section --

KAUHANE: -- the records will show that a motion was made which was duly seconded to allow the chair -- the chairman of the committee the right to speak on the intended amendment that was offered, which was later amended by a motion put by Miss Ashford which was put by you and de-

feated. I think the original amendment was put by as I still insist, was put by Delegate Anthony and seconded by me, which is still prevailing and until the record is changed then - -

CHAIRMAN: The record will - -

KAUHANE: - - there is still that matter before the house.

CHAIRMAN: Mr. Kauhane, I'm afraid the record will show that Section 2 was amended, was adopted as amended by - - as amended - - as the record will show.

ANTHONY: In order to clear the record, I did make a motion and I believe it was seconded, but since the will of the body is to adopt this section, I'll withdraw the motion.

CHAIRMAN: As amended. We'll now proceed to Section 24.

DOWSON: I move that Section 24 be deleted due to the possibility that it will weaken the freedom set up by the other sections.

DELEGATE: I second that motion.

ASHFORD: May I say that this section is my child but the child is a changeling. The swan has become an ugly duckling and in its present form I am in agreement with having it stricken out.

CHAIRMAN: All those in favor of having Section 24 deleted say "aye." Contrary minded. Section 24 is deleted. We'll now proceed to Section 25.

MIZUHA: May I suggest that we take up Section 25 at the end inasmuch as it's a general clause.

TAVARES: Lest there be - - in order that there be no misunderstanding when we adopt this Bill of Rights after we go back into regular session, I should like to move, and I so move, that when the Committee of the Whole writes its report it makes it very clear that the deletion of this Section 24 is not made for the purpose of eliminating the construction of most constitutional provisions today, that all of these rights are subject to the power of the state to legislate in the interest of the public health, safety and welfare. It should be made very clear so that it would not be urged later on that we deleted this for the purpose of making those rights absolute. I think the report should so state and I so move.

CHAIRMAN: The report will show that - - Mr. Tavares.

CROSSLEY: In seconding that, may I ask the movant if he means by that that all rights themselves are not absolute rights. Is that - -

TAVARES: That is correct, Mr. Chairman.

CROSSLEY: I certainly second that motion.

CHAIRMAN: The Clerk will make a note of that so that the report will show it.

HEEN: It seemed to me in order to obviate any argument at all about this situation that that section should remain and should read: "The rights and privileges hereby secured shall not be construed as being absolute." You have it in there. There's no room for argument at all. You don't need to have the court make any interpretations that they are absolute. The courts have interpreted, made interpretations along that line, that these rights are not absolute, but have it in the Constitution and then there can be no argument about it.

CHAIRMAN: That section has been deleted. There's nothing before the committee. That section's been deleted.

BRYAN: I move we reconsider action on that paragraph.

LARSEN: Second the motion.

CHAIRMAN: Motion for reconsideration of Section 24 is in order. All those in favor in having Section 24 reconsidered say "aye." Contrary minded. Afraid the noes - -

HEEN: I think the ayes have it, Mr. Chairman.

CHAIRMAN: I am afraid noes have it.

HEEN: Mr. Chairman, the ayes having had it, I move - -

CHAIRMAN: The Chair will rule that the noes had it unless a roll call is requested.

WOOLAWAY: Roll call.

TAVARES: There is a motion before the house as to what the report should state. I think that should be adopted.

ROBERTS: I so move.

ANTHONY: Mr. Chairman.

CHAIRMAN: Motion is whether we should insert in the report an explanation for the deletion of Section 24. All those in favor say "aye."

ANTHONY: I'd like to speak to the motion first. I think I had the floor.

CHAIRMAN: Contrary minded.

ANTHONY: I had the floor, Mr. Chairman.

CHAIRMAN: I didn't recognize you. I'm sorry.

ANTHONY: Well, will the Chair recognize me now?

CHAIRMAN: You are recognized.

ANTHONY: Judge Heen has just stated that these - - that the report carries with it an expression, as I understood the debate, that the rights are not absolute. Now that may be true as to some of the items in the Bill of Rights, it's not true as to all. For example, the right of trial by jury in a criminal case is an absolute right. In other words nobody can take that away from the people. So I think that statement is perhaps just a little bit broad. There are certain rights that are guaranteed and they're definite, those that have great precision, like the right of trial by jury.

CHAIRMAN: The Chair should like to point out that Section 24 is not before this committee for discussion. It has been deleted.

CROSSLEY: Speaking to the motion that is before us, Mr. Chairman - -

CHAIRMAN: There is no motion now.

CROSSLEY: Yes, there is a motion.

CHAIRMAN: It's been adopted.

CROSSLEY: Was the motion adopted?

CHAIRMAN: The motion has been adopted. I had just explained - -

ANTHONY: The Chair had just put the question and didn't call for ayes.

CHAIRMAN: I called for the ayes while you were asking to be recognized. And the committee voted in favor of - -

ANTHONY: I rose to be recognized before the question was put.

CHAIRMAN: But you were rec -- you were not recognized.

ANTHONY: And the Chair then recognized me after ayes were called and before noes were called.

CHAIRMAN: After the ayes and noes were put.

ANTHONY: No noes were ever called. The record will show.

CHAIRMAN: Well, will the Clerk please read the record please?

CROSSLEY: May I suggest --

CHAIRMAN: The Clerk will show that noes -- ayes and noes were put.

CROSSLEY: May I suggest to the Chair that you put the question again?

CHAIRMAN: If there is a request of this Convention -- of this Committee of the Whole that I reput the question, I'll be glad to. The question before this Convention -- before the Committee of the Whole is to embody in the report an explanation for the deletion of Section 24. All those in favor say "aye." Contrary minded. Carried. Section 24 is deleted, and the report will show the reason for its deletion, as explained by Mr. Tavares.

ANTHONY: Well, Mr. Chairman, that's just the point of my rising. We've had no debate and had no vote on what the explanation is. And I object to the Chair's stating what's going -- the report is going to show without taking the sense of this committee on it.

CHAIRMAN: The Chair can only put the question as put by the Convention. The Committee of the Whole made the motion with an explanation that that be embodied in this report. That motion was put and carried.

MAU: I realize the position of the chairman, but I don't believe that ample opportunity was given to discuss. I rose three times and the chairman just announced --

CHAIRMAN: Then the Chair will suggest that you ask for reconsideration of the subject.

MAU: I move for reconsideration of that motion.

CHAIRMAN: All those in favor of having the motion reconsidered say "aye." Motion -- No. Contrary minded. The motion is lost. Now what is the next --

MIZUHA: I believe we deferred certain sections of the Bill of Rights at the last meeting of the Committee of the Whole, and it would be proper at this time to take up Section 8 following the numbered sections of the Committee Proposal No. 3. Section 8. The delegate from the fifth district who asked to be heard on that subject, I believe Delegate Trask, should be heard on the matter on Section 8 with reference to unreasonable search and seizure. A motion is in order at this time.

BRYAN: I move the adoption of Section 8.

DOWSON: I second the motion.

A. TRASK: I had asked for Section --

CHAIRMAN: Motion has been made and seconded that we adopt Section 8.

A. TRASK: I had asked for deferment on consideration to Section 8. I have since taken the matter up with the chairman and other members here with respect to the recent decision of the Supreme Court, and it is the consensus that we will let the court decide the varying phrase, "probable cause," with respect to searches and seizures. And so I would vote now in favor of Section 8.

MAU: I'd like to amend Section 8. I move at this time that at the end of Section 8 this sentence be added: "Evidence obtained in violation of this section shall not be admissible in any court against any person."

DELEGATE: Second the motion.

MAU: Speaking on the motion, Mr. Chairman --

CHAIRMAN: Will you please repeat the wording of your motion slowly so that the Clerk may take the wording?

MAU: "Evidence obtained in violation of this section shall not be admissible in any court against any person."

The Chair recognizes that a second has been made?

Speaking on the motion, Mr. Chairman. A recent decision of the Supreme Court of the United States, Colorado against Wolf, announced that states may admit certain evidence even if illegally seized in accordance, of course, with their state laws. We are to determine for the new state whether evidence which may be illegally seized may be admissible in the state courts in criminal cases. I might state to the members of the Convention that in the federal court -- such evidence seized illegally may not be used in the federal court. And the Supreme Court of the United States recognized that principle in the late case, Colorado against Wolf. It is my purpose in making this amendment to guard the rights of the individual when they appear in court in criminal cases. It seems to me that although the committee may recommend that this be a legislative matter and be referred to the legislature for determination that this comes to one of the fundamental rights and that we should have this sentence added to protect one of the fundamental rights belonging to our citizens. And that is why I am in favor of that motion.

ANTHONY: I'd like to speak in opposition to the amendment. The committee has very carefully followed the language of Article 4 of the Federal Constitution. That carries with it the decisions of the Supreme Court of the United States interpreting that article. Those decisions have already been imbedded firmly in our federal system, that evidence illegally secured may not be admitted in evidence in face of an objection that it violates the Fourth Amendment to the Federal Constitution. Therefore, if we preserve intact the very language of the Fourth Amendment, we also carry with it those decisions of the Supreme Court that would prevent the admission of such evidence in any trial. It would not permit the state to pass legislation that would make such evidence admissible if we have the provision in its present form. And therefore I think it will be dangerous to add the suggestion. It'd be better to leave it as it stands.

MAU: In answer to the statements made by the last speaker I think that the supreme court of the State of Hawaii will perhaps give great weight to the cases laid down by the Supreme Court of the United States, in view of the similar language taken from the United States Constitution. But it doesn't mean that the supreme court of the State of Hawaii could not follow the decisions of the various state courts and even follow the decisions of Colorado against Wolf. I would admit that these cases in the Supreme Court will be of great weight in determining that question. I agree, so far as that goes, but I am also saying that it does not prohibit the supreme court of the State of Hawaii not to admit evidence illegally state -- illegally seized in state courts in criminal cases.

HEEN: I don't think you need that last sentence suggested by the last speaker at all, because if the evidence was illegally secured then the courts must refuse to admit such evidence. And to admit it would be violation of this provision in the Constitution. No question about it.

A. TRASK: Mr. Chairman.

CHAIRMAN: Senator Trask is recognized.

A. TRASK: I yield to Delegate Mau.

MAU: In answer to the last speaker, if this sentence is not added I don't think that there's any prohibition against the state from enacting laws which have been enacted in other states to change the concept of illegally seized evidence. And that's what we're driving at in order to put it into the Constitution, so that the state legislature is restricted from passing any laws which would admit evidence which we today consider, following federal cases, to be illegal evidence, illegally seized. However we might be able to resolve this question if the committee will agree to place in its report that this provision follows the provision of the United States Constitution and all of the cases. The law laid down in the cases by the United States Supreme Court should be followed by the supreme court of the State of Hawaii.

TAVARES: I so move that in our report we so state.

CHAIRMAN: The Chair will instruct the chairman of the Committee on the Bill of Rights that in his report, final analysis report, that we'll put this provision in. It's my report.

A. TRASK: Yes, Mr. Chairman, and in furtherance of the same idea I have turned over to the chairman of the Bill of Rights Committee that particular case United States vs. Rabinowitz, decided February 20, 1950, so that there'd be no doubt in anybody's mind that the supreme court will follow the rules right down in the Supreme Court of the United States and not follow any state court with respect to this same section.

CROSSLEY: In view of the willingness of the previous movant of the amendment, I move to table the amendment.

MAU: I withdraw the motion.

CHAIRMAN: The amendment has been withdrawn so it clarifies the section.

MAU: I withdraw.

CHAIRMAN: The only motion now before the committee -shall we adopt Section 8? All those in favor say "aye."

AKAU: Point of information.

CHAIRMAN: Point of information has been requested through Mrs. Akau.

AKAU: Statements have been going back and forth about various cases in the supreme court. I'm wondering if that would clarify a certain right that we've been talking about here—the right of people to be secure in their persons and so forth. Does this imply here that the right of searchers to go into homes without warrant and if any evidence is found that these people are suspected? Is this what they're talking about in a legal language, or am I on the wrong track here?

CHAIRMAN: The question put to the Chair or to the one that made it? [Akau not clearly audible.] Chuck Mau, do you mind giving the lady a little explanation? Mr. Mau, a question has been put to you.

ANTHONY: I'll answer the lady's question, if I may. The purpose of this is to make sure that there will be no unlawful search or seizure and if there is, then when evidence is obtained by the police or the F. B. I. or anybody else pursuant to an unlawful search and seizure, it may not be used in any court against the person that it's sought out to be used against. In other words this makes inviolate your home and your person against any unlawful search and seizure.

AKAU: Mr. Chairman, I'd like to thank the delegate from the fourth district. I'm wondering if in some of these —this terminology we could recommend to the Style Committee to be very careful about the simplicity of language because even in my simple mind I can't get some of it.

CHAIRMAN: The Chair will express the welcome for the members. All those in favor of accepting Section 8 with an explanation in the report as ruled by the Supreme Court of the United States, say "aye." Contrary minded. Carried.

MIZUHA: Section 9.

CHAIRMAN: Section 9 is now in order.

BRYAN: I move the adoption of Section 9.

DOWSON: I second the motion.

CHAIRMAN: Same motion, same second. Open for discussion.

MAU: Point of information. I wonder if the committee could tell the Convention whether or not it considered the possibility of indictment even in felony cases by information.

MIZUHA: The question was raised with the office of the attorney general as to whether the language of Section 9 would permit prosecution by information. There was some disagreement between the office of the attorney general and some members of the Convention here. And I believe the delegate from the fourth district, a distinguished jurist who had had court experience, Delegate Heen, entered into those deliberations and I believe it is proper at this time to have his remarks for the record.

HEEN: Under the language used here in Section 9, there can be no information presented against an accused in felony cases, cases that are capital or infamous. We have a statute which allows the filing of information in the circuit court in certain cases, and those will have to be, of course, limited to misdemeanor cases. Here under this language no information having the force and effect of an indictment can be filed in felony cases.

CHAIRMAN: Is that true?

MAU: Another point of information. I wonder if the distinguished jurist has given thought to the cumbersome procedure involved in grand jury indictments and what the modern trend is, whether or not some states have not followed the information procedure even in felony cases.

HEEN: I have not given this subject any consideration along those lines. But I think that no person should be prosecuted in felony cases except upon the indictment of the grand jury. To give a prosecuting officer the right to file information instead of indictment would give that prosecuting attorney too much power altogether. There should be some limitation on the power of a prosecuting attorney and that limitation would be the requirement that a person accused of a felony must be by indictment of a grand jury.

In the constitution of Missouri, we have this, "That no persons shall be prosecuted criminally for felony or misdemeanor otherwise than by indictment or information

which shall be concurrent remedies." In other words in Missouri you can proceed in a felony case by information or by indictment, either way. But I think we ought to preserve the requirement of indictment by grand jury.

TAVARES: I am not going to oppose this section although I personally believe that it could well be liberalized or, according to the last speaker, made more the other way. But I do like -- I would like to have the Convention understand the situation. The fact is that the modern trend in many states has been away from an absolute requirement of a grand jury. There are a number of states today that don't even require an indictment, that allow an information. There are others where the constitution permits the legislature to regulate that, to reduce the number of grand jurors or to permit prosecution by information.

The grand jury arose in the good old days when kings and barons and people of high estate in England could throw somebody into jail on an information and keep him there without trial for a long time. Under modern conditions that is not -- that is seldom abused, that power of information. And I want to say that many states have done away with the grand jury or reduced the number or otherwise regulated it, and I don't think I've heard any particular complaints about the matter being too much abused when you remember that you still have the right of a trial by jury afterwards in case you are indicted or whether -- in case an information is signed against you.

CHAIRMAN: I would suggest that we defer action on this to see if we can get together on rewording of this section to satisfy the objections to Section 9.

ANTHONY: I'd like to ask a question either of Mr. Tavares or the chairman of the Bill of Rights Committee. Statement has been made that many states have abolished indictment by grand jury. Is that the fact, Mr. Chairman?

MIZUHA: It is my recollection that most of the western states permit prosecution by information in felony cases. However, the question as to whether or not we should have prosecution by information or first by indictment by grand jury is a question that strikes at the heart of the rights of the people. If you have a prosecutor who is rather anxious to make a record for the prosecution of the people, why he can go into court at any time with an information without the safeguard of a grand jury. As it is, as the most of you will recall there are many cases that are presented to the grand jury in which the grand jury returns a "no bills." In that case then the prosecutor is powerless to proceed with the prosecution. However, if we have information permitted in the State of Hawaii, prosecution by information, then any prosecutor who desires to make a record of prosecutions can go into court with information and prosecute anyone he pleases.

ANTHONY: I think the section ought to stand as drafted by the committee. It's entirely too much power to put in the hands of a single prosecutor, the right to bring somebody before the criminal courts in a felony charge. All of us know that when a person is charged in a criminal case in a felony, most people remember the fact that so and so was indicted, but very few remember that he may have been acquitted, and so you -- we have this screening process of an indictment by a grand jury which I think is a wholesome thing in support of the liberties of the people.

CHAIRMAN: I put the question.

WIRTZ: Perhaps as being one of the delegates who's had more experience with the cumbersome procedure so called, of the grand jury, I'd like to reecho the statements of the last speaker. The grand jury serves a very important screening process and protects persons from being persecuted.

CHAIRMAN: The only question before this Convention is shall we adopt -- before the Committee of the Whole is shall we adopt Section 9 as written by the committee? All those in favor say "aye." Contrary minded. Carried.

MIZUHA: Section 12.

CHAIRMAN: Section 9 is adopted.

MIZUHA: Section 12 has been deferred.

CHAIRMAN: Section 10?

MIZUHA: The speaker desires that the Section 10 and --

CHAIRMAN: Section 12 has been --

MIZUHA: They deferred --

CHAIRMAN: The Chair will move that Section 12 be brought up at this time.

BRYAN: I don't think the Chair can make that motion. It's in order for me to make it. I move that Section 12 be adopted.

CHAIRMAN: Motion made that Section 12 be adopted.

DOWSON: I second the motion.

CHAIRMAN: Same motion and same second.

ROBERTS: Would you read that?

CHAIRMAN: Mr. Roberts.

ROBERTS: Would you please, would you please read that.

CHAIRMAN: Mr. Roberts recognized.

ROBERTS: I'd like to have the language read that we're adopting. Which language, the one that's proposed or the original?

MIZUHA: I believe --

CHAIRMAN: As written by the committee. That's all we have before the house, before the committee.

MIZUHA: In order to avoid confusion there have been two drafts circulated; one with the omission of the sentence on witnesses and one with the sentence on witnesses included. And probably it is proper at this time to hear from the delegates as to whether or not they would like to have that sentence included or deleted.

CHAIRMAN: Would the committee care to have Section 12 read as amended?

WIRTZ: For point of information. I think it's only proper that the movant of Section 12 should move it in the form that he wants it in. There's been a motion on the floor to adopt Section 12. Which Section 12?

CHAIRMAN: A motion has been made to adopt Section 12 as originally written.

BRYAN: That's correct.

CHAIRMAN: And that was the motion. Now if there is any amendment in its adopt -- amended form, you can move for these.

HEEN: It seems to me that the last sentence of that section is unnecessary. That matter can be handled by the legislature.

CHAIRMAN: The Chair believes that there were several amendments to be brought in and maybe the amendments cover that deletion. I do not know.

HEEN: There was a proposed amendment reading as follows: "Witnesses in criminal cases shall not be unreasonably detained or confined." One criticism against that, that was made to me by Delegate Ashford, that that might mean that you can detain witnesses in civil cases.

CHAIRMAN: By implication.

TAVARES: I agree that that sentence is -- the inclusion of that sentence is not a wise one. It has received no construction by the courts as far as I know, and I think that if a witness is unreasonably detained, under the Constitution or the Bill of Rights of this state as it will be adopted or the Federal Constitution, a witness will probably have ample protection. He can get out on habeas corpus and as far as Delegate Ashford's statement was concerned, it was only in answer to a question about what's the meaning of the writ of ne exeat, and she merely explained, as I understand it, that the writ of ne exeat is a civil action which used to exist in some states and in this jurisdiction which prevented a person from going out of the jurisdiction until the courts permitted him to do so. That has been abolished, and unless we put it into the Constitution I don't think that we can impose such a writ in this jurisdiction.

J. TRASK: I move that we amend Section 12 by deleting the last sentence.

A. TRASK: I second that motion.

DELEGATE: I second that motion.

CHAIRMAN: Motion's been made and seconded that we delete the last sentence of Section 12. "Witnesses in criminal cases shall not be unreasonably detained or confined." All those in favor say "aye." Contrary minded. Carried.

MIZUHA: Section 13.

CHAIRMAN: Section 12 now reads: "Excessive bail shall not be required nor excessive fines imposed nor cruel and unusual punishments inflicted."

CHAIRMAN: All those in favor of adopting that section as read say "aye." Contrary minded. Carried.

BRYAN: Just to keep the records straight, let's put in there a motion that the section be adopted as amended.

J. TRASK: Second the motion.

CHAIRMAN: That motion has already been put.

MIZUHA: Section 13 now.

CHAIRMAN: Section 13.

DOWSON: I move for the adoption of Section 13.

BRYAN: I second the motion.

ASHFORD: Thirteen was deleted.

MIZUHA: Section 13 was not deleted but it was deferred.

CHAIRMAN: Section 18 has been deleted.

MIZUHA: Section --

CHAIRMAN: Thirteen has been deferred.

MIZUHA: There is a new draft of Section 13 on the desk of the delegates, which contains only one sentence: "There shall be no imprisonment for debt." I believe the delegates should be heard on the subject.

C. RICE: Very good draft.

ANTHONY: I move that Section 13 be amended to insert a period after the word "debt" --

CHAIRMAN: I thought you were going to say after the word "thirteen" -- after the letter "thirteen."

ANTHONY: -- and delete the remainder of the sentence which --

DELEGATE: I second the motion.

ANTHONY: So the section will then read: "There shall be no imprisonment for debt" period.

TAVARES: In agreeing with the amendment I should like the report of this committee to state that this was deleted, not out of any desire to eliminate the power of the legislature to provide for such exemptions, which it now does, but simply because that's implied anyway in the general grant of legislative powers.

MIZUHA: That is understood by the committee.

TAVARES: And I second the motion.

CHAIRMAN: All those in favor of adopting Section 13 as amended say "aye." Contrary minded. Carried.
One sentence --

MIZUHA: Section 14.

CHAIRMAN: Section 14. Same motion?

BRYAN: I move the adoption of Section 14.

CHAIRMAN: Same second?

DOWSON: I second it.

MIZUHA: Section 14 was again discussed with the representative of the office of the attorney general, with another distinguished jurist from the fourth district, and at this time I'll call on Delegate Anthony to express his views on the subject.

CHAIRMAN: Mr. Anthony, care to be recognized?

ANTHONY: I am not a jurist.

CHAIRMAN: No explanation necessary.

ANTHONY: The question raised by the attorney general's department was the phrase in the second line "nor shall the laws or execution of the laws be suspended." And the opposition was that that would defeat the enactment of such legislation as the Hawaii Defense Act. I've reviewed that subsequent to the last discussion, and I believe that that is a desirable deletion and therefore I would move that the phrase "nor shall the laws or the execution of the laws be suspended," be deleted.

ANTHONY: Including both, one comma.

CHAIRMAN: Motion has been made and duly seconded that the words "nor shall the laws or the execution of the laws be suspended," be deleted.

ASHFORD: I move to amend that motion by adding to it "and that a period be placed after the words 'requires it' and the remainder of the sentence stricken."

ANTHONY: Is there a second to that motion?

PHILLIPS: I second the motion.

ANTHONY: It's been seconded. I'd like to speak against the amendment. I think it's -- the purpose of that, the delegate from Molokai will recognize, is to make sure that

the only body that can suspend the writ is the legislature, In other words there cannot be an executive suspension. It is to clarify the difficult situation that arose under the Federal Constitution in which by reason of the position in the article, there was a debate whether it could be done by the executive or by the legislature. This language, I think, is good because it shows that it can only be done by the legislature and in the manner provided by the legislature. In other words no executive can go around and suspend the privilege of the writ. He's got to have statutory authority and the precise method, and the duration, which is also very important, be fixed when the legislature does suspend the privilege of the writ.

SMITH: I move that the amendment amending the amendment be tabled.

MAU: Point of information. I was wondering whether or not the delegate from the fourth district would interpret Section 14 a little more fully to the Convention. Assuming that the words "nor shall the laws or the execution of the laws be suspended" were left in, wouldn't the legislature -- couldn't the legislature, even under that provision, provide for protection? I remember the argument made at the last meeting of this committee that in view of the new type of warfare, it might be that we had to have a suspension of laws immediately, and I wondered whether the legislature couldn't provide for such a contingency under Section 14 as now worded without any amendment.

PORTEUS: There is, as I understand it, a motion pending to further amend the amendment and also a motion to table that amendment. If we can dispose of that, I think then the question --

CHAIRMAN: The motion to table was not seconded. It was not seconded.

PORTEUS: The motion to table --

CHAIRMAN: The only motion we have is an amendment to the amendment.

ANTHONY: In answering Delegate Mau's question, I would construe Section 14 to permit the legislature to pass a statute which would authorize the suspension of the laws as well as authorizing the suspension of the privilege of the writ. In passing such a statute then the legislature would deposit executive power with the governor to state the circumstance and the duration in which the privilege of the writ could be suspended or the laws could be suspended. Does that answer the delegate's question? And so with that in view, perhaps the section could very well stand as drafted.

A. TRASK: I'd like to ask Delegate Anthony this question. If that second clause "nor shall the laws or the execution of the laws be suspended" is in fact deleted from this Section 14, would that not allow trial by jury and other rights of similar absolute nature be suspended with the writ of habeas corpus? In other words, as amended the import of the section is limited only to the suspension of the writ of habeas corpus, not to the attendant laws with respect to other rights. Now that's why it seems to me that if we delete that second clause the purpose of the suspension of the writ is necessarily tied up with other laws, and so I just question the advisability of deleting that second clause.

ASHFORD: I concur --

A. TRASK: The question to be answered -- Oh, pardon me.

ASHFORD: I concur with Delegate Trask. I think if the last phrase in that Section 14 is retained, there's no reason in the world why the second phrase should not be -- second clause should not be retained. In other words, if it is to be cared for by a general act of the legislature in times of peace, then there's no reason why that act of the legislature could not provide for the suspension of laws at the same time as it provides for the suspension of the writ of habeas corpus, and the method in which it should be done.

MIZUHA: Perhaps the section should be explained in its entirety. In the event the second clause "nor shall the laws or the execution of the laws be suspended" is deleted, then the delegate -- the suggestion by the delegate from Molokai as to the deletion of the last sentence is in order. Then the section would refer only to the writ of habeas corpus. The question with reference to the suspension of the laws would be a statutory matter, or a matter for the legislative article to decide. That is the original position on the part of the office of the attorney general, that if we delete the second sentence then the last -- second clause, then the last clause should be deleted.

KELLERMAN: Did I -- point of information. Did I understand Mr. Anthony to -- or the gentleman from the fourth district to state that he now believes that the second clause should be retained in Section 14? Would he answer that question? Then I'd like to speak to the point,

CHAIRMAN: That is my understanding.

ANTHONY: I believe on further reflection that the sections should pass as drafted by the committee.

KELLERMAN: I agree with that for this reason. If you delete "nor shall the laws or the execution of the laws be suspended" you're restricting the entire section only to the writ of habeas corpus. The legislature could then constitutionally pass a general act which would grant the executive the power to suspend the operation of the laws at any time he felt like it, which seems to me to be a very tremendous exercise of power and certainly something that should be limited in the interest of the people by a constitutional prohibition.

CHAIRMAN: The Chair feels that if it is so, then all previous motions should be withdrawn rather than be put.

TAVARES: I do not agree with the withdrawal of the motion. Those words are new, "nor shall the laws or the execution of the laws be suspended." As far as I know they've never been interpreted in any other constitution. Suspension of the laws isn't only confined to time of war. You have provisions that when certain things happen certain laws shall be suspended in civil matters. This thing is going to leave a terrific ambiguity in your laws, it will cause 15 or 20 years of litigation before you know what it means. If the legislature says, in case the federal government suspends payment of certain payments, some other laws shall be suspended for our paying out money, this thing will be attacked under this section. It has no meanings that are definite enough for us to be sure of it, and I submit it should go out. It's too broad.

WIRTZ: It seems to be an appropriate time. I move we take a recess.

DELEGATE: I so move.

CHAIRMAN: Short recess declared subject to the call of the Chair.

(RECESS)

[Part of the proceedings not taped. Delegate Mizuha moved for deferment of Section 14.]

MIZUHA: -- is in Committee Proposal No. 4.

CHAIRMAN: Six, as I recollect.

MIZUHA: Is in Committee Proposal No. 4, entitled Section 6. And at this time it is proper to consider Section 6.

CHAIRMAN: Section 6 of Committee Proposal No. 4, is now open for discussion.

BRYAN: Did I understand the committee chairman to move the adoption of Section 6?

CHAIRMAN: No.

BRYAN: I so move.

DOWSON: I second the motion.

CHAIRMAN: Motion has been made and seconded that --

DOWSON: -- adoption of Section 6 in the --

CHAIRMAN: -- we adopt Section 6 of Committee Proposal No. 4.

TAVARES: Mr. Chairman, a point of information. I wonder, I may be perhaps going into too much speculation here, but I wonder if this means that a person whose religion prohibits him from fighting, but not from joining the military organization for other purposes, would have the right here to force the National Guard to accept him even though he wouldn't fight. I think when you put religion in here, you might get to that situation, of a man saying, "I'm constitutionally averse from my religion to killing somebody, but I'm willing to serve in the medical corps. Therefore I insist the National Guard take me." I wonder if that's been considered.

MIZUHA: I believe the policy on the question of enlistment as raised by the delegate from the fourth district can be answered by the policy of the armed services during the recent war. Conscientious objectors were accepted in the service of this country in non-combatant positions. They were welcomed in those positions because in the state of total war this country desires the service of every individual who can contribute something. And as one who had gone to war, may I say that a non-combatant soldier is just as important as a combatant soldier, and if there is a person, because of religious scruples, who does not wish to serve as a combatant but is desirous of serving as a non-combatant with the armed forces, I think he should be welcomed.

TAVARES: I don't doubt but what if they can use him they ought to do that, but they may need these non-combatant s in civil jobs and here you're giving him the right to force himself upon the military even though he doesn't want to do all that the military will order him to do. Now I agree we should use all the people we can, and I certainly don't want to see those people's rights, who through their religion don't believe in killing other people, infringed, but at the same time I think if that's what the purpose of this -- purport of this is, that you're going a little far in saying that the military must nevertheless accept him although he can't be a 100 per cent soldier. I think that's cutting down the powers of your military in selection a little bit too much.

A. TRASK: Point of information, Mr. Chairman. What section are we dealing with, please, and how does it read?

CHAIRMAN: Section 6, Proposal No. 4.

DELEGATE: That's under Committee Report No. 24.

CHAIRMAN: Committee Report No. 24.

BRYAN: I'd like to speak to delegate from the fourth. I think when that came up in the committee, we had considerable discussion on that, and it was the feeling that this section would not prevent voluntary segregation. Is that correct, Mr. Chairman? In other words if someone was to enter the militia and because of his religious principles wanted to restrict his activitiy therein, it could be restricted by the militia on a voluntary basis.

MIZUHA: That's correct.

TAVARES: On the other hand, let's think what would have happened if this were in the Federal Constitution. We have a National Draft Act, we allow conscientious objectors to be excluded, or to be sent over to non-combatant service and so forth, but we give the government the right not to take them if they're conscientious objectors. We don't force them to fight. Immediately you'll force the government to put him on the payroll and pay him even though he's not willing to do 100 per cent of what the government orders him to do. It seems to me that's going too far. Now if the committee report would state that this was not the intention, of going quite that far, why I think that might take care of it, but as it stands literally now, you give a conscientious objector the power to come to the enlisting people and say, "Look, I want to enlist in this militia and collect my salary as a buck private; I'm not willing to fight, I'm not willing to do only one or two things, but you've got to take me on and you've got to pay me that salary."

ASHFORD: Does that -- does the language as it exists here in Section 6 not permit a classification without regard to religion? Suppose a man has religious scruples against killing other people and there is no place in that organization where a man who will not shoot is fitted. Is that not a proper method of classification which has no relation to religion?

CHAIRMAN: Care to answer the question, Mr. Mizuha?

MIZUHA: With reference to the desire of a conscientious objector to serve in a non-combatant position, that's a voluntary choice on his part and certainly in the armed forces of this country we have lots of positions that the non-combatant can serve in. In the recent war, for every man on the front line we needed about 12 behind the front lines. And I think the delegate of the fourth district is wrong in his idea that there's no room for the conscientious objector in the armed services of our country. They should be welcomed, for this country has recognized religious freedom throughout the centuries. And if because of that recognition that individual says that he cannot fight on the front lines and kill other people but desires to serve this country in non-combatant duties as a member of the armed forces, we should welcome him and give him that chance. That is what America stands for at the present time, and if because of conscientious objector's philosophy of life he does not wish to carry the rifle, but wants to administer first aid to anybody on the front line, why that is something that we should encourage and not deny.

TAVARES: I think I've been misunderstood. I do not say there is no place for those people, but I do say this, that their place might be in the civilian occupations. You have a national guard unit. We are not the national government. In case of a draft the national guard -- in case of a war, the national guard, the military forces' functions in the community are limited. The federal government takes over.

In our limited need and our limited funds, the state needs national guardsmen or that type of military only for certain specific purposes.

Now why should they be forced to take conscientious objectors? I say yes, give the conscientious objectors the right to volunteer, but give your state also the right to choose and say, "Now look, we need a 100 or a 1,000 men who are willing to carry a gun. That's all the money we've got, that's all we need. We don't need a conscientious objector, therefore we can't take you." I see no objection to that. We're not forcing him to fight. What I see the objection to is to have this conscientious objector come and say, "Although I am unwilling to fight with those 1,000 men, I still insist you take me in, create a special category of non-fighters and pay me and keep me on the payroll." I think that's going a little too far in strapping the powers of the state.

CHAIRMAN: Any other objections to Section 6?

MIZUHA: May I speak on the subject, and refer to Committee Report No. 24? The third paragraph on the first page reads as follows: "Section 6 is divided into two sections. The first section provides that no citizen shall be denied enlistment in any military organization of this state, nor be segregated therein because of religious principles, race, color, ancestry or national origin. In providing for this clause, it is the intention of the committee that this provision in the Constitution should not be construed as preventing the legislature of the State of Hawaii in creating any military organization or from authorizing such organization to adopt such rules and regulations relative to age, health and other qualifications for enlistment, or to deny enlistment on the basis of security to this state and to the nation."

I refer to that last clause "or to deny enlistment on the basis of security to this state and to the nation." In the event that we have a state militia which goes -- which is incorporated into the armed forces of this nation in time of war, the armed forces has the policy to take care of the conscientious objectors; they will be under federal jurisdiction. Then we would have perhaps an organization like the Hawaii Territorial Guard which functioned during the war here, which would be the home militia. If in the creation of the Hawaii Territorial Guard the legislature provided for such qualifications which it deemed for the best interest of the State of Hawaii; if the legislature in creating that Hawaii Territorial Guard would state that the security -- would make provision for a security board, which security board would determine that a conscientious objector who remains at home and just cooks is not of the type of calibre that would be necessary for the security of the State of Hawaii because he's a non-combatant, I believe there is ample room to deny that person enlistment in the Hawaii National Guard.

But with this provision here I believe the fears of the delegate from the fifth-fourth district are not of consequence at all, because as we know, under the definite standards laid down by the Supreme Court of the United States, they have determined what a conscientious objector is, and in the history of litigation in this country, with reference to conscientious objectors, they reflect but a small minority of the people of this country, very small. And to raise the question that he has raised, it seems as though if we are to have the full participation of our citizenry in the armed forces of our nation we should give them a place if they desire to serve God and country.

TAVARES: The chairman of the committee now seems contradictory. A little while ago he said it was intended that a person with religious scruples could compel himself to be accepted as an enlistment. Now he says you can't and points to the report. I think that should be made clear.

MIZUHA: Under the report as submitted here, it isn't for us to decide what qualifications the legislature may prescribe or what authorization the legislature may give in the creation of the Hawaii Territorial Guard as to what their rules and regulations, which will have the force of law, should be. First of all, I'm proceeding on the general principle, and in the event the legislature sees fit to lay down the other principles for enlistment, it is for the legislature to decide. I do not believe I'm contradicting myself on that point.

TAVARES: If I were satisfied that the words in the report to the effect that regulations might deny enlistment on the basis of security to this state, if I were satisfied that that covered the situation I would accept it as an explanation. However, I wonder if the word "security" is broad enough. You may have a person extremely loyal, no question of security involved, but you only have need for say 500 men to carry a gun and guard your ports, and that's all the money you've got. Now why should you have to take on a conscientious objector? It's no matter of security perhaps there, unless the chairman wants to say that that is involved. If he says that that's what it means, I will accept it.

MIZUHA: Certainly if it is the legislative finding in creation of the Hawaii Territorial Guard and it calls for a security board and that security board feels that the security of the State of Hawaii in time of war cannot permit the conscientious objectors to serve because they cannot defend the country, or defend the state, well, that is for their interpretation; it's not for the Constitutional Convention to decide what is the breadth of that term of "security."

BRYAN: I think that the delegate from the fourth is worried about a limited guard and having fit and willing persons displaced by those that are not willing to do certain things. I would believe if the enrollment or enlistment was limited, the National Guard would be free to say that they could take the first 500 most qualified persons and certainly on that basis they could pick and choose very carefully.

TAVARES: If that is the meaning of the term, and it's so understood, I'll vote for it; but I wanted that made clear. I didn't think it was in the beginning.

DELEGATE: I think it is.

MIZUHA: I believe the report was quite clear in the method it was written, that this Convention is not going to write statutory legislation in the Constitution, and the point that the delegate from the fourth district raises is a legislative matter.

CHAIRMAN: Chair will now put the question. All those in favor of adopting Section 6 as written by the committee --

A. TRASK: Point of information. Is Section 6 limited just to the first paragraph, or does it-on which the debate has been centered on-or does it include also consideration of the second paragraph which reads as follows: "No person shall be denied the enjoyment of his civil rights nor be discriminated against in the exercise of his civil rights because of religious principles, race, sex, color, ancestry or national origin"?

CHAIRMAN: The question is to adopt the section in its entirety, including the second paragraph.

A. TRASK: Well, I'd like to direct the attention of the Convention to the second section and ask of the chairman whether or not he considered this second section with reference to the Hawaiian Homes Commission Act? Now in the Hawaiian Homes Commission Act committee report which it submitted, and the proposals with respect to its inclusion in the Constitution, there is the opening provision namely: "All provisions in this constitution notwithstanding." Now, the Bill of Rights Committee has extended to the Madam Chairman of the Hawaiian Homes Commission Act Committee and to other members of our committee that with that opening sentence in the Hawaiian Homes Commission Act proposal and its inclusion in the Constitution that this section—this second paragraph of Section 6—will not in any way interfere, and that such statement be included in the report of this Committee of the Whole to indicate that this Section 2 will not interfere with the provision of the Hawaiian Homes Commission Act. Could the chairman answer that?

MIZUHA: The Committee on the Bill of Rights had before it the question as to whether or not the anti-discrimination clause as written herein would conflict with the general provision for the record incorporation of the Hawaiian Homes Commission Act in the Constitution. After due consideration, it was felt that the provisions in the Hawaiian Homes Commission section as read by the delegate from the fifth district would take care of the situation, and I believe if the Constitution as adopted contains that section as read by the delegate of the fifth district with reference to the Hawaiian Homes Commission, then it will serve as an exception to this Section 6.

ASHFORD: Point of information. May I ask the delegate from the fifth district whether he regards the Hawaiian Homes Commission Act as a racial discrimination in the granting of civil rights?

A. TRASK: I certainly do not - -

CHAIRMAN: Question's been answered.

A. TRASK: - - but in drafting such a basic law as this - -

CHAIRMAN: This is an explanation to the answer?

A. TRASK: - - the delegate from Molokai smilingly acknowledges, that we have to make this, the wording here, precise and exacting as possible, and elastic as possible, and I want to say to the chairman of the Civil Rights Committee who answered the inquiry that Judge Heen, delegate from the fourth district, has concurred in his conclusion and that we request that the same be included in the report of this committee. Will that be done, Mr. Mizuha?

MIZUHA: I believe that would be a proper subject for a motion on the part of the delegate from the fifth district to be decided by this Committee of the Whole.

TAVARES: It seems to me that if we adopt or go on the premise, which I think we have to go on until the courts rule otherwise, that the Hawaiian Homes Commission Act is constitutional; it is an act of Congress which has already given rights to a certain group of our people; if that act is valid, and as I say we must presume it until it's declared unconstitutional by the courts, until and unless it is so declared, then the people of this territory have no civil rights to share in that—in the Hawaiian Homes lands, and therefore this civil rights provision will not apply at all, as I read it.

Now if the act is unconstitutional then somebody ought to take it into court, and do that, and it'll take care of itself automatically. I feel therefore that actually in adopting this Bill of Rights, this section, we will not be infringing on the rights of any persons entitled to benefits under the Hawaiian Homes Commission Act.

A. TRASK: I concur with the expression of the delegate from the fourth district, and at this time move that this expression may heretofore be incorporated in the report of this Committee of the Whole.

DELEGATE: Second the motion.

BRYAN: I'd like to point out that this particular paragraph was reworded to get to the point that the delegate from the fourth just made. "No person shall be denied the enjoyment of his civil rights," that means civil rights that would go to him under any other circumstances. Therefore, if enjoyment of the rights guaranteed by the Hawaiian Homes Commission Act do not apply to certain individuals, this paragraph would not apply to them.

CHAIRMAN: Will you please restate the motion.

A. TRASK: The expression made with respect to second - - Section 2 of - - paragraph 2 of Section 6 be incorporated as part of the report of the Committee of the Whole.

CHAIRMAN: You've heard the motion. All in favor say "aye." Contrary minded. Carried. Motion is carried.

MIZUHA: The vote on the adoption of the whole section is in order, Mr. Chairman.

DOI: I understand this Section 22 was deferred to be considered together with Section 6. In the discussion so far, there has been no mention made of the relationship of those two sections. It is my opinion that the phrase "civil rights" have as yet not been adjudicated to include the right to marry, and I would like to ask that question of the chairman of the Committee of the Bill of Rights, or those who were of the thought that the free civil right does include that particular right I am referring to, whether it is included in the civil right.

MIZUHA: I heartily agree with the delegate from Hawaii and it is a proper subject for consideration by this Convention.

BRYAN: I'll move that the committee report show that civil rights in this paragraph extend to the right to marry.

DELEGATE: I'll second that.

A. TRASK: Point of information. Does that mean therefore that Section 22, which is sponsored by Delegate Doi, is going to be withdrawn?

CHAIRMAN: That is my understanding; if it's embodied in Section 6, then probably - - in all probability, Section 22 will be deleted.

DOI: That is right; I don't want to see the Constitution filled with many unnecessary superfluous details.

DELEGATE: But with this provision there it has to be guaranteed.

DELEGATE: May I say that the Delegate Doi has shown statescraft here this morning.

CHAIRMAN: The report I believe will show that, Mr. Doi.

MIZUHA: A vote on Section 6 is in order at this present- -

CHAIRMAN: Motion is now - - all those in favor of adopting Section 6 in its entirety as written by the committee, say "aye." Contrary minded. Carried.

MIZUHA: Section 10 is now in order.

CHAIRMAN: Section 10 is now in order.

DOWSON: I move for the adoption of Section 10.

BRYAN: I second it.

CHAIRMAN: Motion's made and seconded. Motion's been made and seconded that Section 10 be adopted.

WIRTZ: I rise to a point of information. As I understood the discussion just previously -- just when we adopted Section 6, that something was going to be done with Section 22.

CHAIRMAN: We'll come to that and have it deleted later on.

ANTHONY: The last sentence of Section 10 reads: "The legislature may authorize the trial of mental incompetency without a jury." From the very beginning of our government here way back in the 1840's, incompetency cases have been tried by judges sitting in chambers without a jury. It is not a kind of a case that requires a -- it is not a suit at common law which requires a trial by jury, and therefore, I think that we should eliminate that sentence, and I move that the motion be amended to eliminate the last sentence of Section 1 -- it's 10.

A. TRASK: I second that motion, but in seconding that motion I don't agree for the reasons given. I do think, and there is considerable thinking on the part of many people rightly or wrongly, that many people are committed to our institutions here wrongly and improperly. And I am for the deletion of that situation and let the legislature in their own manner go ahead and make provisions if they deem possible, but I do ask for the deletion.

CHAIRMAN: You second the motion to delete? Motion has been made and seconded that we delete the last sentence of Section 10, "The legislature may authorize the trial of the issue of the mental incompetency without a jury." All those in favor say "aye." Contrary minded. Carried.

All those in favor of adopting Section 10 as amended --

TAVARES: I have an amendment to propose. I think it's on the desks of the members, entirely rewriting Section 10. And now that they've voted to eliminate the last sentence of the original section, it will be of course understood that my amendment will not include that last sentence, and I will ask to have it deleted. But I believe it's been distributed among the members of this Convention. Well, I have more copies here if it hasn't been.

CHAIRMAN: Will the messenger deliver copies to those who haven't a copy?

TAVARES: "Section 10. Jury Trial. The right of trial by jury shall remain inviolate, except in suits at common law where the value in controversy exclusive of costs does not exceed one hundred dollars." But, "For the trial by jury of any civil case or any misdemeanor punishable only by fine, the legislature may provide for a verdict by not less than three-fourth of the members of the jury, after not less than six hours of deliberation; and in any case, except a capital offense, a jury may be waived, or by agreement of the parties in open court, a smaller number of jurors than required by law may render a verdict by any stipulated majority."

Before the members rise straight up from their seats about such a provision, I should like to explain that this is not new. The Constitution of the Republic of Hawaii which was in effect in 189 --

CHAIRMAN: To discuss your amendment, I perhaps do think it would be very much in order to let the -- make the motion the amendment be adopted, and you can discuss the --

TAVARES: I move that the amendment be adopted.

DELEGATE: I'll second it to allow discussion.

TAVARES: The Constitution of the Republic of Hawaii allowed majority verdicts. It allowed the legislature to make any changes wanted in the number of jurors or the proportion of jurors in both types of cases. It read like this: "Subject to such changes as the legislature may from time to time make in the number of jurors for trial of any case, and concerning the number required to agree to a verdict and the manner in which the jury may be selected and drawn, and the composition and qualifications thereof, the right of trial by jury in all cases in which it has been heretofore used shall remain inviolable except in actions for debt or assumpsit in which the amount claimed does not exceed one hundred dollars, and such offenses less than felonies as may be designated by law." That's Section -- Article 6, Section 3 of the Constitution of the Republic of Hawaii.

Mr. Chairman, I am not asking this Convention to go as far as the Republic of Hawaii went, although I think there's sound reason for it. I am only asking an amendment which will allow the legislature if it so chooses to provide for three-fourths majority verdicts in civil cases and to provide for three-fourths majority verdicts only in those misdemeanors that are punishable only by fine.

A. TRASK: May I ask the delegate a question? Why is the insertion put in there which is strictly lawyer language "except in suits of common law where the value in controversy except for costs does not exceed one hundred dollars"?

TAVARES: I took that from the Federal Constitution, because it's been construed; that language has been construed in the Federal Constitution.

A. TRASK: Well then, I can't help but recall that, I think it was the associate justice of the Supreme Court in 1862 or 52, he said that the common law of England was not the law of Hawaii, that we were not a colony of Great Britain. So although the common law may have been interpreted by the Supreme Court of the United States as having its certain application and connotations and meaning, I think in -- for purposes of simplification, I would like to see a more definitive expression incorporated, rather than to leave it in that realm of pure judicial determination as to what are suits at common law.

TAVARES: Well, as a lawyer I would think, I would much prefer to have the multitude of federal decisions interpreting a section at my behest than to have to have some new language and wait 10 or 15 or 20 years for the court to interpret it. I adopted that because it had a definite meaning, what are suits at common law. The federal courts have construed them.

ANTHONY: Will the speaker yield to --

TAVARES: I yield for a question or a reply.

ANTHONY: I'd like to reply to delegate from the fifth district. That language—I'm not saying I agree with the amendment—that language comes directly from the Article 7 which reads: "In suits at common law where the value in controversy shall exceed twenty dollars" only this is put in the reverse. Suits at common law have a very definite meaning. They do not, as the speaker will recognize, include suits in equity, or causes of action of an equitable nature. They do not include marriage and divorce, admiralty,

guardianship, probate and things of that nature, and so I think the point is well taken that we should adhere to the language that has a settled judicial construction, and this has.

TAVARES: I'd like to point out that 18 states now have provisions either allowing majority verdicts or granting power to the legislature to provide for majority verdicts in civil cases. These states are as follows: 11 states allowing a three-fourths majority in all civil cases, comprising the states of Arizona, Arkansas, California, Idaho, Kentucky, Nevada, Ohio, Oklahoma, South Dakota, Utah and Washington; one state allows a two-thirds majority in all civil cases—that's Montana; one state, Missouri, allows two-thirds majority in civil cases in courts not of record, that's the justice of the peace courts; four states allowing a five-sixths majority in all civil cases, comprising Minnesota—after six hours deliberation, from which I took the six hours provision—Nebraska, New York, and Wisconsin; one state allows less than unanimous verdict in all civil cases—that's New Mexico. And these states have adopted this provision at various times down to, I think, as late as 1938. It's not -- it's an old provision, but there is a modern trend in favor of majority verdicts.

Now six states allow majority verdicts in some types of criminal jury trials. One state, Oregon, allows ten out of 12 in all criminal cases except murder. One state, Louisiana, provides for unanimous verdict of a jury of five for crimes not necessarily punishable by hard labor—I think we call those misdemeanors—nine out of 12 for crimes necessarily punishable at hard labor and the unanimous verdict of 12 for capital crimes.

Four states allow majority verdicts in misdemeanor cases: Idaho, five-sixths for misdemeanors; Missouri, two-thirds in courts not of record; Montana, two-thirds in cases less than felony; Oklahoma, three-fourths in cases less than felony.

My proposal follows the majority of these states in granting to the legislature power to provide for verdicts in civil cases by not less than three-fourths of the members, but it does not follow many states in permitting the legislature to reduce the number of jurors. I'd like to do that too, but I ran into too much opposition from the bar and I think at least we can get together on this three-fourths, and the persons who objected to the reducing of the jury, members of the bar who are very, very conservative, did not object to the three-fourths verdict in civil cases. Likewise, I have found resistance among the bar to a majority verdict for all misdemeanors, and a little resistance to the provision that I asked for in the misdemeanor cases where the penalty is only a fine, but I believe that that would not be serious.

Now I have not interviewed many members of the bar about the provision for eliminating jury trial in cases not more than a hundred dollars, but I believe this is in line with the Federal Constitution which allowed in the early days, 1890 something, the -- or 1879, was it, excuse, 1789 -- allowed it to be eliminated in cases of not more than twenty dollars. I believe twenty dollars in those days would buy as much as a hundred dollars today. And I want to point out that the Republic of Hawaii had a hundred dollar provision and I'm simply following that. We're going back now to 1894 in Hawaii, so that's nothing very alarming.

A. TRASK: May I ask the delegate one question? The second, after the word "deliberation" about the middle there, well, let's divide this situation here. The first provision up to the first semi-colon, you're referring to all suits, criminal as well as civil. Is that correct?

TAVARES: Yes, the first, "The right of trial by jury shall remain inviolate," then the exception comes along.

A. TRASK: Then the next section is with respect to civil suits alone. Is that correct?

TAVARES: No, it's civil suits and misdemeanors not involving imprisonment.

A. TRASK: Yes, over one year.

TAVARES: No, it just provides for misdemeanors where the punishment is only a fine.

A. TRASK: Thank you, and in the second, third section -- clause after that semi-colon, after the word "deliberation," would you consider -- after the word "capital offense," "a jury may be waived, or by agreement of the parties" with reference to criminal and civil cases, shouldn't specific reference be made to criminal as well -- or civil cases?

TAVARES: I think that means all cases. If there's any doubt about it, I think the report could make that clear. In other words, actually I might say this, I'm legislating a little bit in that provision. I think the courts have interpreted, generally speaking, constitutions to allow waiver, but to make it doubly certain I thought I would insert it in here. There are some slight disagreements I think in some courts. The Federal Rules of Civil Procedure allow waiver, but this would make it clearer than ever.

I would like to say this, the provision for the six hour deliberation taken from Minnesota I think is good. It prevents a jury from taking a hasty vote without deliberation and then three-fourths verdict coming out unexpectedly before they've had a chance to talk things over, and perhaps some of them changed their minds. And I think six hours is a reasonable period to require that deliberation before you have a majority verdict.

DELEGATE: Mr. Chairman, on that same point, Mr. Tavares --

CHAIRMAN: Mr. Tavares, you have the floor unless you care to yield--

TAVARES: I yield for a question.

LEE: As I read then, the paragraph after the sentence after the semi-colon after "deliberation," it applies to criminal and civil cases.

TAVARES: That's correct.

LEE: And furthermore at the end of that particular sentence, "by any stipulated majority." I'm trying to conceive of a defense lawyer coming into court representing a defendant who's charged say with a felony, say burglary in the first degree, which carries possibly at least 20 years, wherein he and the government may stipulate on a lesser number than 12 jurors as I understand it. Is that right? And then, do I gather by the last part of it, "by any stipulated majority" that a counsel for the defense would agree to a majority verdict in that case?

TAVARES: I think that's quite possible. It's not as unheard of as it might sound. I could imagine a case where a defense counsel has been getting along very nicely with the jury; he's made a very strong case; he feels sure his man is going to be acquitted; one juror dies, he's only got 11 left. All right, what's he going to do?

LEE: Are you pointing at me, Mr. Tavares?

TAVARES: I mean, what's he going to do then?

CHAIRMAN: He may drop dead.

TAVARES: Is he going to waive the requirement of 12 jurors and take his chances on his good case, or is he going to force himself to have another trial. I think it's quite possible he might be willing to say, "Your Honor, I am willing to gamble," or "I'm willing to accept the verdict of this jury of 11 men, or 10 men, rather than go through another long trial that my client can't afford."

LEE: Well, I don't know whether Mr. Tavares has represented many defendants - -

CHAIRMAN: The Chair feels that probably - -

LEE: - - but I doubt from my own personal experience that I would agree to - - with the government in a situation, to be bound by a majority verdict in a felony case when there's a possibility of one man in a 12-man jury voting against conviction so that there may be a hung jury. I think this is a very - - myself I believe it's a dangerous invasion into the concepts relating to the presumption of innocence, burden of proof, and the matter of reasonable doubt when you're dealing with a jury. And I believe a clause of this sort, "by any stipulated majority," I could go for a majority verdict in civil cases but I can't see the matter of opening it up to majority verdicts in criminal cases.

CHAIRMAN: Delegate Corbett has moved for deferment. Is that - - Delegate Corbett is recognized.

CORBETT: I am completely confused at this point as I think probably a good many of the other laymen on the floor are also. It appears to me that the lawyers present who deny the privilege of any amplification in areas other than their own want to go too far when they get into legal areas, they become completely technical or very difficult for the non-lawyers to understand. I would like to move to table this amendment.

CHAIRMAN: Motion for deferment is in order.

DELEGATE: The lady forgets her husband's a judge.

CHAIRMAN: The motion for deferment of this section is very much in order, if so - -

MIZUHA: I second the motion to defer.

CHAIRMAN: Someone move - -

DELEGATE: I so move to defer, Mr. Chairman.

CHAIRMAN: Motion's been made and seconded that action on this section be deferred till later so that proper amendments can be drawn to satisfy the delegates of this committee. All those in favor say "aye." Contrary minded. Motion carried.

MIZUHA: May we return to Section 14 which was deferred earlier in the morning?

CHAIRMAN: Section 14 is now in order.

MIZUHA: Section 14 has been redrafted, and I believe it's before all of the delegates.

DOWSON: I move for the adoption of Section 14 as redrafted.

A. TRASK: I second the motion.

CHAIRMAN: Motion's been made and seconded that Section 14 be adopted as redrafted.

ANTHONY: I might state, Section 14 has been broken into two sentences which will carry out the intention of the Committee on Bill of Rights. The first sentence has to do with the suspension of the privilege of the writ; that sentence is identical with the language taken from the Federal Constitution, thus carrying with it all judicial interpretations as to when a suspension may take place.

The second sentence has to do with the suspension of laws and it provides that the legislature shall specifically authorize those particular cases in which laws may be suspended. In other words, it prescribes any executive suspension, such was feared by the Committee on Bill of Rights. I might state that this second sentence comes directly from the Massachusetts Constitution, and with the assistance of Senator Heen is somewhat of an improvement on the existing language of the Massachusetts Constitution.

MIZUHA: I would like to move to amend Section 14, the last clause, to read as follows: "to be exercised only in such cases as the legislature shall prescribe, expressly prescribe." I believe the phrase "in such particular cases as . . . "

[Delegates' remarks inaudible.]

CHAIRMAN: No second so far.

A. TRASK: I second the motion.

CHAIRMAN: Motion been made and seconded.

ANTHONY: There is a motion pending before the house, as I understood it, that Section 14 as amended be adopted.

CHAIRMAN: The redraft, the redraft of Section 14 be adopted.

ANTHONY: Redraft, and that - - I suggest that it would be in order for the Chair or have the Clerk read the redraft and then take a vote on the redraft. I think it covers the language which Delegate Mizuha had in mind.

CHAIRMAN: Will the chairman read the redraft of Section 14.

MIZUHA: "The privilege of the writ of habeas corpus shall not be suspended unless, when in cases of rebellion, or invasion, the public safety may require it. The power of suspending the laws or the execution of the laws shall never be exercised except by the legislature or by authority derived from it; to be exercised in such particular cases only as the legislature shall expressly prescribe."

That is the redraft, but in my amendment to the redraft - -

CHAIRMAN: A motion to adopt that redraft has been made, and an amendment to that has been offered by him.

MIZUHA: There's an amendment to this redraft.

CHAIRMAN: An amendment to that redraft has been offered by Mr. Mizuha. And seconded by Mr. Trask.

ANTHONY: Could we have the amendment read by the Clerk?

CHAIRMAN: Do you mind reading the amendment? Mr. Mizuha, I think needs more - - Read the amendment.

CLERK: "To be exercised only in such cases as the the legislature shall expressly prescribe."

ANTHONY: That means substantially the same thing. I don't know whether there's been a second to that, but I'd like to speak against the amendment.

CHAIRMAN: Well if it's the same thing, it would be a matter for Style to change; if it isn't - -

ANTHONY: Yes, it's substantially the same thing, only the language in the redraft requires that power to be exer-

cised in such particular cases. In other words, there shouldn't be any general statute of the legislature suspending the laws, it ought to be in particular cases. Therefore I think that that language is desirable.

MIZUHA: The reason for my amendment was the limitation is too specific here. However, it's a question of style, and if the Style Committee can rewrite this without changing the substance of the section, I withdraw the amendment.

A. TRASK: I'd like to bring to the attention of the - -

CHAIRMAN: Do you withdraw your second, Trask?

A. TRASK: - - that the word "expressly" I believe should be stricken. "Expressly prescribe." I raise that, I'm not looking for the burglar under the word, but because our laws in Hawaii are always printed expressly and they're published expressly, and all the other familiar language in the Constitution has been "as the legislature shall prescribe." And I don't think "expressly" here would do anything else but to diminish the prescriptions authorizing the legislature in the other provisions.

ANTHONY: That's correct.

A. TRASK: I think it should be stricken.

ANTHONY: I'd like to answer that question. The reason why the word "expressly" is used there is for the very purpose that you may not have any executive to look at any statute passed by the legislature and say, "By implication the legislature really intended that I ought to suspend this or that law." In other words, if an executive is going to ld exercise his extraordinary power, the legislature should expressly tell him the circumstances in which he may exercise the extraordinary power.

A. TRASK: I'll withdraw the suggested amendment in view of that explanation.

MIZUHA: I move the previous question.

CHAIRMAN: The only motion before the committee now is whether we shall adopt Section 14, the new draft, the redraft of Section 14, in its entirety. All those in favor say "aye." Contrary minded. Carried.

MIZUHA: I move that the committee rise, report progress and take leave to sit again tomorrow at 9 o'clock.

DELEGATE: Second the motion.

CHAIRMAN: All those in favor say "aye." Contrary minded.

PORTEUS: Before you put that question you've got some other committee meetings tomorrow that are being scheduled. I suppose they can be deferred, if need be. The Committee on Agriculture and the Committee on Executive Powers and Functions wants to meet tomorrow.

HEEN: I rise to a point of information. What happened to Section 14?

CHAIRMAN: Section 14 has been adopted.

PORTEUS: May I ask a question? Was the motion that we sit tomorrow morning carried?

CHAIRMAN: At 9 o'clock.

PORTEUS: At nine.

CHAIRMAN: I haven't called for the "noes" yet. Contrary minded. Carried unanimously.

PORTEUS: It's okay.

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CHAIRMAN: Committee of the Whole please come to order. Chair recognizes Mr. Dowson.

DOWSON: Inasmuch as the adoption of Section 6 makes the consideration of Section 22 redundant, I hereby move that Section 22 be deleted.

BRYAN: I duly second that motion.

CHAIRMAN: Motion has been made and seconded that we delete Section 22, Proposal No. 3 on the Bill of Rights.

WIRTZ: Wasn't there a - - Point of order. Wasn't there a motion to adopt Section 10 when we adjourned?

CHAIRMAN: I'll have to ask the Clerk about that. My memory isn't that long.

TAVARES: Section 10 was pending, as I understand it, and was deferred. I'm sorry I didn't hear what went on just prior.

CHAIRMAN: Section 10 as I remember was deferred for amendment.

ANTHONY: At this time - -

CHAIRMAN: So I believe that the motion is in order to delete Section 22.

ANTHONY: I thought we were discussing Section 10 and I suggest that that be deferred until we get Section 10 out of the way. I have an amendment on the Clerk's desk which I'd like to have circulated. Section 10 relating to trial by jury.

CHAIRMAN: That was deferred, though if that is the pleasure of the committee - -

WIRTZ: Point of order. There is a motion pending, and the Chair has ruled that it's in order.

CHAIRMAN: I believe that Section 22 should be deleted, but - - I so rule and so move. The question is shall Section 22 be deleted? All those in favor say "aye." Contrary minded. Section 22 is deleted.

We'll now proceed on with Section 10.

ANTHONY: I move that Section 10 as presented by the committee be amended to read as follows: "Jury Trial. In suits at common law where the value in controversy shall exceed one hundred dollars, the right of trial by jury shall be preserved. However, the legislature may provide for a verdict by not less than three-fourths of the members of the jury."

TAVARES: I wish to second that motion and to withdraw my original motion for amendment.

ANTHONY: May I speak to the motion at this time? I rise to speak to the motion.

CHAIRMAN: You may.

ANTHONY: The proposed amendment relates only to civil cases, does not relate to criminal cases. It preserves the same language as is found in the Federal Constitution, reason for that being that we want to preserve also the judicial interpretation.

There is one phrase in the Federal Constitution that has proved some - - made some difficulty and that is that section of the Federal Constitution which says "No fact tried by a

jury shall be otherwise re-examined in any court of the United States and according to the rules of the common law." The reason for not including that in the proposed amendment is that courts have had difficulty in setting aside verdicts. Under the Federal Constitution, there are certain limitations on the powers of the law courts to set aside verdicts, and therefore that language is not preserved. But otherwise it will preserve the right of trial by jury in all civil cases in controversies where the amount in controversy exceeds one hundred dollars, and it also authorizes the legislature to provide for less than a unanimous verdict, namely a three-fourths majority of the jury. In other words, it leaves the mechanics of that provision to the legislature.

CHAIRMAN: The question is, shall Section 10 be approved as amended? All those in favor of adopting - -

A. TRASK: Question of Mr., Delegate Anthony. There is no reference whatever and there's - - none is intended with respect to criminal cases?

ANTHONY: That is correct, Delegate Trask. This applies exclusively to civil cases. In other words, in all criminal cases the right of trial by jury by a unanimous verdict is preserved intact as it stands today.

There is one item that I would like to call to the Convention's attention and that is, possibly the amount of one hundred dollars is too low. In other words, the Convention might very well fix it at five hundred dollars, which would be a rather small claim in these days; let that be tried without a jury. I would accept any suggestion that - -

A. TRASK: Does the delegate mean that when you say that the criminal - - the right to criminal jury trials is preserved, you're referring to the Convention's adoption of the Federal Constitution?

ANTHONY: No, there's an express provision in the Bill of Rights section, Mr. Trask. I'll find it in just a minute.

DELEGATE: Mr. Anthony.

A. TRASK: Is that that inviolate section? "The right to jury trial shall be inviolate"?

MIZUHA: "Speedy trial by an impartial jury."

ANTHONY: Number 11. "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the judicial circuit wherein the crime shall have been committed."

A. TRASK: Thank you.

CHAIRMAN: Mr. Anthony, the Chair would like to know the reason why the one hundred dollars is there inserted. Couldn't the legislature fix that at five hundred or seven fifty or three hundred or whatever it deems feasible and just leave out the "in suits at common law, the right of trial shall be preserved. However the legislature may provide" so and so and so and so.

ANTHONY: Well, Mr. Chairman, that I think would be inadvisable, because the most trivial suit for debt, say it was two or three dollars, a person could demand a jury trial. The jury fees would run on the order of a hundred dollars, and all that expense would be passed upon the state.

CHAIRMAN: Couldn't the legislature fix that at five hundred dollars?

ANTHONY: Not unless there is a provision in the Constitution; therefore there should be a stated sum, either one hundred dollars or five hundred dollars as a maximum.

WIRTZ: Under our present system in the territory five hundred dollars is the jurisdictional amount fixed for the district courts, which does not permit jury trial. I would like to amend Section 10 as amended to delete the figure one in the second line thereof and insert in lieu thereof five, so that the jurisdictional amount here for jury trial would be five hundred dollars instead of one hundred dollars.

WOOLAWAY: I'll second that motion.

ASHFORD: Point of order. In the statement by the Chair of the issue before the house, was that not incorrect? I think it was stated as the question before the Convention as whether Section 10 as amended shall be adopted. And I think the real question is on the amendment first.

CHAIRMAN: Discussion is on the amendment.

MIZUHA: I would like to ask the delegate from the fourth district that, in a verdict if there is any damages awarded, the figure arrived at would be by the three-fourths number of the jurors present?

ANTHONY: That would depend entirely upon legislation. In other words in the absence of an implementing statute, the effect of the section relating to the continuity of laws would preserve a unanimous verdict. In other words it would then be up to the legislature to pass a statute implementing the constitutional provision providing for less than a unanimous verdict. As to the question of damages, in that case, of course, the jury would assess the damages. But the party of pleading would have to include a statement that the amount in controversy in this case exceeds five hundred dollars.

MIZUHA: The question of damages will be settled by three-fourths verdict, three-fourths number of the jurors present?

ANTHONY: That's correct. If there is statute to that effect, of course.

MIZUHA: Yes.

A. TRASK: Was the motion of the amendment to amend by Delegate Wirtz seconded?

CHAIRMAN: I think by Mr. Woolaway.

A. TRASK: May I ask a question of Delegate Wirtz? Would this - -

ANTHONY: Will the gentleman yield just a moment.

A. TRASK: I will.

ANTHONY: I would like to accept the amendment of Delegate Wirtz. That will speed up the process here, I think.

A. TRASK: Well, I'm just wondering about whether - - of the advisability of this five. I'm personally opposed to it. There are - - we have on the statute books a rent control law. People, landlords have sought to get tenants out of their houses. The amount in controversy may in some cases may be less than one hundred dollars. It may go over, may be less than five hundred dollars. Now under this situation, the question in many cases is not so much money as it is a place to live. And seldom is any case in summary possession, that is landlord trying to evict the tenant, where the amount in controversy is more than five hundred dollars, and in many cases, it's a question of the humanity of the situation involved, as well as the law. And it would seem to me if the amount is placed at five, it would work great havoc and take away much of the good things that

we say are -- repose in the jury system, in jury trials. And so I would -- and according to this reading, no person who is sued by his landlord to evict him where the amount in controversy is less than a hundred dollars, I question whether or not he has a right to demand a jury trial. Unless the judge wants to answer that.

TAVARES: May I answer that question? As Mr. Anthony tried to explain, this provision is only a permissive one. Unless and until the legislature passes a law to that effect, the right of trial by jury is the same as it is today. The legislature can then pass a law if it wishes allowing jury trials in less than a hundred dollar cases, in less than five hundred dollar cases. They can set it at fifty, twenty-five, zero, over five hundred, any amount they want, and that will be a matter addressed to the sound discretion of the legislature which undoubtedly will take all those matters into consideration, and I don't doubt but what if there is a need for it, the legislature can adjust it.

A. TRASK: Well, if that is the case, why insist on five?

ANTHONY: No, no, I think --

A. TRASK: That's the situation.

ANTHONY: Mr. Chairman, I think Mr. Tavares didn't say exactly what the section says. "In suits at common law where the value in controvery shall exceed five hundred dollars, the right of trial by jury shall be preserved." Now in other suits, the legislature can pass any kind of a law it wants, and it could exclude,Delegate Trask, rent control cases from that. I think the proper place to address your problem would be to the legislature. If you want to preserve a jury trial for a hundred dollar rent case, then preserve that in a legislative enactment.

A. TRASK: I think five is too big a number. I think the courts are made for the little person, and there're more little people in Hawaii than there are big people, and I do feel that there, the figure, the amendment five is just too much.

TAVARES: What amount would the delegate feel?

A. TRASK: I say preserve that one hundred --

TAVARES: One hundred?

A. TRASK: -- and so psychologically, the little fellow might think he'll have just as much opportunity as the big fellow.

WIRTZ: In view of the discussion, I withdraw my amendment.

CHAIRMAN: The Chair recognizes the fact that the motion has been withdrawn.

WOOLAWAY: The second is withdrawn.

TAVARES: As I understand it then, that restores the original motion to amend to one hundred dollars. One more last statement. On the desk I believe of each delegate is now a memorandum about state constitution provisions on the right of trial by jury which I have gone to great pains to prepare, and which indicates either the gist or the wording of many state constitutions on this subject. I'd like to point out one typographical error which, due to the haste of writing this, crept in. On page three at the bottom, note No. 14 -- I asked to have it circulated.

ROBERTS: Copies have not been circulated to all members.

CHAIRMAN: Mr. Tavares, I think that explanation should be embodied in the report in the Committee of the Whole.

TAVARES: Well, I just wanted to call it to the members' attention, if they care to look at it while this discussion is going on. On page three, starting with the word "note No. 14 supra" that refers to note No. 14 of the last quotation on page two, and it should have gone right there. On page two you have a quotation which at the -- in the last two, three lines has a little number 14 and 15 opposite certain words. And those are the notes, 14 and 15, to which the note No. 14 on page three, and note No. 15 on page four refers.

CHAIRMAN: The only motion before the --

MIZUHA: Before a vote is taken on the section as amended, I believe it is well at this time to make clear to the non-lawyers assembled here that this will give the legislature of the future State of Hawaii the power to change what has traditionally been the system of jury trials here in the Territory of Hawaii. And that must be understood very clearly because we are departing from what has been written into our judicial system for the past 50 years, where there must be a unanimous verdict in civil jury trials. And if the Convention, the delegates assembled here, are ready to give our legislature that power, then the vote should be in the affirmative, but if you feel that the legislature should not be given that power, and that we should retain the 12-men jury system, I mean unanimous verdict, then the vote should be no.

However, it is my own personal feeling that a three-fourths majority verdict is a little too low. Hence, I propose this amendment, the last sentence, the last clause, to read, "the legislature may provide for a verdict by not less than five-sixths of the members of the jury."

CHAIRMAN: As the Chair understands it, no less than three-fourths, so the legislature can fix it at five-sixths.

TAVARES: That's correct. The legislature doesn't have to fix it at three-fourths. The legislature can fix it at five-sixths under this amendment.

MIZUHA: There was no motion there. I think somebody wants to second my motion here.

ASHFORD: May I ask a question of the chairman of the Bill of Rights Committee? Section 10 as reported by the Bill of Rights Committee reads, "The right of trial by jury shall remain inviolate." Does that embrace the section of the Federal Constitution requiring suits at common law where the value is in excess of twenty dollars to go to a jury, or does it require all cases to go to a jury, in his opinion?

MIZUHA: It is my understanding that all cases should go to the jury. But that section was reported out for general discussion on the floor.

TAVARES: I'd like to point out one more thing, and I hope the members will forgive me for being so long-winded, but this is important. And that is today very properly our legislature has provided that jury fees shall be paid by the Territory. That means that the poorest man or the wealthiest man are in equality as far as the cost of jury trials are concerned. In many jurisdictions, including the federal courts, before you can go to trial in a civil case before a jury, you have to pony up half the fees on each side.

Now, I am for preserving that system of the Territory paying those jury fees so that the poor man has an equal chance with the wealthy one, but I think that we should try to cut down a little of that expense. In too many small cases

and too many civil cases they gamble with the jury, expecting a hung jury or trying to get a hung jury, and it only takes one man. One man is all you have to have on a jury today to hang a jury in a case that may be very clear.

In many cases where the case is very doubtful on one side, they will hope to have one friend on the jury and let me point out that I don't know that it's happened down here, but on the mainland it has happened. Where you have a unanimous jury requirement all a wealthy man has to do is to either bribe or scare one juror enough to hang a jury, to beat the game. Now this allowing the legislature to reduce the number by which a jury may bring a verdict prevents that from happening. It makes it much harder, if the legislature chooses to do so, for a person to hang a jury, and since the government is paying all those expenses–four dollars a day for every juror and it ought to be increased and probably will be–I think the government ought to be able to cut down a little bit on those expenses.

HEEN: By having a special provision included in the Constitution to allow for a verdict by less than a majority, what is the implication there as to trials of criminal cases? We have no provisions similar to this as to criminal cases.

TAVARES: There is a provision that's already been approved by this Committee of the Whole on criminal trials allowing the trial by jury, which takes care of that.

HEEN: That's correct; it says that in criminal cases a person accused may have a speedy trial by an impartial jury. That generally means the majority - - not a majority verdict but a unanimous verdict. Now can a jury be waived in the criminal case or can, by agreement between the state and the accused, a jury - - may a jury return a verdict less than a majority vote? My point is this, having dealt with criminal trials, with trials of civil cases, to allow less than a unanimous vote, does that imply that in criminal cases, they must always be unanimous, and that they must always have a jury trial?

ANTHONY: I think Senator Heen has raised a good point that should be clear in our deliberations. The intention is to preserve intact the right of the unanimous verdict of a jury in all criminal cases. That's Section 11. As to the question whether or not a jury verdict can be waived, that has been held by the courts permissible. As a matter of fact, in federal courts today, there are many felony cases that are tried without a jury. That can be done by stipulation; so I think the clear import of modifying the section relating to suits at common law, and these minutes should disclose that, that we are preserving intact the unanimous verdict in all criminal cases, but in civil cases, we are giving the legislature a framework on which they can operate to pass a statute which will provide for less than a unanimous verdict.

TAVARES: In that connection I think it should be pointed out that the Judiciary Committee has proposed an article which gives the supreme court of the new state the power to make rules of criminal and civil procedure. It is my understanding and belief, and I think our report should so show, that under that power the supreme court can adopt rules which will permit, under proper safeguards to be set forth in the rules, persons to agree to majority verdicts even in criminal cases. I mean, yes, to a verdict by less than a number of 12, and less than a majority. I think the Federal Rules of Civil Procedure largely provide for that now, and therefore, I would not want it to be understood that by deleting those sections, those provisions out of my original amendment, I was abandoning the idea that it can be done. I think it can be done if we adopt the judiciary rule and allow the supreme court to make rules which will permit people, not require them, permit them if they choose, to agree to verdicts of less than 12, by less than 12 jurors and a verdict of less than unanimous.

CHAIRMAN: The only question before the committee now is, shall we adopt section - - of adopting the amendment to Section 10. The amendment is, "In suits at common law where the value of controversy shall not exceed one hundred dollars, the right of trial by jury shall be preserved; however, the legislature may provide - -

ANTHONY: No "not." The chairman read a "not."

CHAIRMAN: "Shall be preserved."

FONG: May I ask the introducer a question? I notice here that the first sentence, "In suits at common law." Now I think that is meant to differentiate that from suits in equity. Is that right?

ANTHONY: That is right, Delegate Fong. That is taken directly from the Federal Constitution, and has over a hundred years' interpretation. It would exclude equity suits, probate, divorce, guardianship, admiralty, things of that nature which are traditionally not suits at common law.

FONG: Yes. Now will that prevent the legislature from passing a law stating that in equity suits there may be a jury? I understand that some jurisdictions have that.

ANTHONY: That is covered usually by rule. That's the federal practice at present. In a suit where there is a merger of law in equity the court by rule can require a jury verdict. Under the present law we can't have a jury in equity cases except in an advisory manner. It is never definitive, such as it is in a law action or a suit at common law.

FONG: Well, in the territorial courts we have no trial by jury in equity cases.

ANTHONY: Well, we could have a jury in an advisory capacity, in equity cases.

FONG: Yes, but the legislature could provide for trial by jury in equity cases?

ANTHONY: The answer is yes.

ASHFORD: My recollection is that under the present partition statutes certain issues can be tried by jury.

TAVARES: That is correct. It is my understanding as the original introducer of the first, the forerunner of this amendment, that there's nothing to prevent the legislature from saying - - from extending the right of jury trial over what it is today.

CHAIRMAN: I'll ask the delegates to sit while a member has the floor.

ANTHONY: I want to give the delegate from the fifth district an example. In probate, as we all know, that ordinarily comes before a judge in chambers. If you're dissatisfied with the decision of the judge, then by legislation you may take an appeal. The same thing happens in the land court. Nothing in this section would prevent the enactment of such legislation.

FONG: And nothing in this section will prevent the legislature from stating afterwards that in suits in equity there may be trial by jury?

ANTHONY: That is correct.

FONG: Then this paragraph here, "in suits at common

law," it deals with all those actions which we understand as having jury trial at the present time?

ANTHONY: At common law, Mr. Fong.

A. TRASK: May I address my remarks to the delegate from the fourth district also on this same question. It seems to me that when a person comes into a lawyer's office and has a law suit, he doesn't know whether it's a common law, equity or probate or whatever it is. He's got pilikia, and he wants adjudication, and he may want a jury trial. So I don't know whether or not we should really confine ourselves just to the federal delineation of this right.

In other words, with the development of time this -- the constitution and the people of the United States have not deemed it advisable to have a constitutional amendment on this thing, but a person who is in trouble and comes to a lawyer, he's got a case, and it seems to me that we ought to broaden the right of a jury trial and determination of facts. As a matter of fact there's been discussion in many quarters of perhaps a right of trial by jury in equity cases. Some people have suggested divorce cases. And it seems to me that we ought to, in view of what -- how people feel about suits in the courts, to broaden the scope of the right of jury trials and to leave it safely to the legislature to provide for the latitudes or the constrictions that are deemed right and proper.

I do feel, therefore, that as the questions of Delegate Fong disclosed, that we ought to make the right of trial by jury be preserved extending to all cases, whether at common law or any other type of law. So I suggest here an amendment to the amendment reading as follows: "In all civil cases," striking out the word "suits at common law." Again, have an insertion after the word "in"; "in all civil cases"; and then continue, striking out "suits at common law."

YAMAMOTO: May we have a -- I move for a five minute recess.

MIZUHA: I second the motion.

CHAIRMAN: Short five minute recess has been ordered.

(RECESS)

A. TRASK: With the distinct understanding that the right of the legislature to provide for jury cases and all other suits other than those at common law, and that the same notation will be made in the report of this Committee of the Whole, I withdraw any further inquiry to the matter.

ANTHONY: That is clearly the understanding of the amendment as just stated.

CHAIRMAN: The only question before this committee --

MIZUHA: May I again point out to the delegates assembled that this provision will authorize the legislature to provide for a verdict where nine people sitting on a jury of twelve can return a verdict that will -- must be accepted by the court. And because I feel that is too low a majority, I propose the following amendment: The last clause to read as follows: "The legislature may provide for a verdict by not less than five-sixths of the members of the jury."

DELEGATE: I second that motion.

CHAIRMAN: Motion has been made and seconded that the three-fourths be deleted, and in lieu thereof insert the word "five-sixths."

TAVARES: I should also like to point out as shown in my memorandum that a goodly number of states permit that today, and we have heard no complaints about the quality of justice in those states. As a matter of fact, I read an article recently in a law journal which pointed out that there were fewer appeals in jurisdictions having a majority verdict than in many other jurisdictions having the unanimous verdict. It has worked well in those states which have it; we've heard no complaints whatsoever.

Finally, I'd like to point out that although the Federal Constitution under which we now operate does not require our legislature to give a jury trial in probate cases, in land court, in many other types of cases, our legislature has actually extended the right of trial by jury rather than restricted it. It seems to me, therefore, that you can trust your legislature to make the proper adjustments that the people want, because even with the power to restrict, they have not restricted so far.

MIZUHA: I wish to point out that five-sixths is ten out of twelve; the original amendment was nine out of twelve. We still make provision for a majority verdict --

CHAIRMAN: One man hanging around there some place. Nine, ten. All those in favor of making it five-sixths rather than three-fourths say "aye." Contrary minded. Chair is in doubt unless a roll call is requested.

PORTEUS: Rather than calling a roll call which takes a long time couldn't we have a raising of hands? It'll be a whole lot shorter.

CHAIRMAN: So ordered. All those in favor of five-sixths, please raise your right hand. Contrary minded. Twenty-five, five-sixths; twenty-four, no. All those not voting will vote in favor of the amendment.

MIZUHA: Those not voting will increase it in favor of the amendment.

CHAIRMAN: I understand, in favor of the amendment.

DELEGATE: Roll call.

MIZUHA: I believe it's not necessary for a roll call. We had a show of hands here already.

DELEGATE: It's only 49 delegates.

KAUHANE: We demand a roll call.

CHAIRMAN: A roll call is always in order. All those in favor of a roll call, please raise your right hand.

Clerk, please call the roll. All those in favor of five-sixths vote "aye."

ANTHONY: I'd accept the amend -- I will accept the amendment. I'm the proposer of the amendment.

CHAIRMAN: You're out of order. The roll call has been demanded and ten votes carried.

ANTHONY: I'm trying to speed up the procedure here.

CHAIRMAN: Well the only way to speed up procedure is take a vote on it. Clerk, call the roll.

ROBERTS: What's the question, Mr. Chairman?

CHAIRMAN: Question is all those in favor of five-sixths vote "aye." Contrary minded, "no."

[Roll call not available.]

CLERK: 20 Ayes, 37 Noes, 6 not voting.

TAVARES: I now move that the amendment be approved and that we recommend passage when this committee rises, in the form of the amendment.

CHAIRMAN: The only motion before this committee is that - -

DELEGATE: Roll call.

CHAIRMAN: - - Section 10, the amendment to Section 10 be adopted.

TAVARES: That's correct.

DELEGATE: I second that motion.

CHAIRMAN: All those in favor of the amendment, say "aye."

DELEGATE: Roll call. Roll call.

MIZUHA: Mr. Chairman, roll call.

CHAIRMAN: Roll call has been requested. All those in favor of roll call, please raise your right hand. Can't even count. I only see four hands up now.

DELEGATE: Wait a while, there are more than four.

DELEGATE: Hold your hands up.

DELEGATE: I see fourteen.

CHAIRMAN: Roll Call. Roll call has been demanded. All those in favor of the amendment please - - the amendment offered by Mr. Anthony.

MIZUHA: Will you please read that amendment so there will be no doubt in the minds of the delegates.

CLERK: "Section 10. Jury Trial. In suits at common law where the value in controversy shall exceed one hundred dollars, the right of trial by jury shall be preserved. However, the legislature may provide for a verdict by not less than three-fourths of the members of the jury."

CHAIRMAN: All those in favor of that amendment, vote "aye." Contrary minded, "no." Clerk, call the roll.

[Roll call not available.]

CLERK: 51 Ayes, 8 Noes, 4 not voting.

CHAIRMAN: The ayes have it.

BRYAN: I move the adoption of Section 10 as amended.

DELEGATE: I second the motion.

CHAIRMAN: Motion has been made and seconded that we adopt Section 10 as amended.

KELLERMAN: I have another amendment to propose to Section 10, although it does not relate to the identical subject matter. Should that - -

CHAIRMAN: The amendment may be offered.

KELLERMAN: - - be introduced now or later. Is that in order now?

CHAIRMAN: Your amendment is in order.

KELLERMAN: Is it in order?

CHAIRMAN: Your amendment may be offered.

KELLERMAN: Now? I wish to propose a second amendment to Section 10. Perhaps the ori - - the one on the subject matter under immediate discussion could be titled Section 10A and this could be entitled Section 10B. "No person shall be disqualified to serve as a juror because of sex." I think you have this proposed amendment on your desks. I'd like - - if there's a second to that motion, Mr. Chairman.

MIZUHA: I second the motion.

CHAIRMAN: Mrs. Hayes second the motion?

HAYES: Second it.

KELLERMAN: In speaking to that motion, I should like to point out to the delegates that serving on a jury is not necessarily a civil right. It is more a civil duty. It is not necessarily included under the general anti-discrimination clause on civil rights. For that reason it is expressly spelled out in very many state constitutions, that no person shall be disqualified to serve as a juror because of sex.

Under the present Organic Law, there is a limitation. Women are not allowed to serve on juries under the Organic Act, and statutes passed subsequent thereto have of course been in conformity with the Organic Act prohibition. When the Organic Act goes out of existence there - - that limitation will go out of existence. But this guarantee in the Constitution makes it impossible for the legislature to provide otherwise.

CHAIRMAN: Section 10 by Mrs. Kellerman is self explanatory. Any of those opposed to this amendment?

ANTHONY: That is precisely in accord with the recommendations of the Judiciary Committee. I suggest, I'm in favor that the amendment be left to the Committee on Style, the appropriate place to put it in the Bill of Rights.

CHAIRMAN: Well then, it's in order we adopt this amendment.

ASHFORD: I would like to say that I do not concur with the delegate from the fourth district in the suggestion that that is not covered by the protection of civil rights.

AKAU: I was wondering if there might be an amendment on this. If we are going to accept it in the Bill of Rights, instead of the word "because" using the words "on account," that is to "serve as a jury - - juror on account on sex."

CHAIRMAN: On account of?

AKAU: Not "because." There are more words, but I think the meaning is slightly different.

KELLERMAN: I suggested the word "because" because that is the word that has been used in the anti-discrimination clauses in the other parts of the Bill of Rights. It's simply uniformity of style.

CHAIRMAN: Changing that word may be a matter of style rather than anything else.

SAKAKIHARA: I move to amend amendment offered by the delegate from the fourth district. Strike out "because" and insert after "juror," "by reason of sex."

KELLERMAN: I should think that's a matter of style. I don't object to "on account of," "because of," "by reason of" or any of the phrases that mean the same thing.

CHAIRMAN: The Chair so believes. It's a matter of style. Question. All those in favor of - -

MAU: Just for the record, I don't quite agree with the sponsor of the motion that the service on juries by women is merely a duty. I consider it one of the fundamental rights that belong to that class of our citizens, and I want the record to show that there's no unanimity in the explanation given by the sponsor. I have a question on this, whether or not putting this provision under Section 10, which relates to suits at common law, civil trials, whether women will serve only in civil cases. I want that to be very, very clearly explained.

ANTHONY: That was the purpose of my making the statement that it ought to be left to the Committee on Style as to the appropriate place to put this language in the Bill of Rights.

CHAIRMAN: Well, it could be called 10B and Committee of Style -- Style Committee may change the --

DELEGATE: Question.

CHAIRMAN: Question. Shall we adopt the amendment to 10B. All those in favor say "aye." Contrary minded. Carried.

TAVARES: Just to satisfy some of the members who have doubts, I move that when this committee makes its report it include in the report a statement that this section that's just been amended, the second part of Section 10, applies to all jury trials.

MAU: I second the motion.

HEEN: To have no doubt about it at all, this section should be numbered 10A. In other words, this should not be a paragraph in Section 10. Otherwise, the implication will be it's limited to civil cases.

CHAIRMAN: Well, someone will have to move for reconsideration.

HEEN: I move that this particular amendment be numbered 10A.

CHAIRMAN: You'll have to reconsider your action.

HEEN: I don't know whether that amendment was made to 10A, or I mean, to 10 itself. I heard Delegate Kellerman say it might be 10A or 10, part of 10.

CHAIRMAN: The amendment as printed calls it 10B.

HEEN: 10B. That's all right.

MIZUHA: I think we agreed that the intention here was that this 10B as proposed, was not restricted to civil cases only, and that the rest was to be left up to the Style Committee. There is no question, Mr. Chairman.

CHAIRMAN: The Chair so rules.

FUKUSHIMA: To make a lot of other things straight for the record, I think there is no clear understanding [of] the composition of a jury. Do we mean here in Section 10 and Section 11 when we say jury, it is a jury of 12? Without any question?

ANTHONY: No question about that. We adopted the federal language and that in turn adopted the common law. It is a jury of 12.

TAVARES: There is not one decision of any state or the United States courts that has ever held that the word "trial by jury," or "jury trial," or the word "jury" when used without any other modification means anything but 12 men. There isn't one decision to the contrary; therefore, when we say "jury" without an amendment or without a change of what we mean, it means 12 men. 12 persons.

ASHFORD: Does it mean 12 men or does it mean 12 men and women?

CHAIRMAN: God created men; he made no distinction between men and women. Section 25, I think is the next section.

MIZUHA: Before we go into Section 25, the Committee on the Bill of Rights would like to call the attention of the various delegates to some standard provisions that have been included in other Bill of Rights. However, for instance, that no law, no bill of attainder or ex-post-facto law incurring the obligations of contract should -- some people have asked that we write it into the Bill of Rights but after consultation with the chairman of the Committee on Legislative Powers and Functions, it is very clearly covered by Article 1, Section 10 of the United States Constitution, which prohibits -- which is a prohibition on the state from passing such laws, hence it is not necessary to include in our Bill of Rights.

Likewise, the Committee on the Bill of Rights considered the question of segregation in the public schools in connection with this anti-discrimination clause. It is proper at this time that a question be asked of the chairman of the Education Committee, whether that would be incorporated in the education article of the Constitution.

LOPER: The committee proposal in its present form does include a sentence against such discrimination, but it has not yet been passed in its final form by the committee.

MIZUHA: Then, I believe it is proper at this time that the recommendations of the Committee of the Whole will include a provision or a qualification that that question could be considered or raised again in the future, in the event that the education article does not contain that provision of segregation in the public schools. And I so move.

DELEGATE: Second the motion.

BYRAN: Point of order. Couldn't that be offered as an amendment to the education section when it's presented, if it's not included?

MIZUHA: That'd be proper. So I withdraw my motion. But it will be offered if it's not included.

Before going on to Section 25, I believe it is proper at this time to ask any of the Convention delegates if they have any other questions with reference to the Bill of Rights, and to raise it at this time inasmuch as Section 25 is a saving clause and will complete the discussion on the Bill of Rights.

CHAIRMAN: Section 25 should be adopted.

MAU: The chairman of the Bill of Rights Committee has asked whether there are any questions as to any other provisions which might go into the Bill of Rights. Is that correct?

MIZUHA: I did not get the question.

CHAIRMAN: The question is whether the members of the committee feel that perhaps some other provisions may go into the Bill of Rights.

MIZUHA: There's none at present. We have a communication from the Committee on Labor and Industry that they will incorporate this clause on the right to organize and bargain collectively and will insert it in their article; hence the Committee on the Bill of Rights has not taken it up at this time. However, we reserve jurisdiction of the question, and will present it to the floor in the event there's no such report by the Committee of Labor and Industry.

DOWSON: I move for the adoption of Section 25 if nobody else has any question.

BRYAN: I second the motion.

CHAIRMAN: The motion has been made and seconded we adopt Section 25.

Now, Mrs. Akau.

AKAU: I want to say it isn't -- my statement hasn't to do with 25, it has to do with the thing as a whole.

CHAIRMAN: You may make the statement.

AKAU: Point of information. At the time that the proposal on women on juries was presented here to the floor, it was tossed around. I think a statement of the consensus of opinion was that it first went to the Bill of Rights Committee, then it came back on to the floor and it was suggested, I believe, not moved, but it was a consensus of the group that it go to the Judiciary. Now, the point I raise is, if after we've kicked it around and somehow the feeling was that it belonged in the Judiciary, that that's really where it should be, and that we are out of order, I believe, in allowing it to go into the Bill of Rights. I just raise that point.

CHAIRMAN: I'd like to raise -- to remind you that Section 10-B covering that subject has been adopted by the entire Committee of the Whole.

AKAU: I realize that, Mr. Chairman. I was just wondering if it might be in order to reconsider.

CHAIRMAN: It's in the Bill of Rights now.

AKAU: Yes, if it would be in order to reconsider, although it has been passed now, to reconsider this particular section and have it go over to Judiciary without consulting the people on style, since that was the decision of the group some few weeks hence.

CHAIRMAN: The Committee on Style can not change the meat of the -- cannot change the language.

AKAU: Well, they won't -- Mr. Chairman, excuse me, they won't change the meaning of it, but I just raise the question as to the propriety of the thing since we had already moved. I, therefore, move now that we reconsider Section B-10, not the content of it, but the position, the place where it belongs.

CHAIRMAN: That, and I'd like to remind the speaker again, that would be left to rules allowed the Committee of Style, to put that section or any other section where they feel it should belong. I think that's a matter for Style to decide. Anyone feel differently may express their views on it.

All those in favor adopting Section 25, say "aye." Contrary minded. Carried.

Now go out of Committee of the Whole into regular session.

MIZUHA: I move that the committee rise and report its recommendations to the Convention.

CHAIRMAN: Adjourned.

HEEN: I move that the committee rise and report progress and ask leave to sit again. And during the interim period the report of the committee should be reduced to writing.

CHAIRMAN: Final, final?

MIZUHA: I withdraw my motion in favor of that motion.

CHAIRMAN: All those in -- Is there any second?

SAKAKIHARA: Second the motion.

CHAIRMAN: All those in favor that the Chair rise, report progress, beg leave to sit again, say "aye." Contrary minded? Carried.

JUNE 15, 1950 • Morning Session

CHAIRMAN: You should have before you for final action, the Committee of the Whole Report No. 5 in reference to the Bill of Rights. I presume most of you have read the report. At this time the Chair would like to thank Representative, I mean Delegate Nils Tavares for doing in my opinion—I've read the report—a wonderful job. I think it's a credit to this Convention and to the Constitution to have in the Constitution this report. And it's a very nice piece of work, in my opinion. I want to assure you that the signature is mine.

What is the pleasure of the committee?

[Inaudible. Motion made, seconded and carried to adopt committee report.]

SAKAKIHARA: What is the motion, Mr. Chairman?

CHAIRMAN: Motion has been made and seconded when the Chair rise, it reports the final adoption of the committee report. All those in favor say "aye." Contrary minded. Carried.

Chairman: HERBERT M. RICHARDS

Second Morning Session

CHAIRMAN: The Committee of the Whole shall come to order.

ANTHONY: I move we take a five-minute recess while all the delegates read the report. Then if they have any questions they can ask them.

CHAIRMAN: If there's no objection, I declare a recess.

(RECESS)

KELLERMAN: First I'd like to explain the delay and inconvenience to this body in asking that the Committee of the Whole sit again on this report. As you are all aware, the committee report was adopted very hastily. I had before me the report of the Committee of the Whole, and I was trying to find in my folder the report of the Committee on the Bill of Rights to get the language to propose the amendment. Before I was able to do so or to phrase the amendment, the report went through. I voted "no" against it, but that was a minority "no," and therefore it appeared that it had passed. And so I've asked for reconsideration on this point.

I would like to propose an amendment to Committee of the Whole report, page five, if you'll turn to page five, your Committee of the Whole report—the end of the first sentence under "Recommendations, Reasons or Explanations." The first sentence ends: ". . . and other relevant circumstances." At the end of that sentence I would like to -- I move to insert the following sentence: "Your committee understands further that this paragraph would not prevent the state from authorizing any military organization to deny enlistment on the basis of security to this state or the nation."

MIZUHA: I second the motion.

TAVARES: I see no objection to the amendment.

CHAIRMAN: Any further discussion? All those in favor please signify ayes and noes. Contrary minded? It is so ordered.

At this time, the Chair would like to recognize Delegate Woolaway.

WOOLAWAY: I think it's fitting at this time, while we're in the Committee of the Whole, to recognize some of our outstanding citizens, youngsters who someday will take our

/places, the type we enjoy to have, the Cub Pack No. 9 of Kaimuki.

CHAIRMAN: We are most happy to have Cub Pack No. 9 of Kaimuki here, to be with us this morning.

KAWAHARA: I would like to propose an amendment to the report, page five, Section 6. I believe on your desk, you have circulated amendment to Committee of the Whole Report No. 5 which reads: "The Committee is unanimously agreed that the right to marry is a civil right within the meaning of Section 6." I would like to amend -- move to amend section -- the report on Section 6, page five. After the words "consent of Congress" the following words: "Your committee also agrees that the right to marry is a civil right within the meaning of Section 6."

CHAIRMAN: You have heard the motion. Is there any --

DOI: I second the motion.

TAVARES: Although this constitutes repetition of what is stated in another portion of the report under Section 22, I see no objection to inserting it here also.

CHAIRMAN: Is there any further discussion? All those in favor of inserting the amendment, please signify by saying "aye." Contrary minded. The ayes have it. So ordered.

HEEN: In order not to have the original written report of the Committee of the Whole re-written, I would suggest that a supplemental written report be submitted setting forth these amendments. That'll save considerable time and it will obviate the necessity of writing a new report altogether.

DELEGATE: Second the motion.

HEEN: I so move.

CHAIRMAN: Put that in the form of a motion. It's moved and seconded. Any further discussion? All those in favor please signify by saying "aye." Contrary minded. It is so ordered. If there are now no further --

KELLERMAN: I move the adoption of the committee report as amended.

DELEGATE: I second the motion.

CHAIRMAN: Moved and seconded that the committee report as amended be adopted.

I believe that the proper procedure would be that this committee rise and --

HEEN: That's correct.

CHAIRMAN: -- and report.

HEEN: I'm just going to move that when this committee rises, that it recommends the adoption of these amendments, and that the same be included in the supplemental written report of the Committee of the Whole. I so move.

AKAU: Point of information. I realize that we have passed Section 10 already. I want to ask a question, if I may please. Section 10, which appears on page 3 of the report which you have in your hands now; there was some discussion on the floor regarding the question of three-fourths of the members of the jury, three-fourths of the members of the jury in Section 10, and I have already read the clarification and the explanation. In view of the fact that we have been told that we have based most of our laws from the English courts, I'm wondering if we might have some explanation about this, since in the English court, it has to be a unanimous jury giving a decision, that is, a 12 man or 12 man and woman decision. Now, then, we say one thing and then say another thing. I was wondering, since Mr. Tavares had written most of this, if he could explain because justice in America may not necessarily be justice elsewhere.

CHAIRMAN: Mr. Tavares, do you wish to answer that question?

TAVARES: It seems to me these questions should well have come before the Committee of the Whole got through debating. I don't know offhand, at the moment, just what the latest English practice acts provide as to jury trials. I'd have to look that up. I wouldn't want to answer that question at the moment. It might be they allow majority verdicts. I'm not sure. Or that may be they exclude jury verdicts in a number of cases that we allow them today. There's no British Constitution as the members here well know and parliament can change or abolish the jury trial any time it wants to.

AKAU: I believe, if I may use a name, Mr. Anthony mentioned last week the question of the English courts and that brought to mind that they do have a unanimous jury, and that's why I brought the question up. Maybe Mr. Anthony might enlighten me.

CHAIRMAN: Mr. Anthony, would you like to answer that question?

ANTHONY: The words "trial by jury" as appearing in the Federal Constitution have the meaning as that term was used in England at the time of the adoption of the Federal Constitution. They have that meaning today insofar as criminal cases are concerned. The one departure is in civil cases in which we can provide for less than a unanimous verdict. So in criminal cases we will still have a unanimous verdict of 12; in civil cases there is the framework whereby less than a unanimous verdict can be adopted.

CHAIRMAN: Does that answer the question, Delegate Akau?

Are there any further questions? Is there a second to Delegate Heen's motion?

KELLERMAN: I second Delegate Heen's motion.

ROBERTS: I'd like, if I may, to point out an error in typing on page two of the proposals on Section 6. "No citizen shall be denied," it says, "enlishment." It should be "enlistment" with a t.

Can the correction be made? Page two of the proposal, end of the report.

CHAIRMAN: It has been pointed out that there has been a misprint in the typing of Section 6 on page two in the proposal. Perhaps Delegate Tavares was slightly tongue-tied at the moment of dictation.

TAVARES: I think maybe the typewriter got its feet mixed.

CHAIRMAN: I think that that correction can be made without formal action of the Committee of the Whole. You've heard the motion to recommend upon rising to the -- recommend to the Convention upon rising that this report of the committee pass as amended with the amendments in supplemental -- in a supplemented [inaudible]. Is that the correct motion?

HEEN: The motion was that when this committee rises, it recommends to the Convention that the original written report be amended in the form set forth in the motions that were made upon the floor, and that that report be in a form of a supplemental report. In other words, the first step after resolving ourselves into a Committee of the Whole is

to amend -- I mean to adopt the original report, then to adopt a supplemental report recommending the amendments that were offered upon the floor in the Committee of the Whole.

CHAIRMAN: Does the second agree with that?

PORTEUS: There is the possibility that when the minutes are written there may be at least one person who objects and raises some points of order on this. So I think we ought to explore this thing completely. I don't believe that you can on the Convention floor, amend the Committee of the Whole report. The Convention itself has no right to amend any committee report. Only a committee can amend a committee report; therefore, only the Committee of the Whole can amend this Committee of the Whole report. So, if there is any difficulty in getting a signature to an amended report, due to the fact that there have been two chairmen, I think that the suggestion as made, altered very slightly would do the work. In other words, to take the Committee of the Whole report as presented by the first chairman, and as I understand it you're only supplementing that report, making additions to it. Is that not correct?

HEEN: That's correct. And that supplemental report will be adopted. That the original written report is amended in the following particulars. That's where you have two amendments, and that supplemental report may be signed by the present presiding chairman of the Committee of the Whole.

PORTEUS: I differ only on the language that it's an amendment. I say that you can supplement it by adding to it, by adding and adopting a new report, but you can't amend the other report on the Convention floor. Only the committee can make that change.

CHAIRMAN: Do I understand the proposition correctly, that Delegate Porteus suggests that this committee report out two reports: one, the original report as it stands, and second, a supplementary report to be --

PORTEUS: Supplementing the first report.

CHAIRMAN: -- supplementing the first report.

PORTEUS: That's correct.

CHAIRMAN: Is that reasonable?

HEEN: That supplemental report, of course, will recommend the adoption of certain amendments to the original written report. Don't see how else you can write that written report, that supplemental written report. That's done very often in the legislature. You have an existent statute, then later on the legislature amends that original statute by saying in paragraph 2 of Section 4 the word 1951 is changed to 1954. That is a complete enactment.

CHAIRMAN: Delegate Porteus. Does that satisfy your interpretation?

PORTEUS: No, I'm not satisfied. I don't know how I'm going to write -- handle the minutes of the journal under these circumstances. I'll leave it to you, but I don't think it's correct.

KING: Point of information. Would it not be possible to adopt the two amendments to the pending committee report while we're in Committee of the Whole? Let me ask that question of Delegate Porteus, the parliamentarian.

CHAIRMAN: Delegate Porteus.

KING: We're now in Committee of the Whole considering Committee Report No. 5.

PORTEUS: That's correct.

KING: Would it not be possible to adopt two amendments to that Committee of the Whole report? Then would it not be possible for the committee to rise and report to the Convention the adoption of Committee Report No. 5 as amended?

PORTEUS: That's correct.

KING: Well, then it seems to me the first motion is to move to adopt the amendment which has already been done, has it not? So that the Committee of the Whole Report No. 5 stands amended and the committee can rise and report to the Convention the adoption of the Committee of the Whole 5, No. 5 as amended, with authority to the chairman of the Committee of the Whole to file a supplementary report covering those amendments. Is that correct?

I so move that the Committee of the Whole, having already adopted two amendments to Committee of the Whole Report No. 5, rise, recommend to the Convention that the Committee of the Whole Report No. 5 be adopted as amended, and that the chairman of the Committee of the Whole be authorized to file a supplementary report covering those amendments.

DELEGATE: Second that motion.

CHAIRMAN: There is a motion on the floor. Does Delegate Heen withdraw his motion?

HEEN: I withdraw the motion.

CHAIRMAN: The second withdraw -- Mrs. Kellerman, I believe, seconds it.

J. TRASK: Second the motion.

CHAIRMAN: It's been moved and seconded that the committee on rising report the -- recommend the adoption of the committee report as amended, and that a supplemental report containing the amendments be filed with the Convention. All those in favor please signify. Contrary minded. So ordered. I entertain a motion to [adjourn].

Debates in Committee of the Whole on

SUFFRAGE AND ELECTIONS

(Article II)

Chairman: GEORGE DOWSON

JUNE 9, 1950 • Morning Session

CHAIRMAN: Will the Committee of the Whole come to order? This committee is meeting to consider Standing Committee Report No. 39 and Committee Proposal No. 8. The Chair now recognizes the delegate from Hawaii.

SILVA: I move at this time that the committee rise and recommend passage of Proposal No. 8 as recommended by the committee.

MIZUHA: I second the motion.

CHAIRMAN: It's been moved and seconded that Committee Proposal No. 8 be passed. All in favor say "aye." Those who are contrary minded, say "aye." [sic]

ANTHONY: Aren't we going to have any debate on this proposal? I suggest that the -- we proceed to have debate on this rather than take a vote immediately without anybody knowing what's in the proposal.

CASTRO: I think the proper motion is to consider Proposal No. 8 section by section. I therefore ask that the movant withdraw his previous motion.

CHAIRMAN: Would the senator -- delegate, Senator Silva concede to that?

SILVA: You have to reconsider your action because I think the ayes had it.

CHAIRMAN: I did not call for the noes before --

SILVA: The ayes have it then.

CHAIRMAN: -- Delegate Anthony stood.

SILVA: You didn't call for the noes, but the ayes have it.

CHAIRMAN: The Chair rules that the vote was not taken.

HEEN: I move that we reconsider the action taken on that first motion.

DELEGATE: Second the motion.

CHAIRMAN: It's been moved and seconded that we reconsider action on the first motion, that is the motion to adopt the committee proposal -- report as a whole in this committee. All in favor say "aye." All who are contrary minded say "no." It's carried.

CASTRO: I move that we consider Committee Proposal No. 8 section by section.

WOOLAWAY: I'll second that motion.

CHAIRMAN: It's been moved and seconded that we consider Committee Proposal No. 8 section by section. All in favor say "aye." All who are contrary minded say "no." It's carried. It's in order to move for the adoption of Section 1, so we can --

KOMETANI: The Committee on Suffrage and Election in this report would like to let the delegates here know that it was a unanimous report. The committee also was very fortunate to have the four county clerks of the territory appear before the committee in its discussions and deliberations. It was this committee's very desire to write into this Constitution a proposal that would not deny a single individual in this territory the right to suffrage. We had made it as brief as possible, and whatever was considered to be statutory was left up to the legislature to be made into our laws.

CROSSLEY: It is my distinct pleasure to move for the adoption of the first section of Proposal No. 8.

APOLIONA: I second that motion.

J. TRASK: I think it proper at this time that we number the sections accordingly; one, two, three, four, five and the Committee Proposal --

CHAIRMAN: The Chair will accept that. If there's no objections, we shall number them in the sequence from one to five.

Section 1 is up for debate.

SMITH: I'd just like to ask the chairman of the Committee on Suffrage and Elections a question. In Section 1, No. 4, "shall be able to speak, read and write English or Hawaiian language except for physical disability." How will this be carried out?

CHAIRMAN: Would the chairman like to answer that question?

KOMETANI: I did not get the question.

CHAIRMAN: Delegate Smith, repeat the question.

KOMETANI: The last part of that question.

SMITH: I just wanted to know if, for instance, a voter was questioned as to his ability to be able to speak, read and write English or Hawaiian language, how -- wouldn't that sort of open it up having it in the Constitution like this?

KOMETANI: No, I don't think so. It is in the Organic Act and, that is, the name is placed in Hawaiian. Is that right, Mr. --

KELLERMAN: May I offer an amendment? I'd like to amend Section 1 of sub-number 2 to read "shall have attained the age of 21 years."

WOOLAWAY: I'll second that so we can discuss it.

CHAIRMAN: It's been moved and seconded that the second part of Section 1 be changed to read --

KELLERMAN: May I speak to that amendment, proposed amendment, Mr. Chairman?

CHAIRMAN: Yes, you may.

KELLERMAN: It seems to me that the time is not ripe to reduce the voting age from 21. At the time that the Federal Constitution was adopted, and other early state constitutions, children became adults in their business, social and family responsibilities far younger than they do today. The prevailing age for marriage at that time was around 15 to 18. Fifteen usually for the women and 17 to 18 for the men. There were families before the men were 21. They had their own businesses, they had started their own farms, they were engaged in the business of living an adult life several years before they were 21. In fact, many of the marriages took place at an even much earlier age for the men than even 17. Today our marriage age on the whole is above 21. With marriage comes the establishment of an independent home and family and family responsibilities. Most of our children today do not get out of school until they are 18. They are regarded as children until they are 18. The interim period is spent usually in some form of apprenticeship, in learning a trade or the beginning of a trade or in further education. By and large our children today, our young people, do not engage in business or family lives. On the whole they do not until they are above 21 years of age.

In addition to that the work of government has become even more complicated than it was 150 years ago, very much more complicated. It enters into more phases of our lives than it did then. We all know that without further discussion.

It seems to me that we are keeping our children as children longer than they were then, and the acts, proposed measures on which they are to be given the right to pass judgment, are even more complicated and more difficult of understanding and the passing of good judgment than they were 150 years ago. I should think rather than decrease the age of voting judgment, the two facts which I have mentioned would tend to urge us to increase the age upon which to pass judgment.

I've heard the argument made that since a boy can go to war and risk his life at 18, he should have the right to vote. It seems to me that the very attributes in many respects that make a good, young, brave and, I may add, reckless soldier are not the attributes which are conducive to the sound, sober judgment of a voter who is passing not only upon his own economic and political life but that of all others in his community when he exercises his vote.

I do not see any justification whatsoever in reducing the concept of voting judgment below 21 years of age. And for that reason I urge very strongly that this Convention think carefully before it reduce the prevailing and longstanding recognition of 21 as the age of voting maturity to anything below 21.

HEEN: May I call the attention of the members of the Convention to Appendix 1 on page 372 of the Manual on State Constitutional Provisions which was prepared by the Legislative Reference Bureau. They list the minimum age of every state, and every state sets a minimum of 21 years except Georgia. In other words, 47 states -- Page 372. Every state sets a minimum of 21 years, I mean, 47 states have a minimum age of 21 years and Georgia is the only state that sets the minimum age of 18 years.

KOMETANI: The committee was fully aware of the fact that 47 out of the 48 states had 21 years as their voting age. However, we figured Hawaii as Hawaii. Hawaii grants the age of majority at 20. At 20 he has a right to marriage without parental consent. He by law becomes fully responsible for his debts. He is a taxpayer. Not only that, like the wartime slogan, he's eligible for draft. We also considered the fact that [in] Hawaii with its warm, temperate climate, the children mature a little earlier, and the committee definitely felt that we should give the responsibility and the right of suffrage to our youth one year earlier than the rest of the 47 states.

TAVARES: May I ask the last speaker a question, which I think will bring out the situation further.

CHAIRMAN: You may.

TAVARES: Is it not true that in most of those states that have 21 years as the voting age, it is also the age of majority?

KOMETANI: Yes.

TAVARES: And therefore, if we are going to change the voting age to 21, we ought to change the age of majority for other purposes to 21. Is that not logical?

KOMETANI: That's right.

CORBETT: The lady delegate from the fourth district suggested that we should instead of decreasing the age of the voting population should possibly consider increasing it. I submit that we are doing that continually. Medical science has added a large body of oldsters who are entitled to the vote. The vote has not been taken away from them. I think it might be salutary if we off-set to a certain extent this body of conservatives by a group one year, one age bracket [younger] who will possibly have political imagination, courage, and freedom from tradition. The young people coming out of our schools today have a background, a training in political education, self-government in their schools, which fit them to assume the responsibilties of a voter. I strongly believe that we should give our young people of 20 the vote.

ASHFORD: Delegate from the fourth asked the chairman of the committee a question and following that up, I would like to ask the chairman of the committee the following question.

CHAIRMAN: Will you put the question?

ASHFORD: Is it not true that in some of those states the age of majority for women is below the age of 21 years?

KOMETANI: Yes, I believe so.

AKAU: The statement has been made by the delegate from the fourth district regarding the time of majority in the early colonial days. I simply submit for your consideration the fact that times have changed. Mechanization of industry, population trends, and all the things that go with our modern, atomic age—jet propulsion, and what have you. I could enumerate them right on down the line.

The point I wish to make is that what happened a hundred years ago, a hundred and fifty years ago, is not apropos to our particular situation here in Hawaii today. We have great hope and faith in our younger generation. The students are coming out of the university much more mature than they have in the past. They have had many more serious experiences. They are ready to assume more responsibility. The age of 20 is not too young for the vote. They certainly could't do any worse than the people have been doing for the past fifty years here in Hawaii.

MAU: Having heard the discussion I'm ready to vote on the question. I move the previous question.

DELEGATE: I second the motion.

KELLERMAN: Mr. Chairman.

CHAIRMAN: It's been moved and seconded that we move to the - - for the previous question.

ROBERTS: Mr. Chairman.

HEEN: Mr. Chairman:

CHAIRMAN: I believe - -

HEEN: I think we ought to have further debate on some of the other - -

ROBERTS: I'd like to point out - -

CHAIRMAN: Is this on - - a debate on the previous question?

ROBERTS: I understand that there's been a motion for the previous question which has been duly seconded.

CHAIRMAN: That is true.

ROBERTS: A previous question under normal procedures is not debatable, and a motion, such a motion was put to vote. I'd like to raise a point of order, Mr. Chairman.

CHAIRMAN: You may.

ROBERTS: As I understand the procedures for the Committee of the Whole, the purpose is to permit free discussion and a full presentation of ideas by all of the delegates in the Convention.

CHAIRMAN: Are you - -

ROBERTS: It seems to me, Mr. Chairman, I'll move - - I'll make the point. It seems to me, Mr. Chairman, that there has not been sufficient opportunity afforded for the delegates to discuss this question, to discuss the question before us, Section 1 of the article before us. I therefore urge, Mr. Chairman, that the motion made by the previous speaker be withdrawn until such time as all the delegates who wish to speak have had the opportunity to speak on this particular section.

MAU: I'd be the last one to cut out debate on any question. I withdraw my motion.

DELEGATE: Thank you, sir.

KING: The previous question would have been ordered on the amendment offered by the lady from the fourth district, Delegate Kellerman, as I understand it, not on the section itself, so it wasn't the desire to cut out debate on the whole section but merely on that particular amendment. Now I feel that we've rather exhausted the point of whether the voting age shall be 21 or 20, and would have voted in favor of the previous question, but now being withdrawn that doesn't come up.

I would like to say I am convinced by the argument that if the majority age in Hawaii is 20, then the person who arrives at majority should be able to vote. He becomes legally a man or woman in his own right or her own right, pays taxes, incurs contractual liability, may be sued, maybe make a will, may marry, may do everything that a person that is accepted as a citizen except to vote. It seems to me the privilege of voting should go with all those other obligations and responsibilities, and I would be opposed to the amendment offered by Mrs. Kellerman.

LAI: Point of information. If we were to adopt this 20 years voting age, what would be the increase in voters? Can somebody answer that?

CHAIRMAN: Can someone answer that question? Delegate Kometani.

KOMETANI: Roughly about 7,000.

DELEGATE: There is supposed to be reapportionment.

KOMETANI: 7,000.

KELLERMAN: Since I proposed the amendment, may I speak to it again and in answer to some of the remarks that have been made opposed to it.

CHAIRMAN: You may.

KELLERMAN: With reference to one of the statements made by the lady delegate from the fifth district, she commented on the maturity of our university graduates. I would doubt that there are many university graduates in Hawaii just 20 years old. The age at which most of our children get out of high school is 18. I assume they go four years or certainly a minimum of three to the university. I dare say then we would have few university graduates in Hawaii at 20, so I don't think that remark was pertinent. In fact, I think it argues my point that if we are relying upon the greater maturity of our university students, then there is no reason on earth of decreasing the age from 21.

Now, with respect to the remarks recently just made by the delegate from the fifth. The age of majority is a statute, and it seems to me that it would be more pertinent and more reasonable to amend a statute to raise the age of majority to 21, if the better political thinking of this community is going to be jeopardized by reducing the voting age to 20 just to make it conform to a statutory majority age of 20. I - - it seems to me that that's putting the weight upon the wrong side of the question. The majority age can be changed by statute, it is now only a matter of statute.

I think for those reasons that the arguments against the amendment are not pertinent, and I ask the sincere consideration of the extreme responsibility of the vote, that it not be reduced. Our high school children coming out at 18 have had experience in the methods of democratic discussion and class meeting. They are not well rounded, as well rounded as judgment and experience can give them, and the questions of social, economic, and political importance that older people have learned and learned to evaluate from experience, the best teacher, and experience can only come with age. For those reasons I ask again the sincere and serious consideration. I think this is very important.

KAM: I would just like to add in favor of this 20 years because the liquor commission of the Territory of Hawaii set the legal age of 20 years in order to purchase liquor. Thank you.

TAVARES: Just matters of information. Not so long ago this territory fixed the age of majority for women at 18, just as it is fixed in some states. Mr. Chairman, those ages were fixed in the dark days when women were considered as chattels, when they were owned by their husbands. It goes back to the days of England when a man could whip his wife as long as he used a stick no bigger than his thumb, and the jurisdictions that have now restored women to the same status as men are those as our territory who have recognized the equality of women with men. And I submit it's a very, very outmoded argument to use that which goes back to those dark ages, the disparity allowing of women coming of age before men. Our territory, fortunately, has seen the light and has placed them both on the same status.

Furthermore our legislators who represent the people of this territory have fixed the age of 20 as the age of majority. That shows that the sentiment of this territory has been and now is - - has been for many years and now is that these people are in every way fully qualified to assume the

responsibilities of life. And as long as we have done that, I don't see why we should change in the absence of very strong evidence that those people are not qualified, and I don't think the evidence is available, and I don't believe it's true.

SMITH: I am in favor of the 20 years but I'd like to ask the chairman since we have gone back to the year -- years, what was that, chattels, and ask if any study had been -- or reference had been made to the last constitutions which have been amended, New Jersey and Missouri, and if there's any reason why they kept it at 21.

DELEGATE: Second the motion.

DELEGATE: Previous question.

CHAIRMAN: Can Delegate Kometani answer that?

KOMETANI: Both Missouri and New Jersey had retained 21 as their voting age, possibly because the age of majority there likewise is 21.

SERIZAWA: It seems like we've had enough debate on this subject. Therefore, I move for the previous question.

DELEGATE: Second the motion.

Chairman: It's been moved and seconded that we move to the previous question. All in favor say "aye." All who are contrary minded say "no." It's carried.

The vote -- voting will be on No. 2 of Section 1, that is the amendment for that which reads "shall have attained the age of 21 years." I -- the Chair will request that no one vote with the use of the microphone.

MIZUHA: Do I understand that we are now only voting on the amendment?

CHAIRMAN: We are now voting on the amendment which changes the 20 to 21 as the voting age. All in favor of the amendment, say "aye." All who are contrary minded say "no." It's not carried. It's been defeated.

SMITH: Mr. Chairman, before moving that, I just want to know, No. 3, "shall have resided in the state not less than one year next preceding the election." Isn't there some rule that they have to be in the district so long?

KOMETANI: The committee seriously considered the question that was asked by the delegate from Maui. Because of the conditions or the requirements in the law, naturalization law, we felt that anyone, any person who's naturalized should be given suffrage immediately. We have given serious consideration to our Filipino population who were brought here as laborers. In order to be naturalized, they must be a resident of the territory for five years and certainly after waiting five years, if he has been naturalized, he should be given the right of suffrage the following day.

KING: As I read the committee report, also, it authorized the legislature to make such restrictions as to residents in the district, county, or precinct, as the case may be. In other words the committee report left out all the statutes, isn't that correct?

KOMETANI: Yes.

HEEN: I think Section 5 takes care of that situation. "Shall be registered as a voter in accordance with law" so that the law may prescribe the period of residence in an election precinct, or rather district.

Now, addressing myself to sub-paragraph or rather paragraph four of Section 1, in order to qualify to vote "one shall be able to speak, read, and write the English or Hawaiian language, except for physical disability." Now I'm wondering whether or not that might be in conflict with Section 6 of the Bill of Rights. Section 6 of the Bill of Rights, second paragraph of that section reads, "No person shall be denied the enjoyment of his civil rights nor be discriminated against in the exercise of civil rights because of religious principles, race, sex, color, ancestry, or national origin." I'm not speaking against the provision itself, but there might be raised this question of discrimination against other races than Hawaiian. May be that in time to come everyone in the State of Hawaii will be able to read and write the English language, so that perhaps this one might be called discrimination in favor of the Hawaiian people. It might be placed somewhere else in the Constitution, perhaps in the schedule of the Constitution, so that if sometime in the future it become functus; and there might be framed in language, "anything in the Constitution to the contrary notwithstanding, Hawaiians able to read -- Hawaiians who are able only to read and write the Hawaiian language shall enjoy the right of suffrage." I'm just presenting my observations on this matter so that it can be taken care of without any possibility of discrimination being raised in the future.

MIZUHA: It is my belief that the Section 6 of the Bill of Rights relative to anti-discrimination because of race, do not take into consideration the physical or mental attributes for the qualifications of that race or the background of that race. It is -- it does not take into consideration the speaking of the language or brown hair or white hair or blue eyes or long noses or short noses and so forth, but it's just by race itself. Hence I do not believe it is in conflict with Section 4 of the section -- sub-section 4 of Section 1 of the Committee Proposal No. 8 which refers to the language of the Hawaiian people, and I think there is sufficient tradition in Hawaii recognizing the Hawaiian language as the language of the territory, so that if the committee report is clear on that point, there need not be any conflict later on.

HOLROYDE: The last speaker indicated that under Section 5 there could be possibly laws passed that would require residence in districts. I note in the Organic Act it corresponds practically to Section 3 of the proposal of the committee with the exception that they left out the three months requirement in the district, in the representative district. I'd like to know whether the committee left that out purposely to indicate that they did not recommend a residence in the district because under that old rule in the Organic Act, many people—especially school teachers who had moved from district to district—were prohibited from voting in territorial elections until the following election, and I would like to know the committee's feeling on that particular question --

CHAIRMAN: Would the committee chairman --

HOLROYDE: -- especially for the report.

CHAIRMAN: -- committee chairman like to answer that?

KOMETANI: We left that phrase out because it is embodied in the election laws of Hawaii.

CHAIRMAN: I believe there's --

TAVARES: Perhaps that should be clarified. It seems to me that that would then be included in the language of No. 5, "Shall be registered as a voter in accordance with law." Now, if the short preliminary residence in a district is required as a condition of registration, would not that be included in that paragraph?

MIZUHA: I move the previous question for the adoption --

CHAIRMAN: Delegate Mizuha moves for the previous question. Do I hear a second to that?

DELEGATE: I second it.

CHAIRMAN: It's been moved and seconded that we move to the previous question. All in favor say "aye." All who are contrary minded say "aye," uh "no." It's carried.

The previous questions is, Section I, with the five parts. We are now voting on Section 1 with the five parts, none of which has been amended. All in favor of the motion say "aye." All who are contrary minded say "no." It's carried. Section 1 is carried.

Section 2 is now being considered.

KAGE: I move that Section 2 of Committee Proposal No. 8 be adopted.

APOLIONA: May I second Delegate Kage's motion?

NIELSEN: Mr. Chairman, point of order.

ANTHONY: May I ask what's before the house at the moment?

CHAIRMAN: Your -- the point of order has been brought up.

NIELSEN: Didn't the representative from the fourth district ask if he could second the motion? He didn't second it.

APOLIONA: I rose on a point of special privilege to second that motion.

CHAIRMAN: That the Chair understood but now it's clarified.

KING: The motion then is on the acceptance of Section 2, disqualifications of voters, as written.

ANTHONY: I would like to have the committee answer for me the disqualification, "no person who is non compos mentis." Do they mean a person who has been adjudicated non compos mentis or a person who is non compos mentis and still has never been adjudicated. It seems to me that would, might raise a serious question of fact in the qualification of a voter unless that's cleared up.

WOOLAWAY: Adjudicated, that means as judged, judged as such?

CHAIRMAN: I believe -- the Chair understands it as such, that it's been judged as being non compos mentis.

ANTHONY: Well, a person can be of unsound mind and still not be committed. Now, I think it ought, and he would vote. It seems to me if you want to make it abundantly clear, you ought to put in there, insert after the words "who is," insert the word "adjudicated."

PORTEUS: I wish to disagree with my brother from the fourth district. I think the addition of the word "adjudicated" means, would mean that in each case unless a person had been held by a court to be non compos mentis, he was automatically qualified to vote and the clerk of the county or a clerk registering voters would have no basis for rejecting the registration of such a person as a voter. Undoubtedly someone could be presented for registration, very obviously one who was non compos mentis but not one who had been hailed before a court in which there had been a judicial hearing on that subject. This question as to whether he is or is not non compos mentis, it does not pose an unusual question for the clerk of the -- who registers the voters in that it would be the only thing presented to him, but rather in all these other matters as to whether the person is a citizen, whether he's attained the age of twenty, whether he has had residence in the state is a matter of judgment by the court [sic], and in fact our Organic Act in Section 18 says "no idiot or insane person" and I think that the committee has changed that language to "non compos mentis."

ANTHONY: I'd like to state that I'm satisfied with the explanation.

CHAIRMAN: If there's no further debate, we'll put this up for a vote. We are now voting on Section 2 without amendment. All in favor of passing Section 2.

HEEN: I noticed that they used the term "felony" here. Now, felony is a statutory matter. In other words, any crime punishable by imprisonment for a term of over one year is considered a felony. That might be changed to some other period. In the Organic Act, which I think is the better language to use, that provides "no person who shall have been convicted of any criminal offense punishable by imprisonment, whether with or without hard labor, for a term exceeding one year, whether with or without a fine," shall be disqualified. You have that in the Organic Act; then, any change as to the period of imprisonment in a felony case to a period less than one year would not change the provision of the Organic Act.

MIZUHA: There is one question I would like to raise at this point. Maybe it's not apropos to this section but maybe with reference to another section. At the present time there is a limitation under the Organic Act as to the qualifications of voting of service personnel stationed here in Hawaii. I am just raising the question whether it is advisable at this time to insert it in the Constitution or whether it is a statutory matter. I am not prepared to answer that question. Maybe the committee had considered that question?

KING: Under Section 4, there is some language that would cover it but it authorized, "the legislature shall provide the manner in which a qualified voter who may be absent from the state or the island of his residence on any election day may vote."

DELEGATE: Question.

MIZUHA: The question that I raise is with reference to service personnel stationed in Hawaii, whether they shall be eligible to vote after residence in Hawaii.

PORTEUS: I think that that subject could well be discussed under the next section. It says "No voter shall be deemed to have gained or lost residence by reason of his presence or absence while employed in the service of the United States." I think we can get at that subject at that time rather than in this prior section.

TAVARES: I don't think the statement of -- the argument of the delegate from the fourth district was answered about the felony. For more than 50 years, we have had a statute which defines felony as any crime punishable by imprisonment at hard labor for more than one year with or without fine. Now it's hardly likely that we will ever change that definition and if we do, it is hardly likely that we will make it much less serious than that. And as long as we define felony by statute, and I'm sure we always will, there will be no uncertainty about it. We are going to continue that statute in effect by our Constitution, and I am certain our legislature won't repeal it without putting something in its place, so I feel the danger is not real at all.

CHAIRMAN: I believe the -- Delegate Roberts, have you --

ROBERTS: I'd like to ask a question of the chairman of the committee. Whether the substitution of the words "convicted of" instead of "under conviction of" would be a matter of style. If it is, then I will not make a motion to amend that section so that the section would read "No person convicted

of a felony" instead of "under conviction of felony." Would that be a matter of style? If it is, then we can take care of it in the Style Committee.

CHAIRMAN: Would the chairman like to answer that? The Chair feels that there's been ample debate here unless there's any question as to that and would you like to put this Section 2 up for vote? We are now voting on Section 2 without amendment. All those in favor say "aye." All who are contrary minded say "no." It's carried.

We are now ready for Section - -

HOLROYDE: Point of information, Mr. Chairman.

CHAIRMAN: - - three. Delegate Crossley.

HOLROYDE: Point of information.

DELEGATE: Point of order, Mr. Chairman.

HOLROYDE: Point of information.

CHAIRMAN: Delegate Holroyde.

HOLROYDE: I'd like to know whether the Chair is aware of the fact that Delegate moved-to-adopt Bryan is now present.

CHAIRMAN: That's a point of personal privilege, Delegate Holroyde.

WOOLAWAY: I now move for the adoption of Section 3.

APOLIONA: I second the motion.

J. TRASK: Because of the lateness of the hour and in keeping with the general orders of the day, I move that the committee rise and report progress and beg leave to sit again so that we might consider in the Committee of the Whole Standing Committee Report No. 39 on Committee Proposal No. 8. Oh, no, Standing Committee Report No. 37 and Proposal - - on Committee Proposal No. 7.

ASHFORD: I second that motion.

WOOLAWAY: There's a motion before the House - - before the committee right now.

CHAIRMAN: Motion's been withdrawn on passage of Section 3.

AKAU: The Section 3, 4 and 5 of this report is not too lengthy and not half as involved as, let us say, the judiciary. It would seem to me that we could sit another 20 minutes and probably get through if that would meet with the approval of the Judiciary Committee. We could ask them to extend us the courtesy, and I'm now asking for point of personal privilege to speak to the chairman of the Judiciary Committee. May I please?

CHAIRMAN: The Chair believes we could declare a short recess while you do that and get this matter straightened out.

AKAU: Oh, he's right here. I could just ask him, Mr. Chairman.

CHAIRMAN: Well, you may ask him.

AKAU: Mr. Anthony, may we - -

SILVA: There's a motion before the house.

AKAU: I move to table the motion to go resolve ourselves back into Committee of the Whole - - I mean, from the Committee of the Whole.

DELEGATE: Second that.

CHAIRMAN: It's been moved and seconded that we table the motion to rise and report progress to the President of the Convention. All in favor say "aye." All who are contrary minded say "no." The ayes have it. It's - - Section 3 is up.

WOOLAWAY: Point of order. Having withdrawn my motion, there's nothing before the house so now I move again that we adopt Section 3.

APOLIONA: Mr. Chairman.

CROSSLEY: The Chair recognized me, I believe, and the point of order is - -

CHAIRMAN: I believe Delegate Crossley has the floor.

CROSSLEY: I now move the adoption of Section 3.

DELEGATE: I second the motion.

APOLIONA: I now second that motion.

CHAIRMAN: It's been moved and seconded that we adopt Section 3 of the report.

KING: I might say in response to Delegate Trask's motion that we rise and report progress and sit again, that the chairman of the Judiciary Committee is willing to proceed on the consideration of this if it doesn't take too much longer. So that if we finish this within the next 25 minutes, we can complete it and then go into Committee of the Whole on the judiciary. If we don't complete it the next 25 minutes, then perhaps the motion you made would be in order. I just make that as an explanation of the point of view of the chairman of the Committee on the Judiciary.

CHAIRMAN: Section 3.

HEEN: On Section 3 I don't quite understand the purpose of the section there. A person might be absent while employed in the service of the United States and will never lose his residence if he has an intent to always come back to Hawaii to live. That's a matter of law. Nor does he lose his residence if he goes away to the mainland to study in any institution on the mainland. He can go away and stay away for five years; so long as he has the intent to come back to reside permanently in Hawaii, he will always be a resident of the Territory of Hawaii. That's also a matter of law. So only when you change your intent, then you lose your residence. I know some of these students who've gone away to study have registered as voters on the mainland. When they did that, that was an intent to give up their permanent residence in the Territory of Hawaii. But if they didn't do that, as long as they maintained an intent to come back to live in the Territory of Hawaii, their residence will always be in the Territory of Hawaii.

A. TRASK: I am bothered also with this Section 3. To me, it's writing into the Constitution a question of qualification for citizenship which under the facts of the particular case, as the Judge has indicated, may disqualify the person in fact. In other words, when I was attending the University of Southern California, I voted—for Roosevelt at that time—and I naturally cut off my voting allegiance to the Territory of Hawaii. I had not yet attained 21 at that time, but I think California was 20. The situation is this. I think we are putting into the Constitution something of a permanent character when such a matter should be determined by the facts of the particular case appertaining to the particular person. I - - take for instance, the first section. Now, a person may be - - a local boy may be in the service of the United States Army, Marine, Air Corps, and so forth. He leaves here, he goes away and he raises a family and after a few years decides to come back. According to this provision, it would seem to me that by virtue of his services in the United States Army, even though he may have acquired legal rights and

voting privileges elsewhere, he always has his voting privilege in the Territory of Hawaii. I do not think it's right, I do not think it's fair. And so I doubt the wisdom of including such a Section 3 here, and I would like at this time to consider seriously that this matter be altogether deleted and I so move.

BRYAN: I feel that I'm fairly well qualified to speak on this point. I have been in the predicament that this thing hopes to control and rules on. I think that the word "simply by reason" gets around the objection that my colleague from the fifth had. In his own case he had other reasons why he should not be qualified to vote in the Territory of Hawaii, the other reason being that he had registered to vote and had voted in the state of California. But "simply by reason" of his service in the United States or his attendance at an institution of learning in some other state, that was not what would disqualify him. And I think that this is a good protection, I'm very much in favor of it.

AKAU: Mr. Chairman.

DELEGATE: Mr. Chairman.

CHAIRMAN: Delegate Akau wanted the floor a little while ago.

AKAU: I think Delegate Heen and Delegate Trask have both brought up some -- a very important legal question that I had in mind also and perhaps from our "Supreme Court" here, we might get some judgment. Now, then I'd like to state the incidence that happened recently -- no, a couple of years ago from the Attorney General's office. I simply quote from my memory. The woman who was working there in the Attorney General's office in the secretarial department used to vote here in Hawaii. Now then she went to the mainland, I think it was to California and I'm simply doing this as I say from memory, She voted, I believe, in California as a legal resident there. Then she came back here and wished to establish her residence here as a citizen having voted here once, established her legal residence in California, I believe, and then came back here. I don't know what the legality finally was, but I do think that we need some kind of clarification here and I have an amendment after somebody else speaks that I'll get together on the same -- on this very question.

CHAIRMAN: Can anyone speak to that point?

PORTEUS: If I may be exempted as being a member of the "Supreme Court," I'd like to talk on this subject.

CHAIRMAN: You're exempted.

PORTEUS: Thank you very much. I think there is some good reason for the section as it is worded. I think the intent is, as expressed here, that simply and solely because of a person being here in the territory or being absent while employed by the United States government, that isn't conclusive as to whether he has acquired residence here in the territory or lost residence in the territory. The same applies while he is in navigation. Now, this last clause means that if a person goes away to an institution of learning, a school, that because of him going away, he shall not thereby be held to have lost his residence. It will take something more than that. Now, there are -- there is a good body of law with respect to the acquisition of residence and domicile. It's a question of intent. It has usually been held that where a person is in the service of the United States such as in the Armed Forces, and is ordered to a post and lives on a post, that thereby he has not got the option of deciding whether or not he will take up residence in that place and then qualify as a voter; in other words, a private or a sergeant stationed at Schofield on the post, not formally a resident here, could not be eligible purely because of his being stationed here to be a voter. He has to prove that he has acquired residence under the general body of law that is applicable. Insofar as the case that delegate from the fifth district was referring to, it arose in the Attorney General's office. I think that question arose as to whether or not someone was eligible to be employed by the territory unless that person had been a resident of the territory for a certain length of time. By going to the mainland and voting, it was a clear indication to surrender residence in the territory. There was nothing that prevented that person from acquiring residence again. It just meant that they couldn't qualify by, on the moment of coming back, as having been a resident for three years next preceding appointment. That's all that was. There's no ineligibility to acquire; it was just that she had surrendered her previous residence.

A. TRASK: I think there is a distinct feature of home rule involved in this section, namely this. A voter with this particular section in hand would be placed at an advantageous position with respect to the clerk. In other words, the clerk's got to disprove his claim, rather than making it on the other hand the obligation on the voter or the applicant for voter -- for voting recognition, to register. In other words, I would like to see the clerk placed in a more advantageous position to judge the qualification of the applicant who desires to register as a voter. Whereas, in this situation we put the burden on the clerk to disprove the claim of the applicant for voting, which I think is not altogether proper. And to me it has a feature which is against the local officials having a sense of home rule and control over the voters and registration.

ANTHONY: I incline to think that this doesn't put the burden on anyone. This is a simple statement of what the existing law as to residence or domicile is. And all it does is say that you don't either gain or lose your residence or domicile if you're in the armed services or if you're away at school or if you're on a boat. Now it might very well be deleted but I see no objection to enactment of it into the Constitution if the Convention wants it. It seems to me it's a simple statement of the existing law on the subject, fairly accurate, and I see no particular harm in it.

RICHARDS: I'd like to ask a question. As I understood the Secretary's remarks, the inclusion of this would not prohibit people in the armed services from obtaining local residence if they qualified under other terms. Is that correct?

ANTHONY: That is an accurate statement. May I be recognized?

CHAIRMAN: It is an accurate statement?

ANTHONY: That's an accurate statement. You can gain residence in Hawaii and be in the Army. The mere fact that you're in the Army however and in Hawaii does not prove that you're a resident.

ASHFORD: This is a section that is declaratory of the law as it now exists. A law not provided by statute, but by uniform decisions of the courts, not only our own courts but courts everywhere, including the United States Supreme Court; and therefore it seems to me it'd be circuitous to write it into the Constitution.

SHIMAMURA: I also see no objection to this Section 3. As some of the previous speakers have mentioned, legal residence or domicile consist of two things: first, physical presence, and second, intent. That is, intention of whether

or not you wish to make a certain place your home, whether or not you adopt it as your home. And it is therefore a question of fact. As Miss Ashford said, "this is declaratory of the law," and where a student goes to school, there's a presumption that he doesn't lose his residence. In other words, the residence isn't changed; the same thing is true about being in the armed forces. Therefore I think this section should be - -

A. TRASK: I'd like to draw the attention of the delegates to the second sentence in the following section, No. 4, which reads, "The legislature shall provide the manner in which a qualified voter who may be absent from the state or the island of his residence on any election day may vote." I think that is a more - - a proper expression which does incorporate No. 4, and let it be the law, and as it is, and it's a good statement, but still I think it should be - -

WOOLAWAY: I think that question just covers absentee voting, that's all.

A. TRASK: No, everything.

CHAIRMAN: Delegate Fong.

WOOLAWAY: Mr. Chairman, I'd like to ask the chairman of the committee, doesn't that question - - that sentence that Mr., Delegate Trask just read - -

CHAIRMAN: You're out of order. Just a minute. Delegate Fong has the floor.

FONG: May I ask the chairman a question? Now the word used is "employed in the service of the United States." Now if a man was in the agricultural service and he came here and say he will stay here for about 10 years, would he be able to gain residence here?

CHAIRMAN: Will the chairman answer that? Delegate Woolaway, did you have a question?

WOOLAWAY: I'm sorry, Mr. Chairman, I thought I still had the floor. Mr. Trask - -

FONG: Just a minute, Mr. Woolaway.

CHAIRMAN: Oh, you're not - - you haven't given up the floor. I'm sorry. Delegate Woolaway, Delegate Fong still has the floor.

FONG: The language as read was this: "No voter shall be deemed to have gained or lost residence simply by reason of his presence or absence while employed in the service of United States." Now that means that he will not have gained residency if he is in the employ of the service of the United States.

ANTHONY: Mr. Chairman.

CHAIRMAN: Do you wish to speak to this point?

ANTHONY: Mr. Chairman, may I answer that, Delegate Fong's question?

CHAIRMAN: Will Delegate Fong yield to Delegate Anthony?

ANTHONY: Isn't this the situation? All this is saying is the mere fact alone of presence or absence in Hawaii, if you're in the military service, will not make you a resident. In other words, if there are other facts, if an army officer buys a home here, he pays his taxes, he marries, and so on, then naturally he becomes a resident even though he's been ordered here by virtue of - -

FONG: Why don't we put it in so it won't be so ambiguous.

ANTHONY: I don't think we need it at all, really. It's a matter of existing law.

FONG: It seems quite ambiguous to me.

TAVARES: Mr. Chairman.

WOOLAWAY: Mr. Chairman.

CHAIRMAN: Delegate Woolaway has been waiting patiently. Delegate Woolaway.

WOOLAWAY: Delegate Trask said that the sentence, "The legislature shall provide the manner in which a qualified voter who may be absent from the state or the island of his residence on any election day may vote," says that Section 4 as written covers Section 3. I would like the chairman of this committee to answer that. I feel that just covers absentee voting. Is that right?

KOMETANI: Section 4, "The legislature shall provide the manner - " Provide absentee voting.

WOOLAWAY: That's right. Another thing, Mr. Chairman, I think we're arguing over a lot of words. As a resident voter of this territory on the island of Maui, if I went away, whether on a vacation or if I served in the army, when I came back and I appeared before the county clerk to reregister, all I had to do was raise my hand and under oath say I've been here the sufficient time or qualified without any trouble, why I'd be registered again. So I don't think that - - I don't see any reason why we should argue any more on Section 3; therefore I move the previous question.

SMITH: I'll second the motion.

CHAIRMAN: It's been moved and seconded that we move to the previous question. All in favor say "aye." All who are contrary minded say "no." It's carried. Now the question is on Section 3, without amendment.

ANTHONY: I think the expression "no voter" is inaccurate. It should be "no person." Voter includes a person who is a resident.

CHAIRMAN: I believe the delegate's out of order. It's been moved that we vote on the previous question.

ANTHONY: I move for reconsideration.

CHAIRMAN: It's been moved and seconded that we reconsider Section 3. All in favor say "aye." All who are contrary minded say "no." It's carried. Section 3 is now being reconsidered.

HEEN: Mr. Chairman.

CHAIRMAN: Delegate Heen has the floor.

CROSSLEY: Point of order.

CHAIRMAN: Delegate Crossley rises to a point of order.

CROSSLEY: I believe that the last motion was inaccurate; I think what we were reconsidering was our vote on the previous question. You had never put the question on the adoption of - -

CHAIRMAN: I believe I stand corrected, Delegate Crossley.

CROSSLEY: - - so the vote should have been the reconsideration of our action in moving the previous question.

CHAIRMAN: I believe you're right. We are now considering Section 3. Delegate Heen.

HEEN: Considering Section 3?

CHAIRMAN: Yes.

HEEN: I think the proper words to be used there, or rather the proper word to be used there is "person," instead of "voter." "No person shall be deemed to have gained residence or lost residence," because if he is already a voter, he doesn't gain it.

KING: I believe the gentleman is correct and I suggest he offer that as an amendment to the motion to adopt Section 3.

HEEN: I so move, Mr. Chairman, that the word "voter" in the first line of Section 3 be deleted and that the word "person" be inserted in lieu thereof.

TAVARES: Mr. Chairman, I second it, the amendment.

HEEN: I move the adoption of that amendment.

DELEGATE: Question, Mr. Chairman. We accept that amendment.

CHAIRMAN: It's been moved and seconded that the word "voter" in line 1 of Section 3 be deleted and the word "person" be added in its place.

CROSSLEY: As the movant of this section, I accept the amendment.

KING: I believe with the mover of the original motion accepting the amendment, we can now at one vote accept Section 3 as amended; the amendment has been incorporated.

CHAIRMAN: Will the seconder accept that amendment? Dr. Apoliona does.

I believe the Chair will accept that ruling. Delegate Porteus.

PORTEUS: Mr. Chairman, when anyone moves that a section be adopted, he can't say that it be adopted in an amended form. Is that what your ruling is? That, in other words, the section be adopted in amended form.

CHAIRMAN: That is what's under consideration.

PORTEUS: Customarily it is to move that the section be amended; then after the amendment carries, then move that the section as amended pass.

CROSSLEY: That's correct.

KING: In the effort to push it along they cut across lots. I imagine the motion is on the amendment first.

CHAIRMAN: Thank you. Are you ready for the question? The question is to vote on the amendment to Section 3 which is the deletion of the word "voter" in line one, that is the second word, and the addition in its place of the word "person." All in favor say "aye." All who are contrary minded say "no." It's carried.

CROSSLEY: I move the adoption of the section as amended.

APOLIONA: I second the motion.

CHAIRMAN: It's been moved and seconded that Section 3 be passed as amended. Are you ready for the question? All in favor say "aye." All who are contrary minded say "no." It's carried; Section 3 is carried as amended.

CROSSLEY: I move the adoption of Section 4.

APOLIONA: I second that motion.

CHAIRMAN: It's been moved and seconded that we adopt Section 4.

NIELSEN: I'd like to make an amendment in that section in the fifth line after the word "absent," the fourth word, and insert "from the representative district in which he is registered may vote." The reason for that is that on the Big Island why it's a 120 miles between one district and the other and many times people are commuting between Hilo and Kona and they don't get to vote. So if we leave it to the legislature "between representative districts" instead of "between islands" then the legislature can do something about it. As it originally is written, why nothing could be done about it by the legislature except between islands. I so move.

ASHFORD: I'd like to say that we, there are several islands in the county of Maui that are one, that are in one representative district, and if you don't have the island in, they'll be left out.

J. TRASK: Point of order.

BRYAN: I was going to suggest that you leave the words "state, district and island" all in there.

J. TRASK: Point of order, Mr. Chairman.

BRYAN: I was wondering if that would be acceptable.

CHAIRMAN: Delegate James Trask rises to a point of order.

J. TRASK: There's nothing before the Convention. Now the motion has not been seconded, so I second the motion.

CHAIRMAN: The amendment has been seconded. Will Delegate - -

NIELSEN: I'll accept the inclusion as indicated by Mr. Bryan.

CHAIRMAN: Will you repeat the inclusion, Delegate Bryan?

BRYAN: I didn't have the exact wording. I was going to suggest "who may be absent from the state, district or island of his residence." That would take care of his problem, the problem of Molokai, and the problem of the territory.

NIELSEN: "The state representative district" so that wouldn't be mixed up with senatorial districts which are individual islands.

J. TRASK: I see no reason for including the words "representative district" because of the fact that the state automatically includes the representative district. So there's absolutely no reason for the amendment.

NIELSEN: Explaining that - - one says from a state that means to the mainland or to the Orient or somewhere else.

J. TRASK: "Absent from the State of Hawaii." You might put that amendment in. After all we are writing a Constitution for the State of Hawaii. It naturally includes the State of Hawaii. It would mean that it's implied.

BRYAN: I think the answer to that is that if someone who is a registered voter on the island of Molokai is on Maui or on Oahu at the time of voting, they can vote by absentee ballot on Molokai. That's the idea.

HEEN: I think what we should do is to use language which is in more general terms. "That the legislature shall provide for absentee voting."

NIELSEN: I'll accept that as an amendment.

DELEGATE: I second that.

KAUHANE: I did rise to a point of information.

CHAIRMAN: Delegate Kauhane rises to a point of information.

KAUHANE: Mr. Chairman, don't you think because of the confusion of the minds now that you should declare a recess and get this thing written up correctly?

KING: The point raised by Delegate Nielsen was that absence from Kona in Hilo would not have a right to vote in Kona unless he was absent from Hawaii on some other island. And the point made by Delegate Heen would fill it if he would propose it as an amendment instead of just as a statement of information. Let that last sentence read, "The legislature shall provide the manner in which absentee voting may be held," or some other phraseology if the delegate will figure it out, and Delegate Nielsen has indicated his willingness to accept that. It's merely to solve the point of the largest island here where a man may be in Hilo on business on election day and according to this would not be entitled to vote in Kailua. Is that right?

HEEN: In the Model Constitution, we find this: "Absentee Voting. The legislature may, by general law, provide a manner in which qualified voters who may be absent from the state or county of their residence may register and vote, and for the return and canvass of their votes in the election district in which they reside." Now, the use of that general language might be adopted. I suggest this - - "The legislature may, by general law, provide a manner in which qualified voters who may be absent from the district in which he is registered to vote and for the return and canvass of their votes in the election district in which they reside." Language along that line would, I think, cover the situation, but I think it requires a little more study in order to get the real proper language. I therefore move that this committee rise, report progress and ask leave to sit again.

DELEGATE: Second the motion.

CHAIRMAN: It's been moved and seconded that this committee rise and report progress and ask to meet again. All in favor say "aye." All who are contrary minded say "no."

JUNE 13, 1950 • Morning Session

CHAIRMAN: Will the Committee of the Whole come to order for the consideration of Committee - - Standing Committee Report No. 39 and Committee Proposal No. 8. You may be at ease.

CROSSLEY: I move, I believe Section 4 is the next section under consideration. I move the adoption of Section 4.

CHAIRMAN: I believe it has been moved and seconded that Section 4 be adopted, at the last meeting of the Committee of the Whole. There was a pending amendment made by Delegate Nielsen and seconded by Delegate James Trask that the word "district" be added in the fifth line after the word "state" in Section 4.

HEEN: The matter of absentee voting involves absence from the voting district, absence from the island, absence from one representative district while being in another representative district. Now all of those things can be taken care of by statute, and it's my suggestion that that last sentence be deleted altogether because the first part of the section reads: "The legislature shall provide for the registration of qualified voters and prescribe the method of voting at all elections, provided that secrecy of voting shall be preserved." Now, it may be "method" means voting by ballot, and I think if we insert there after that word "method," "method," two words, "method and manner of voting," it would take care of the whole situation. In other words, a person may be absent from his voting district, and he can vote in such a manner as to go before the county clerk and vote there while he's absent from his own representative district, as an illustration.

DOI: Is that a motion, Mr. Heen?

CHAIRMAN: I don't understand it to be a motion.

HEEN: No, it was a suggestion. If it appeals to the members of the Convention, I would change it into a motion; that is, by adding after the word "method" in line two the words "and manner" and delete the last sentence.

DOI: I would like to second the motion to amend the fourth section.

CHAIRMAN: It's been moved and seconded that the last sentence be deleted and the word "manner" be inserted in the second line after the word "method."

KOMETANI: In inserting this last phrase in regard to absent voting, it was the desire of the committee to liberalize absentee voting. We have taken this matter up very carefully with the county clerks and the phrase "island" was inserted because of the geographic make-up of our state. We would not like to deprive any individual from the right of suffrage because of the fact that he lives in Lanai, Molokai or Maui, which happens to be one county. I feel very strongly that this phrase should be - - this section, "Registration; Voting," should be left as it is, and the matter which was discussed by our delegate from Kona, I think the election laws would take care of the district voting in the county. However, in the case of Maui county where it is made up of three islands, we felt that the individual in Maui when he is on a contract job to Lanai and because of the fact transportation and a stretch of water prohibits him from returning, he should not be deprived of the right to vote. In the district of - - the county of Hawaii, it's big enough to have the law take care of that matter.

HEEN: I still insist that I think I'm right in having that last sentence deleted; the legislature can take care of absentee voting as it does now. There's nothing in the Organic Act about absentee voting at all and still the legislature has enacted appropriate statutes to take care of absentee voting. However, if the chairman of the committee would like to have that provision included, then I say it should read: "The legislature shall provide for absentee voting." That will take care of the whole situation, without trying to determine from what district, what island, and so forth and so on. The legislature can take care of that.

Perhaps in order to clear the way, if Delegate Doi will permit my withdrawal of my original motion, I will withdraw that motion and make the present motion, that the last sentence be amended so as to read: "The legislature shall provide for absentee voting."

CHAIRMAN: Do I hear a second to that motion?

ANTHONY: I second the motion.

CHAIRMAN: Delegate Doi seconds the motion, I believe. Delegate Anthony, do you wish to have the floor?

ANTHONY: No, Mr. Chairman, I just rose to second it.

CHAIRMAN: Thank you. Is there further discussion on this amendment?

YAMAMOTO: Is it understood that in reference to this problem, the matter of the Big Island will be considered? All included?

CHAIRMAN: Delegate Heen, would you like to answer that?

HEEN: May that question be repeated? I thought I heard it but - -

CHAIRMAN: Will you repeat the question, Delegate Yamamoto?

YAMAMOTO: The problems in regard to the Big Island will be considered in this matter?

HEEN: Oh yes, quite definitely. If the legislature has the power to enact statutes with reference to absentee voting, they can take care of the situation over in Hawaii, for instance, where they have two representative districts.

CHAIRMAN: It's been moved and seconded that the Section 4 be amended so that the last sentence will read: "The legislature shall provide for the manner in which absentee voting shall take place."

ANTHONY: No, the last sentence was - - the motion was: "The legislature shall provide for absentee voting," period, and the rest of the language stricken.

CHAIRMAN: I'll take that correction. All in favor say "aye." All who are contrary minded say "no." It's carried.

AKAU: A little before that where it says - - in the line before that, may I just read, "voting at all elections, provided that secrecy of voting shall be preserved." In view of our past experience in this recent election for the Constitutional Convention, and since some of the methods were not preserved, I move to amend that section by just adding the word before "preserved" to "scrupulously preserve" adding that word which makes it much more emphatic in my opinion. "Scrupulously preserve."

CHAIRMAN: Will you repeat that word, please.

AKAU: It would read therefore, like this, Section 4 on registration and voting. "The legislature shall provide for the registration of qualified voters and prescribe the methods of voting at all elections provided that secrecy of voting shall be scrupulously preserved."

ANTHONY: I move that Section 4 as amended be adopted.

CHAIRMAN: It's been moved and seconded that Section 4 be adopted as amended.

DELEGATE: Question.

APOLIONA: I think the delegate from the fourth district, in the first sentence after the word "method," said "and manner." It was seconded by Mr. Doi.

HEEN: Mr. Chairman, that motion was withdrawn.

CHAIRMAN: I believe so.

HOLROYDE: I second the motion of Delegate Anthony.

CHAIRMAN: Is there any - - shall I put the question? All in favor of adopting Section 4 as amended say "aye." All who are contrary minded say "no." It's carried, as amended.

We're now ready for Section 5.

CORBETT: I move for the adoption of Section 5.

APOLIONA: Second that motion.

CHAIRMAN: It's been moved and seconded that we adopt Section 5.

SAKAKIHARA: I have an amendment to Section 5 of Committee Proposal No. 8, which was distributed last Friday. I move that the amendment be agreed to. Section 5 of the proposal. The amendment to Section 5 will read as follows: "General elections shall be held on Tuesday after the first Monday in November in even numbered years, and every second year thereafter." The amendment fits in now as follows: "At any primary and general elections a voter shall not be denied the right to vote for candidates from more than one party ticket."

KAUHANE: I second the motion to adopt the amendment offered by Delegate Sakakihara.

ANTHONY: I'm opposed to this amendment. This is an obvious attempt to undo the good work of the last legislature in having a closed primary. I don't think we ought to have anything in our Constitution that's going to prevent the legislature from keeping on the statute books wholesome legislation which will prevent the shifting of votes from one party to another in a primary election, and therefore I'm against this.

SAKAKIHARA: That's a matter of opinion whether that was good legislation or bad legislation. I don't necessarily subscribe to the opinion of one man's thinking. If the members of the Convention will recall that the matter of a closed primary election was a very hotly contested issue before the last session of the legislature. It was strongly supported by the union, by the two major political parties of the territory, who are now regretful of the fact that such legislation was put into effect. Many good men of either party, their candidacies are endangered in a closed primary election.

I don't know whether the members of this Convention realize that approximately 85 per cent of the voters in this territory are non-partisan. Fifteen per cent of the voters are either Republican or Democrat. And out of the existing territorial statute, a person offering himself as a non-partisan candidate for public office are discriminated against; they have to receive twenty per cent of the votes cast or they are eliminated in the primary election. On the other hand, if you are running as a Republican or a Democrat, you could be nominated by a majority vote at that election, but nevertheless it specifically provides that a man offering himself as a non-partisan candidate, he will have to receive twenty per cent of the votes cast.

This is in conformity with the trend of thought at the present time even on the continental mainland United States. The states of Massachusetts and Ohio recently repealed the straight party ticket act which existed for many years.

I submit that a man is entitled to vote according to the conscience of - - according to his own conscience. He can no longer go to the polls and cast his vote for the man who he thinks is the proper person to represent him in a government office. Hereafter he will have to select one or the other, select a Republican or a Democrat, and yet when he is a non-partisan, not affiliated with either of the political party, he will be kept away from the polls; he will be discouraged from voting. Eighty-five per cent will be discouraged from going to the polls and cast their votes. And I submit that this is a good amendment.

CORBETT: I don't intend to enter into the debate as to whether the legislation was good or bad at the last session, but it is my belief that any actions taken on such legislation should be by the next legislature and not written into the Constitution.

TAVARES: I'd like to say that I am going to vote against the proposed amendment, but I don't think that we have to agree that the closed primary is good or bad in order to do that. I agree with the last speaker that this is a question to be left to the discretion of the legislature. If the legislature made a mistake the last time I think that mistake ought

to be pointed out to the next legislature, and they ought to be asked to change it. My own opinion is that as conditions change, sometimes the law should be changed to meet them. Once upon a time we had a convention system, and it worked very well for a while; then it began to be felt that there was too much control so we changed to the open primary; then we changed to the closed primary, and perhaps later on, we should make another change. Perhaps some day we will want to come back to the convention system. I think it ought to be left open to the legislature to decide which one of those methods, under all the conditions then obtaining, is necessary and for that reason I shall vote against the amendment.

J. TRASK: I take exception to the remark made by the delegate from Hawaii to the extent that the political parties are regretting that they adopted the closed primary law. Again I think it's a matter of opinion. The Democratic party is strongly in back of this closed primary law, which was enacted by the legislature and as such belongs to the legislature. It should never be made part of the Constitution. I can't speak for the union. However, speaking to a lot of my Republican friends, they are all for the closed primary law. I don't know what percentage the delegate from Hawaii represents but I think he's erroneous in his information to the delegates of this Convention. Another thing, here he quotes 85 per cent of the voters will be deprived of their vote in the primary election. I am almost sure he is basing his remark on the existing law which is the open election. So I move at this time that we table the motion to adopt the amendment.

SAKAKIHARA: I didn't know that there wasn't any Democratic Charlie in Hawaii now. I don't know which is the party, but I do say - -

A. TRASK: Will the gentleman from Hawaii yield?

SAKAKIHARA: I will.

CHAIRMAN: Delegate Arthur Trask.

A. TRASK: For the purpose of debate I seconded the motion made by my fellow - -

SAKAKIHARA: I refuse to yield, Mr. Chairman.

CHAIRMAN: As I understand it, you yielded to Delegate Arthur Trask.

SAKAKIHARA: He wanted to ask me a question, if I understood it correctly. I yielded the floor to question.

CHAIRMAN: I don't think the delegate from the fifth district did say that he rose to ask a question. He asked - -

A. TRASK: It wasn't intended to deprive the orator from Hawaii of his rights, of course. I withdraw that second for the time being.

CHAIRMAN: Second's been withdrawn.

SAKAKIHARA: I don't understand why the fifth district delegate, who preceded before the elder Trask, said that the Republicans predominately were in favor of the closed primary; I don't know since when the gentleman speaks for the Republican party. I do say, Mr. Chairman, I have an editorial comment from the San Francisco Chronicle of recent issue of why Ohio has just adopted the Massachusetts ballot, which abolishes the practice of straight party ticket voting. Hawaii is not going forward by adopting such tactics as closed primary elections to deprive the people of this territory, especially who are not of any political party. I submit that the people of this territory have every right to have this Convention incorporate their bill of rights, rights of suffrage and election, and go to the polls and vote according to the dictates of their conscience without any statutory prohibition as to how they should vote. I submit that this is an appropriate question, a right to be incorporated into the basic law of this territory.

CROSSLEY: I am opposed to the amendment not on the merit of the amendment or on the merits of closed primary law as such, but purely and simply on the matter that this was created by the legislature and if they have made a mistake, they'll correct it; if they think it's the will of the people, they'll continue it. I appreciate very much a member of the loosely connected Democrat party speaking for the Republicans, but I think the Republicans are quite able to carry on for themselves. It was in our party platform before its adoption and I think the Republican party primarily feels that it's something that should be tested out and given back to the people who created it for further action, and not by the Constitutional Convention.

HAYES: I just want to say that I was one of those who fought against the - - who fought for the closed primary on the floor of the legislature, and the result of that, at that time was - - showed that it was a very close vote. There are many, many things that I believe in thoroughly, but I feel that at this Constitutional Convention that we should refer it back to the legislature. If we've made a mistake, the legislature should change it again, and so therefore I feel that that is my sentiment and I just wanted to stand up and speak for it because I was a marked woman on the floor of the legislature speaking for open primary.

NIELSEN: I might say that it has been in the platform of both the Democratic and Republican parties for several years. So, so far as being in the platform, why the standpatters have it in, and will continue to have it in. In the past we've been having two popularity contests; we might just as well have one election. Your primary is a party matter, and then in the general you zigzag down and vote for anybody you want to. So I'm sure we won't lose 85 per cent of our vote in the primary. I'm sure it will still turn out around 80 per cent. But certainly it doesn't belong in the Constitution, and it's a legislative matter and so I'll have to vote to table.

KOMETANI: While we are in the matter of open elections, in 24 of the 48 states the matter of free and open election is in the Constitution under the Bill of Rights, in suffrage rights. And it reads as follows: "All elections shall be free and open and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." Now that is in 24 of the 48 states, and therefore the open election is a matter of the individual state's opinion.

CHAIRMAN: Will Delegate Sakakihara restate the amendment so that it may be clear.

SAKAKIHARA: The amendment reads as follows: Second sentence in Section 5, "In any primary and general elections, a voter shall not be denied the right to vote for candidates from more than one party ticket." That is the amendment.

CHAIRMAN: Is there any deletion from Section 5?

SAKAKIHARA: Yes, delete the rest so that the Section 5 will read as follows: "General elections shall be held on Tuesday after the first Monday in November, even-numbered years and every second year thereafter. In any primary and general elections a voter shall not be denied the right to vote for candidates from more than one party ticket."

CHAIRMAN: Thank you. Are you ready for the question?

ASHFORD: Wasn't there some question raised the other day about the propriety of tabling an amendment?

CHAIRMAN: I don't believe the motion to table has been put. Delegate Nielsen did mention that he would vote to table, but I don't think he put that into a motion.

HEEN: I take it that the first section of -- or rather the first sentence of Section 5 is left intact under this amendment proposed by Delegate Sakakihara?

SAKAKIHARA: That is true, Senator Heen, and then I intended to make this clarification. My amendment will merely replace this second sentence of Section 5 and retain the third and fourth sentence thereof, so that the Section 5 will read: "General elections shall be held Tuesday after the first Monday in November, even-numbered years and every second year thereafter. In any primary and general election a voter shall not be denied the right to vote for candidates from more than one party ticket. Special elections may be held according to law. Contested elections shall be decided by the Supreme Court of the State of Hawaii according to law."

HEEN: So, I take it then that the amendment deletes the second sentence altogether and another sentence substituted for it.

CHAIRMAN: I believe so.

HEEN: Is that correct, Mr. Chairman?

CHAIRMAN: I believe so.

HEEN: Because I would like to raise a point with reference to the first sentence later on.

CHAIRMAN: Are you ready for the question?

H. RICE: The motion has been made by Mr. James Trask that -- to table the amendment. I second the motion to table.

CHAIRMAN: I believe he's withdrawn his motion to table.

J. TRASK: Mr. Chairman.

CHAIRMAN: Delegate Rice, do you yield?

J. TRASK: I did make a motion to table the amendment; it was seconded by my brother Arthur who withdrew his second.

H. RICE: I will second that motion.

CHAIRMAN: It's been moved and seconded that the motion be tabled.

ROBERTS: I rise on the matter of personal privilege. I'd like to point out I'm not going to raise the question of procedure. I'd like to point out that when a motion to table is put and my vote is recorded in the negative, it is not an indication that I approve of the proposal. I have voted before on the motions to table and I have voted regularly against any motion to table when adequate procedure exists to vote on the specific proposal. It seems to me that adequate procedure exists right now to vote on the amendment. There's no need to move to table. It seems to me that as long as we can vote on the question then we can vote in terms of our specific ideas and notions. A motion to table denies that right.

J. TRASK: In view of what the delegate has just said I withdraw my motion.

CHAIRMAN: The motion to table has been withdrawn. Are you ready for the question?

SAKAKIHARA: I ask for ayes and noes, roll call.

CHAIRMAN: All in -- do I see the hands on that? There is insufficient demand for roll call.

TRASK: I think we should defer action on this matter until the other delegates are here on the floor.

CHAIRMAN: That is a -- Would you put that in the form of a motion. Delegate Kometani, did you --

KOMETANI: I'm just looking around to see who's absent from the Convention, that's all.

CHAIRMAN: Roll call has been put but there's not enough hands. How many in favor of roll call?

SAKAKIHARA: No, as the Chair was about to roll call, it was interrupted by Delegate Trask. Let's be fair about it.

CHAIRMAN: There are about two people in favor of roll call. How many are in favor of roll call? Roll call has passed, and it's to be -- this is to be done by roll call.

AKAU: Are we voting now merely on the amendment --

CHAIRMAN: We are.

AKAU: -- or on the whole business?

CHAIRMAN: We are voting on the amendment as put by Delegate Sakakihara. The Chair feels that there's been enough explanation of the amendment so that it need not be re-explained. All in favor will say "aye," and all who are opposed say "no," by roll call.

DELEGATE: In other words, all those who vote aye now are voting in favor of Mr. Sakakihara's amendment?

CHAIRMAN: That is true.

Roll call: Ayes, 23. Noes, 34 (Anthony, Ashford, Bryan, Castro, Cockett, Corbett, Crossley, Gilliland, Hayes, Heen, Holroyde, Ihara, Kage, Kawahara, Kellerman, King, Larsen, Lee, Loper, Luiz, Mau, Nielsen, Porteus, Rice, C., Rice, H., Richards, Roberts, Serizawa, Tavares, Trask, A., Trask, J., White, Wirtz, Wist. Not voting, 6 (Arashiro, Kido, Phillips, Sakai, Smith, Woolaway).

CHAIRMAN: The motion's been defeated.

HEEN: I'd like to have someone explain this language to me, "even-numbered years and every second year thereafter."

KOMETANI: That was very seriously considered because we would like to coincide our election with the federal and we understand that the federal election is held on the even number of years.

HEEN: I think the language should be "in the even-numbered years," period.

KOMETANI: No, "and every second year."

HEEN: "In all even-numbered years," put it that way. "General elections shall be held on the Tuesday" -- there ought to be a word after Tuesday inserted, the word "next." That's the language used in the Organic Act. "General elections shall be held on the Tuesday next after the first Monday in November in all even-numbered years." I so move that.

DELEGATE: I move we take a short recess so the chairman of Suffrage and Election can get this.

SAKAKIHARA: Second the motion.

CHAIRMAN: If there's no objection --

KING: Rather than recess, I would suggest that we rise, report progress and ask to sit again so that we may go into the Committee of the Whole on the Judiciary, and when we

sit again the amendment suggested by Delegate Heen might be the first order of business. I'd like to offer that as a motion, that the committee now rise, report progress and request permission to sit again.

CROSSLEY: Second that motion.

CHAIRMAN: It's been moved and seconded that we rise, report progress and beg leave to sit again. All in favor say "aye." All who are contrary minded say "no." It's carried.

Afternoon Session

CHAIRMAN: The Committee of the Whole is now come to order. There'll be a -- if there's no objection, there'll be a five minute recess. Section 5 has been brought up for consideration. It was moved to be adopted by Delegate Corbett and the motion was seconded by Delegate Apoliona.

KING: If I recollect correctly there was an amendment pending on that.

CHAIRMAN: There was one pending, but I believe at the time of the closing it wasn't put up. May I suggest that the proponent of that amendment offer it again. I think it was Delegate Heen. I understand he was having it typed this afternoon.

PORTEUS: I will go and see if I can find out whether that's being typed and where Delegate Heen is.

CORBETT: I believe that I recall Delegate Heen's amendment to be the deletion of the words "and every second year thereafter." I think his intention was to put a period after the words "even-numbered years" as he felt that the next phrase was simply repetitious.

CHAIRMAN: Could we check with the Chief Clerk on that matter?

NIELSEN: As I recall he also inserted the word "next" after the word "Tuesday" in the first line, and after the word "November" in the second line, "in all even-numbered years," it would read.

HEEN: I am having two forms of amendment printed for the members of the committee. Now one form will read, "General elections shall be held on the Tuesday next after the first Monday in November in all even-numbered years." That's one form. The other form might be in this manner: "A general election shall be held on the Tuesday next after the first Monday in November in the first even-numbered year following the adoption of this Constitution and every second year thereafter." Take your choice.

NIELSEN: Mr. Chairman, a question. I'd like to know if after the Constitution is adopted, it might not come in odd-numbered years.

CHAIRMAN: Will you answer Delegate Nielsen's question?

HEEN: If we -- say the Constitution is adopted in 1950, then the general election would be in 1951 or if the general election -- or rather the Constitution is adopted in 1951 after the close of the regular session of the territorial legislature, then the first election will be the 1953 general election. Of course there'll be a provision for special session if there's a necessity for acting before -- acting on the changes in laws, statutes and so forth before the regular session. A special session of the legislature might be called by the Governor.

KOMETANI: The reason for even-numbered years is, as I previously stated, is to have our election coincide with the federal. If we held it on the odd-numbered years -- You will remember that when you become a state you will elect for the President, and therefore it must be on the even-numbered years.

HEEN: That's correct, it's even-numbered years. So that if we have the Constitution adopted this year the first general election would be in 1952.

TAVARES: It's not my understanding that if we happen to come into the Union at an odd time that we won't have an election, but that may be a special election. It shouldn't necessarily interfere with the general election to be held under this section. Therefore there would be a special temporary provision in the ordinance section or some other appropriate place taking care of that special election.

SHIMAMURA: Under the provisions of H. R. 49 it is mandatory that the governor of the territory call an election within sixty days after receipt of notification from the President of the United States certifying to the approval of this Constitution. Therefore in this general section we should not try to restrict ourselves to the ordinary elections. As a matter of fact the Committee on Ordinances has already prepared and drafted and filed the committee proposal on such an election ordinance.

CHAIRMAN: I believe it would be in order if someone moves to adopt one of these amendments.

KING: I agree with both the previous speakers that upon the adoption of the Constitution a special election would be held to inaugurate the state government. Therefore the second suggestion offered by Delegate Heen referring to election after "even-numbered years following the adoption of this Constitution and every second year thereafter" would not be applicable. I'd like to suggest to Delegate Heen, who made the original suggestion, that he move for the adoption of the amendment that would have Section 5 read: "General elections shall be held on the Tuesday next after the first Monday in November in all even-numbered years" and hereafter the same language as the original proposal.

HEEN: I move at this time that the first sentence of Section 5 of Committee Proposal No. 8 be amended to read as follows: "General elections shall be held on the Tuesday next after the first Monday in November in all even-numbered years."

CHAIRMAN: Delegate Kellerman seconds the motion. You would then delete the other two or three sentences?

HEEN: No, no, this is only the amendment of the first sentence that would delete the words "of every second year thereafter."

KOMETANI: Mr. Chairman, we accept the amendment.

CHAIRMAN: The amendment 's been accepted by the --

HEEN: No, there'll have to be a vote on it because it's an original amendment.

DELEGATE: I second the motion.

CHAIRMAN: It's been moved that the first sentence in this Section 5 be amended as read by Delegate Heen. Are you ready for the question? All in favor say "aye." All who are contrary minded say "no." It's carried.

HEEN: Reference to the second sentence in the same section which reads, "Primary elections shall be held not less than six weeks prior to the general election." That should be left to the legislature, and should not be included in a constitutional provision -- as a constitutional provision.

Efforts have been made in the past to have the legislature set a period of six weeks prior to the general election, and they may yet succeed in having that done, but if you write it in there as a permanent provision, the time may come when you don't need a six weeks' interim between your primary election and general election. I therefore move to delete that section -- I mean sentence.

BRYAN: I second that motion.

CHAIRMAN: Just the second sentence that was moved for deletion and seconded.

AKAU: I'd like to speak in opposition to that statement made by the honorable delegate from the fourth. I think if anybody has been near City Hall in the time between the primary and the general and has seen those clerks work practically day and night, he would realize that the time is absolutely necessary from the point of view of efficiency and practicability to get everybody registered. There are new registrants, there are people who wish to change their registration, and there are people who have come and have set up residences here and have had their residence cards okayed. I think in fairness to the people who have asked us; Mr. Oren Long for example came to visit us at one of our meetings and other people from the county office, the county clerks from all of the counties, and discussed this very important time element with us; I think we should take the word of the people who actually have to do the work. They're the ones who ought to know. Of course, from the point of view of a person who's running for office it is a little hard, physiologically, psychologically and anatomically, all that sort of thing. But for those people, if we are going to be considerate for those people who actually do the work, I think we should leave this clause as it is, namely six weeks.

HEEN: I think if the last speaker were to address her remarks to the legislature it would appeal to the legislature, and probably the legislature would probably set a six weeks period. But there may come a time when you don't need six weeks, when you simplify the process of registration you may not require six weeks.

CHAIRMAN: If there's no further debate --

KOMETANI: Because of our geographic makeup it would -- when we become a state, it will necessitate a little more time for the representative or the office seekers to travel throughout the different islands. And for that reason we have felt that six weeks or more should be inserted in the Constitution to protect our office holders.

CHAIRMAN: It's been moved and seconded that the second sentence of Section 5 which reads, "Primary election shall be held not less than six weeks prior to the general election," be deleted, that that section be deleted. All those in favor say "aye." All who are contrary minded say "no." The Chair is in doubt as to how that went. I believe we could vote by the show of hands. All in favor of deletion raise their right hand. All who are contrary minded raise their right hands, please. Just one hand. There are 29 ayes, 17 noes and there are some who didn't vote. The second sentence is deleted.

HEEN: I now move that Section 5 be adopted as amended.

OKINO: Before there is a second, I should like to make a further amendment of Section 5. I move that the last sentence of Section 5 be deleted. There is nothing in our Organic Act with reference to the subject matter of a contested election. Said subject matter in the past has been regulated by its statute, by legislation. I refer specifically to Section 280 of the Revised Laws of Hawaii, 1945, as amended. You will note that the last sentence refers to contested elections. The last sentence reads, "Contested elections shall be decided by the Supreme Court of the State of Hawaii according to law." Now there is a possibility that candidates seeking county offices may have contested elections. It will be very unfair to ask the candidates seeking county offices to bring their witnesses all the way from Kauai and Hawaii to Honolulu in order that the matter may be adjudicated before the Supreme Court, which no doubt will be here in Honolulu. I believe the legislators in the past have taken this fact into account. It was for that reason and in my opinion a very good reason that the matter was left with the legislature. It is for this reason I have moved the deletion of the last sentence from Section 5.

CROSSLEY: I'd like to second the motion to delete.

CHAIRMAN: Delegate Crossley seconds Delegate Okino's motion to delete the last sentence, that is "Contested elections shall be decided by the Supreme Court of the State of Hawaii according to law."

AKAU: Point of information.

CHAIRMAN: Delegate Akau, what is your point?

AKAU: Perhaps it may sound naive but is it possible for the Supreme Court to go to Kauai? Isn't the Supreme Court where the judge is, whether it's under a tree or what have you? I'd just like to have somebody from our "Supreme Court" here answer.

HEEN: I believe though that the delegate from Hilo has a point. It may be that the last sentence should read, "Contested election shall be determined in a manner prescribed by law."

KAWAHARA: May I ask the delegate from the first district a question? My question is in reference to the statute that he referred to in regards to the contested elections. I wonder if that statute states that in the case of contested election such a contested election shall be decided by the Supreme Court. Who decides in the final analysis as to the validity of the election? Does the legislature decide or does the Supreme Court decide? By his reference that there is a law written, that doesn't answer the question, still doesn't answer whether the Supreme Court decides or the legislature decides.

CHAIRMAN: Delegate Anthony, would you -- he has a question which you would like to answer? Delegate Anthony.

ANTHONY: For a great many years, in the days of the monarchies, in the days of the Republic, and even down to today, the matter of contested elections have been left to the Supreme Court, and it is by virtue of rule of the Supreme Court. Rule 17 of the present Rules of the Court provides for election cases. "Petitions by any candidate directly interested or by thirty voters of any election district, setting forth cause why the decision of any board of inspectors of elections shall be reversed, corrected, or changed, shall be verified or supported by the affidavit of some person or persons having personal knowledge of the facts claimed to be grounds for reversing, correcting, or changing the decision." Now there's nothing to prevent the Supreme Court from sitting over in Hilo if there should be a contested election in Hilo.

I imagine the purpose of this Rule of Court and this tradition of depositing that power in the Supreme Court is to get away from any political suspicion of tampering with the election ballot boxes and what not, and so you go to the most

trusted agency in the whole government, namely the Supreme Court, and let them pass on the contested election. And also it's a very speedy matter.

C. RICE: Isn't it a fact that when the election inspectors get through, all the ballots are put in the bag and mailed to the Secretary of Hawaii, they're all here. None of them are kept on the other islands. It's easier to have your contest right here where all the ballots are. We've had several contests; one the island of Niihau, they wanted to recount the ballots but they're always correct. They've counted them twice but they've always been found correct, counted by the Supreme Court here. Of course, in those days they all voted Republicans, I guess.

SHIMAMURA: I shall also read Section 280 of the Revised Laws of 1945 referred to by the delegate of Hawaii. That refers to appeals to the judicial circuit court from the decisions of the respective board of inspectors and does not pertain to election contests as such which the delegate from the fourth district correctly pointed out have been always within the jurisdiction of the Supreme Court.

HEEN: All the more reason why this section should be either deleted or amended. Leave it to the legislature to prescribe the manner in which contests may be determined.

TAVARES: I think there is some point to that suggestion for this reason. I think it's already been touched on. I'd like to make it a little clearer. I think that if it is entirely left to the legislature it would be theoretically possible for the legislature to provide that contested elections should be handled by the legislature itself, in which case it might go along party lines instead of on the basis of the facts as shown before an impartial body. I don't necessarily think they should be tried in every case before the Supreme Court but it seems to me something should be said about trial within the courts rather than before some other type of tribunal.

OKINO: I have no objection to accepting the suggestion made by the delegate from the fifth district, Judge Heen, that the last sentence be amended to read as follows: " Contested elections shall be determined in such manner as may be provided by law."

HEEN: Is that your motion or is that my motion, if I may ask?

OKINO: I have adopted your suggestion into my motion.

HEEN: I second your motion.

CHAIRMAN: Delegate Heen has seconded the motion to amend the last sentence.

CORBETT: Would it not be possible to put both the special elections and the contested elections in one sentence if both of the subjects are going to be covered by legislative act? It doesn't seem necessary to have two sentences. I'm sure the attorneys can word this better than I, but this would be my suggestion; " The legislature shall enact laws to provide for special elections and contested elections."

TAVARES: I'm a little bit concerned about leaving this entirely to the legislature to provide by law for contested elections. It seems to me that the one impartial tribunal you'll have will be the courts. And I would like to move to further amend that by adding after the word " determined" insert the words " by the courts." I think that would be sufficient, " by the courts," so that it would read, " shall be determined by the courts, in such manner as shall be provided by law."

WOOLAWAY: I second that manner.

CHAIRMAN: Delegate Woolaway seconded the motion by Delegate Tavares to amend.

OKINO: To simplify procedure, I'm willing to adopt that suggestion made by the delegate from the fifth district, Nils Tavares.

ANTHONY: Mr. Chairman, it shouldn't be "by the courts"; it should be " by a court of competent jurisdiction" if you're going to put that in there. You're not going to have more than one court pass on the same contested election.

TAVARES: I'll accept the amendment. " It shall be determined by a court of competent jurisdiction in such manner as shall be provided by law." I'll accept the amendment.

CHAIRMAN: Will Delegate Woolaway accept that as the second? Will Delegate Tavares tell us what the amendment is now as it is?

TAVARES: The amendment is to amend the last sentence to read as follows: " Contested elections shall be determined by a court of competent jurisdiction in such manner as shall be provided by law."

HEEN: Is that your motion now, Delegate Tavares, if I may ask?

OKINO: For the benefit of the delegate from the fourth district - -

CHAIRMAN: Just a moment. Delegate Heen, will you yield to Delegate Okino? Delegate Okino, you have the floor.

OKINO: I am answering the question interposed by the delegate from the fourth district. I am willing to adopt the suggestions again suggested by the delegate from the fourth district, Mr. Nils Tavares.

HEEN: I second that motion.

CHAIRMAN: Delegate Heen seconds that motion. There's no more deliberation and no more - -

MIZUHA: What is the amendment we're voting on now?

CHAIRMAN: Will you inform the delegate from Kauai?

TAVARES: The amendment is to amend the last sentence of Section 5 to read as follows: " Contested elections shall be be determined by a court of competent jurisdiction in such manner as shall be provided by law."

MIZUHA: There is a question, I rise to a point of information. What would you mean by "contested election"?

CHAIRMAN: Could you answer that, Delegate Tavares?

TAVARES: I take it that a contested election will be an election in which there is a reasonable basis for claiming that the count was wrong or that some other thing was not done properly and that if done properly the result would have been affected. And I think it would be up to the statutes to set forth those circumstances.

MIZUHA: I believe now that question - - I believe that question is now decided by the boards of registration of voters in each county.

TAVARES: That is not correct. Before an election, if a voter's right to vote is challenged, the board - - the inspectors of election must decide it on the spot. However, a candidate who is affected by the votes which are affected by those rulings can appeal the election if it can be shown that it might make a difference in the result. And if he does,

then there is a recount under the supervision of the Supreme Court, at the present time.

NIELSEN: Much as I hate to say it, I don't see any reason to put this in the Constitution at all. It's simply a matter for the legislature. They'll set down the rules regarding any contested elections. I don't see why we have to put anything in the Constitution.

CHAIRMAN: If there is no more deliberation, we can put the question to amend the last sentence. Are you ready for the question? All in favor say "aye." All who are contrary minded say "no." I believe it's carried.

LAI: I move that we adopt Section 5 as amended.

APOLIONA: I second that motion.

CHAIRMAN: It's been moved and seconded that Section 5 be adopted as amended. All in favor say "aye." All who are contrary minded say "no." It's carried. Section 5 is adopted as amended.

HEEN: I now move that this committee rise, report progress, and ask leave to sit again to consider a written report.

J. TRASK: Before there be a second on that motion, I notice that we have an amendment on our desk in regard to the limitation of political expenses. The amendment will include a new section, Section 6, to read as follows—I believe the delegates have the amendment on their desks—"The legislature shall provide for the limitation of expenses which may be incurred by persons seeking elective offices." I am just wondering, Mr. Chairman, whether this will be a constitutional matter or whether this will be a legislative matter. I wish one of the delegates here would answer that question.

KOMETANI: I feel that is entirely legislative matter.

CHAIRMAN: Since no one seconded it - -

BRYAN: I second Delegate Heen's motion to rise, report progress - -

KING: Does that motion include the adoption of the proposal as a whole?

CHAIRMAN: I don't think so. I think that would be in order before - - if the second will hold off on this. Delegate Bryan concedes.

KING: I move that Committee of the Whole adopt Proposal No. 8 as amended, and after they've done that then the committee rise, report progress and ask permission to file a written report later.

SMITH: I second that motion.

CHAIRMAN: It's been moved and seconded that the Committe Proposal No. 8 be adopted as amended and that the committee rise and report progress and ask for permission to file a written report. All in favor say "aye." All who are contrary minded say "no." It's carried.

JUNE 20, 1950 • Afternoon Session

CHAIRMAN: Will the Committee of the Whole meeting come to order. The [Committee of the Whole] report [No. 7] was made out and a great deal of help was given to the chairman by members of the "Supreme Court" and other attorneys and other members of the Convention for which the committee chairman feels very thankful.

KOMETANI: I move for the adoption of the Committee of the Whole Report No. 7.

APOLIONA: I second that motion.

DELEGATES: Question.

CHAIRMAN: Is there any debate? All in favor of adopting Committee of the Whole Report No. 7 to be presented to the Convention say "aye." All who are contrary minded say "no." Everything is aye, so I guess it is passed.

C. RICE: I move that when the committee rises, it reports recommending the passage of Committee Report No. 7.

CROSSLEY: I second that motion.

CHAIRMAN: It has been moved and seconded that we rise and report to the Convention the recommendation that this report be accepted. All in favor say "aye." All who are contrary minded say "no." It is carried. The meeting is over.

Debates in Committee of the Whole on

LEGISLATIVE POWERS AND FUNCTIONS

(Article III)

Chairman: J. GARNER ANTHONY

JUNE 28, 1950 • Morning Session

CHAIRMAN: The meeting will come to order.

HEEN: In order that the delegates may be better informed as to the consideration of the various sections in the article on legislative powers and functions, I will read the preliminary discussion in the report of the committee.

"Your Committee on Legislative Powers and Functions submits herewith a committee proposal for a complete article on legislative powers and functions. The proposal embodies what your committee believes necessary or desirable in establishing the legislative department of the state government. Before arriving at its proposal your committee studied the several proposals referred to it, as well as those provisions of the Hawaiian Organic Act, the Model State Constitution and the constitutions of several of the states pertaining to the legislature. Your committee has decided to retain the framework provided in the Organic Act without substantial change, except in a few particulars.

"Your committee believes that the legislature should remain bicameral, but recognizing the desirability of wider representation of the population which has greatly increased since the adoption of the Organic Act, has provided for an increase in the membership of both houses of the legislature. However, while it was unanimously agreed that there should be an increase in membership, your committee was unable to agree as to the extent of the increase. A majority of your committee approved a Senate of 25 members and a House of Representatives of 51 members, while a minority insisted that the House should not be larger than 41 members, nor the Senate larger than 21 members.

"In fixing the composition of the two houses your committee was faced with the problem of reapportionment, which, with the increase and shift of population since 1900, has become complicated as well as acute. Your committee has agreed that the House of Representatives must be apportioned on the basis of the number of registered voters among the several major island divisions (the present counties) but that the present ratio of representation among the four existing senatorial districts should be maintained in the Senate. In districting your committee made but one change as to senatorial districts, that being the splitting of the island of Oahu into two districts roughly corresponding to the present representative districts, but completely revised the representative districts, which are increased from six to eighteen.

"A major departure proposed by your committee from the provisions of the Organic Act is the provision for annual, as distinguished from biennial, sessions of the legislature. Your committee proposes that of the annual regular sessions, only those held in the odd numbered years, which shall be known as 'general sessions,' shall be open to all kinds of legislation, and that those held in the even numbered years, to be known as 'budget sessions,' shall be confined to general appropriations bill and bills to authorize proposed capital improvement expenditures, revenue bills necessary therefor, bills to provide for the expenses of such session, urgency measures deemed necessary in the public interest, bills calling elections and proposed constitutional amendments. In addition, special sessions are provided for.

"The provision for annual sessions is a recognition of the need today for more frequent, if not continuous, sessions of the legislature, particularly in view of the difficulties of projecting estimates of revenues and expenses for two years and more in advance, as is the case at present. The provision for a budget session in those years in which a general session is not held, makes it possible to limit appropriations for the expenses of the government to a single fiscal year.

"A similar thought underlies your committee's action in providing for the establishment of a legislative council. While such a provision might be considered legislative and the inclusion of such provision objected to on that ground, your committee believes that the work of the legislature must be implemented by a continuous study by some agency under the control of the legislature in the interim between sessions and that it is a matter of such importance that it should not be left entirely to legislation.

"Another important change is in the provision for reapportionment. The provision of the Organic Act for reapportionment has been, as is notorious, totally ineffective. Your committee proposes that reapportionment be practically automatic every ten years."

It was my intent as chairman of the Committee on Legislative Powers and Functions to take up all the sections of the articles at this time instead of -- and leaving Sections 2, 3 and 4 to be considered last. Two, three and four of the article deals with the setup of the Senate, the initial apportionment of the House of Representatives and the automatic reapportionment of the House of Representatives every ten years. I understand, however, that some of the delegates would like to take up Sections 2, 3 and 4 first, dealing with the Senate, the House, the apportionment, and the reapportionment of the House of Representatives. I would like to hear from some of the delegates on that.

SAKAKIHARA: I so move.

MIZUHA: I second the motion.

CHAIRMAN: What is your motion, Delegate Sakakihara?

SAKAKIHARA: My motion is to take up Section 2 and Section 3 and 4.

CHAIRMAN: You've all heard the motion. All in favor.

MAU: Doctor Larsen is asking what the motion is. The motion is to consider all the other sections of the proposal other than that -- those that relate to reapportionment.

CHAIRMAN: No, Mr. Mau, the motion was to take up -- I should think you'd take up Section 1 first. The motion was to take up reapportionment first. Is there any further discussion? All in favor signify by saying "aye." Contrary. Carried. Proceed.

MIZUHA: In this discussion on apportionment I would like to ask a general question before any motion is put to

the chairman of the committee, whether the delegates here will discuss the question of apportionment only with reference to particular districts by delegates from those districts or are we going to participate in a general discussion of all districts.

CHAIRMAN: That's up to the body. The speaker can proceed any way he desires.

HEEN: Perhaps it might be well to take up Sections 3 and 4 first, dealing with the House of Representatives. Section 2 provides for the initial apportionment of the House of Representatives which will continue until the automatic reapportionment of the House in 1959, about ten years hence.

PORTEUS: I think there's a disposition on the part of some of the members who wish to deal with the composure of the Senate and establish how many senators there's going to be. I think if we can go to the sections in order now, Section 2, then Section 3, then Section 4, we'll make progress.

CHAIRMAN: May I ask the chairman of the committee a question? Is there any reason why we shouldn't act on Section 1 first?

HEEN: Well the problem as to reapportionment in my mind is more serious than that one connected - -

CROSSLEY: Point of order. We just voted to take up Section 2.

CHAIRMAN: I'm just asking for some information.

MIZUHA: It's my understanding that Section 2 deals with senatorial districts, and I think we should proceed with senatorial districts first before we - -

CHAIRMAN: Chair so rules. We're dealing with Section 2.

SMITH: I move that we tentatively adopt Section 2.

CROSSLEY: I'd like to second that motion.

CHAIRMAN: It's been moved and seconded that we tentatively adopt Section 2. Any discussion?

NIELSEN: I have an amendment. I have an amendment to Section 2.

CHAIRMAN: Has it been printed?

NIELSEN: Yes, it has been printed and distributed. The amendment is to make the first senatorial district, East Hawaii with five senators; the second senatorial district, West Hawaii with two senators.

PORTEUS: Might I interrupt one moment to ask whether or not it might not be desirable to deal with the first sentence of the section first in order that we may determine how many will be in the Senate. After we've made the determination of how many will be in the Senate, then I think the division in districts will be a little easier.

CHAIRMAN: That seems desirable to the Chair if it is agreeable to the movant.

NIELSEN: That's agreeable but the question is, I think this ties in with the House too. So if it's going to be a 25-51 combination, I'd be in agreement, but if it's going to be 21-41 or some other combination, why then we've got a headache on our hands. I think the number in both the Senate and the House is the critical thing to decide right now.

HEEN: Perhaps it might be well to read Section 2 throughout:

SECTION 2. Senate; senatorial districts; number of members. The Senate shall be composed of twenty-five members, who shall be elected by the qualified voters of the respective senatorial districts. The districts, and the number of senators to be elected from each, shall be as follows:

First senatorial district: the island of Hawaii, seven;
Second senatorial district: the islands of Maui, Molokai, Lanai and Kahoolawe, five;
Third senatorial district: that portion of the island of Oahu, lying east and south of Nuuanu street and Pali Road and the upper ridge of the Koolau range from the Nuuanu Pali to Makapuu Point, five;
Fourth senatorial district: that portion of the island of Oahu, lying west and north of the third senatorial district, five; and
Fifth senatorial district: the islands of Kauai and Niihau, three.

PORTEUS: Would it facilitate matters to have a motion that we adopt - - we tentatively approve the first sentence so as to determine the number.

CHAIRMAN: The Chair will entertain such a motion.

SAKAKIHARA: I so move.

SMITH: I'll second it.

CHAIRMAN: It has been moved and seconded that we tentatively adopt the first sentence of Section 2. Any discussion?

H. RICE: I'd like to offer an amendment, where it reads "25 members" to read "15 members."

MIZUHA: I second the motion.

CHAIRMAN: Just a minute, who seconded that?

HOLROYDE: Point of order.

CHAIRMAN: What is your point of order?

HOLROYDE: The first sentence does not include the number. The first sentence which was the motion, "The Senate, the senatorial districts, number of members." Would that be the first sentence?

CHAIRMAN: No, that's not the substance of the provision. That's just descriptive.

HOLROYDE: We want to clarify that.

CHAIRMAN: What we are voting on is the first sentence: "The Senate shall be composed of 25 members who shall be elected by the qualified voters of the respective senatorial districts." To which there has been an amendment that the number "25" be changed to "15." It has been moved and seconded by Delegate Rice. Any discussion? All those in favor of the amendment - - the vote is on the amendment.

HAYES: I would like to know the reason why the senator from Maui feels that the number should be 15.

H. RICE: From our county it would be ridiculous to have five senators and six representatives. The senators would be worth a dime a dozen in that proportion. I think that for the economy of the territory and the good of the territory, we should cut down on this representation, and they're not going to increase anything except proportional representation and I think it is all right to leave it where it is.

SMITH: I'd like to speak against the amendment. The main issue here, as the committee has decided, that for 50 years the reapportionment under the Organic Act is now proven defective due to population. And even though we feel that there might be too many from Maui, we have to

consider that in order to have something to follow in the future, that to give Oahu a true reapportionment, that maybe Maui would have too many. But we'll be having something to follow, and therefore I believe that Maui will have to have a little more than she really needs.

CHAIRMAN: If there is no further discussion, the Chair will put the question.

TAVARES: It seems to me that if we are going to vote for a larger Senate, that may be all right provided we put some curbs upon the type of wasteful expenditures for patronage that legislatures are apt to engage in, and later on I hope that if the 25-member Senate is voted on that the members here will seriously consider some reasonable curbs on the unlimited patronage that has made our sessions so expensive.

A. TRASK: I am in favor of the amendment by the senator from Maui. I feel that it isn't so much the question of economy, it isn't so much a question of dime a dozen, it's a question of the House being the undergraduate, the more representative portion of the legislature, and the Senate being made up of men more mature, more learned, more experienced who can give a deliberative eye, ear and heart and mind to the various problems the territory faces. It's a question of deliberation and it's not a question so much of representation and I am altogether in favor of having the Senate as we all like to think from the historical sense, that it is the group of people composed of mature, deliberative people wise to the ways and experiences of the community life.

CHAIRMAN: Any further discussion on the question?

NIELSEN: I'd like to speak against the amendment because I feel that we need a larger number in the Senate so we can have more committees. Because of the complicated days that we're living in, with only 15 in there, the overstacking on committees means that the various committees cannot meet half often enough. I might call your attention to the fact that the reorganizational act of Congress, they reduced the standing committees in the House—which would be the same as the Senate with us—from 48 to 19, that was after they reduced the number of committee assignments, and what happened. The very first Congress that met after that had to put under these 19 committees, three special committees and 119 subcommittees. So I think that in order -- so that each committee will have men familiar with the work that that committee will be given to do, that we should have a Senate large enough to take care of it.

LARSEN: It seems to me that one thing we have to consider is expense also. We have a chance to try this state for ten years with the same number we've had, a well respected body of few men who are deliberating with a minimum expense. If this doesn't work out, in ten years we can have 25. But, let's not start our state off with a top legislative expense.

CHAIRMAN: Any further discussion?

LEE: I believe that someone should answer the statement made by the delegate from Hawaii concerning the matter of committees. I believe that when a body is increased in size you will find that there will be more committees and when more committees are established, as we found here right in this Convention, members of that particular body have to belong to many more committees, and as a result it increases the work of the particular members of that particular body. It may be all right for one chamber of the legislature to be in that category, but you will find as in this experience we have here that whatever the committee reports out of committee, the matter often times is taken up by the Committee of the Whole and that has been the practice of this Convention. You will note that if the Senate is the size of 15, many of the matters are taken up as the Committee of the Whole. There will be more opportunities to take up matters in the Committee of the Whole where every member of the Senate will be able to give full consideration to any proposal that may be made before the legislature. I merely call that in answer to the remarks from the delegate from the island of Hawaii.

KAWAKAMI: I believe in quality rather than in quantity and so far we have had three senatorial representatives and I hate to have that three diluted by water. Therefore, I believe in 15.

WOOLAWAY: While we're speaking on the subject, I'll speak for the measure. First of all, I'd like to point out that in the year 1900 when the Organic Act came into effect, the population of this territory was 154,000 people. At that time, as we do now, we had 15 senators or a total of one senator to every 10,000 of the population. With a 25 Senate, we would have one senator for every 20,000 or twice that amount. As far as caliber is concerned, it was mentioned to me that Maui would be at a disadvantage to the island of Oahu if we had five senators and not three because we just didn't have the caliber of men on the county of Maui as you have on Oahu. Well, I can hardly swallow that, let alone speaking for the senators now that represent us in the territorial legislature. Secondly, I think a 15 Senate, its voting power would be a little bit too overwhelming against a House of 43 members, say three votes to every one in the House of Representatives; and let me tell you they can really wield their power with that vote. And fourthly, on the cost, it isn't the cost of paying for the services of your senators and representatives that's running this Territory into unnecessary debt, but it's the cost of unnecessary administrative costs, messengers, stenos, clerks and the like that are given jobs for political reasons alone, as was brought up by Delegate Tavares. I think this Territory can stand an increase in the House of Representatives and in the Senate. Furthermore, in sticking to reapportionment that we're all for, I'm not going to vote for any decrease in representation from Maui county or anybody else in this Territory. I'm for the increase of 25.

ASHFORD: In the Federal Congress there is no reapportionment of the Senate except as may occur from the entrance of new states. Just conceive of the immense increase, for example, in the population of California between 1900 and 1950, yet they still have two senators. The reapportionment occurs in response to population in the House, and it seems to me it is very proper that that is what should occur here. The 15 members of the Senate have functioned extremely well and I am for it.

CHAIRMAN: Are you ready for the question? The Chair will put the question that's on the amendment of Delegate Rice, that the number "25" be changed to "15" in the first sentence of Section 2 of Committee Proposal No. 29. All those in favor. Contrary. The noes have it.

DELEGATES: Roll call.

CHAIRMAN: Is there a request for a roll call? Roll call is in order, apparently. The Clerk will call the roll. This is on the amendment.

Ayes, 16. Noes, 46 (Akau, Apoliona, Bryan, Castro, Crockett, Crossley, Doi, Dowson, Fong, Fukushima, Gilliland, Hayes, Holroyde, Ihara, Kam, Kanemaru, Kauhane,

Kawahara, Kellerman, Kido, King, Kometani, Lai, Luiz, Lyman, Mau, Nielsen, Noda, Ohrt, Okino, Phillips, Porteus, Richards, Roberts, Sakai, Sakakihara, Shimamura, Silva, Smith, St. Sure, Tavares, J. Trask, White, Woolaway, Yamamoto, Yamauchi). Absent, 1 (Wist).

CHAIRMAN: The motion is lost.

WIRTZ: I now have the amendment to the first sentence. I had previously had and prepared and printed an amendment to the entire section but I understood the ruling of the Chair was that we're going to take this up sentence by sentence, so I'd like to read the amendment to the first sentence. I move that the first sentence be deleted and in lieu thereof the following sentence inserted:

> The Senate shall be composed of 20 members who shall be elected by the qualified voters of the respective senatorial districts and the lieutenant governor of the state who shall be the presiding officer and who shall have a vote only in case of a tie.

A. TRASK: I second the motion.

WIRTZ: I'd like to speak briefly in support of my amendment. I think it's clear that in the legislative committee deliberations that so long as we moved up in terms of five in the Senate-for each five giving each of the outside islands -- outside counties, one and Oahu two—that the same proportion was maintained. The difficulty with a 20 Senate was the possibility of a tie. That is why the committee went to a 25 Senate to avoid the possibility of a tie. I offered this suggestion in the committee in the interest of economy to keep the number of the Senate down, and I feel that by having the lieutenant governor of the state act as the presiding officer we are following a well established precedent of the United States Senate and likewise of 35 states in the Union. Now I think that this amendment will satisfy all persons who are critical of the present setup of the Senate. It will increase the body to 20 members and by having a lieutenant governor, who, I'd like to point out, is only to be the presiding officer and has no vote except in case of a tie, serves both the criticism that our present Senate is too small and should be expanded and likewise it answers the criticisms of keeping expenses down.

SAKAKIHARA: May I ask the Delegate from Maui a question? This amendment is to have Section 2, line 2 read "20" instead of "25," is that it?

CHAIRMAN: Delegate Sakakihara, will you please address the Chair. The amendment was that the number should be fixed at 20, that the lieutenant governor should be the presiding officer without vote except in case of a tie. Does that answer your question?

SAKAKIHARA: May I ask, Mr. Chairman, the delegate from Maui how he proposes to set up the Senate on the basis of 20 senators, from each senatorial district?

WIRTZ: I'll be glad to answer that question. As I stated, I have this entire proposal, the whole section which would show the breakdown, but I didn't want to get into that for fear of being out of order, but if the Chair will allow me to answer, and I'd partially answered it by pointing out that when you go up in multiples of five the increase is one to each of the outer counties and two for Oahu. So that this would, on a 20 member Senate: Hawaii five; Maui, Molokai, Lanai and Kahoolawe four; Oahu eight; Kauai and Niihau three.

SAKAKIHARA: Thank you.

CHAIRMAN: No further discussion?

MIZUHA: I would like to speak in favor of the amendment. The federal government has recognized the principle of equal representation in the Senate and that has continued over the period of the history of our government and has never been changed. Hawaii, since its inception as a territory of the United States under the Organic Act established a 15 man Senate but did not follow the federal principle but did closely resemble it and gave representation to the outside counties in a sort of proportion which gave them some voice in the Senate. In a republican form of government where the two branches of the legislature has been established, it has always been felt that the Senate should be a small body of men who would represent entire districts, or entire states on a statewide basis to the Congress of the United States; with reference to the various state legislatures to represent the various counties or districts to the state legislature.

Increasing the Senate to the proportion, as originally proposed by the legislative committee, of 25 members will give Hawaii a 25 man Senate and follow the pattern of other state legislatures and the federal government. We have seen throughout the years that the representative body of the state assembly always had about three or four times the number of senators. If we establish a 25 man Senate, then our state legislature -- House of Representatives should, if we follow that pattern of proportion, have at least a minimum of 75 representatives. The history of our legislature here in the Territory of Hawaii has shown that they have spent money in the legislative sessions, sums of money far out of proportion to the population and to the income of the territory as compared to other state legislatures. If we had a 25 man Senate, every senator will have his brother and sister working for the Senate. Every senator will have his brother and sister and uncle and nephew working for the holdover committee of the Senate.

Likewise we have seen the legislative article as set out -- put out by the legislative committee creating a legislative council, and our experience with holdover committees here in the Territory of Hawaii has shown that our legislators are human. Once they are elected to that great body, the legislature of the State of -- the Territory of Hawaii, they carry with them a certain aura of importance. Not only will they exert themselves in legislative sessions to give employment to their relatives and friends and seek to increase the legislative budget, but also they would be breathing down the necks of every department head of this territory morning, noon and night to give their relatives and friends jobs, and if we have a 25 man Senate, every department head once a day will have a call from a senator to tell him that he must give somebody a job.

And if we are to look at the facts closely, if we cannot have the 15 man Senate as it was voted down previously, then a 20 man Senate would give us just a slight increase and will avoid the tremendous expense that our legislative sessions will have to face because of the increased salaries that have been proposed by the legislative article, fifteen hundred dollars a session and then a thousand dollars for the budget session. It must be remembered that they will meet annually. Now, under this article certainly the costs of the legislature would be double or triple, depending upon the number of people representing the various counties, and I am in favor of this amendment because it tends to bring economy to government and have the legislative body a deliberative body instead of a body seeking to seek jobs for their friends and relatives.

SMITH: I am speaking opposing the amendment for this reason; that I fully appreciate the work of the committee in

their deliberations; that they felt that the Organic Act was ineffective as far as reapportionment was concerned; that these arguments that will come up against their proposal, I believe that they did come up in the committee and were discussed, probably very thoroughly, more thoroughly than we can possibly take time in one or just two days discussing it. Therefore, I really oppose this amendment.

ROBERTS: I am generally in favor of a little larger Senate, in part because it makes it more representative of the community and doesn't permit it to operate like a private club. I think we ought to get adequate representation from the islands and I believe the previous method did provide representation. I think that the increase in number whether it be five or ten has some bearing, not in terms of how much it's going to cost for the salary of the senator, but what it's going to mean in terms of the total budget. Those who have followed the budget of the Territory in terms of the expenditures of funds not for the salary of the individual nor for his travel expense, but for additional expense in connection with the operation of the legislature, makes it quite clear that the costs are extremely high. Let me just give you the figures for the year 1949. The total legislative costs excluding members' salaries and travel - -

CHAIRMAN: Delegate Roberts, has that been printed and placed on the desk? Is that the same document that has been printed and circulated?

ROBERTS: No, it is not. That figure shows a total legislative costs of $472,000 and that is exclusive of the salaries of the members of the House and the Senate and the travel expenses. Now that $472,000 is 63 per cent of employee cost to the total costs; in other words, the other cost amount to only approximately 37 per cent. Now when you increase the size of your Senate and of your House, you are going to have proportionate increases in cost, and it would seem to me that we ought to try and keep the cost at some reasonable level; but at the same time consistent with getting as broad representation as possible, to permit the Senate to operate as a deliberative body properly representing the entire community. I think the amendment offered by the delegate from Maui is a reasonable one; it provides for increase to 20 and has the additional advantage of providing that the lieutenant governor of the state is to be presiding officer of the Senate which provides some work for the lieutenant governor and also brings a person in to keep deliberative operation and permits an operating Senate of 20 which is generally broader. I, therefore, would like to speak in support of the amendment and I urge that it be adopted.

CHAIRMAN: Delegate Lee, your microphone is not working, I don't believe. Still not working.

LEE: I would like to speak in support of the amendment proposed by the honorable delegate from Maui. If I may point out that the subcommittee of the Statehood Commission had recommended a House of 41 members of the lower house and 21 members of the Senate. So that the point raised by Delegate Smith concerning the deliberations by the committee of the Convention must also be weighed in line with the recommendations made by the committee from the Statehood Commission.

Your chairman of the Legislative Committee has given considerable time both prior to the Convention as well as during the Convention concerning the membership of both the House and the Senate and it is in line, it seems to me, with the matter of costs. If as Delegate Roberts has pointed out, the costs of the budget for the legislature in the '49 session, excluding salaries, is $472,000, we may safely say . . . [Part of speech not on tape.]

The 1949 session is closely set out to be about $500,000 or near $600,000. Actually a 51, because if you adopt a 25 member Senate you will amost be bound to vote for a 51 House. Instead of 45 members of the legislature you will have 76 members of the legislature and your legislative budget will be at least a million dollars for the regular session, then plus the annual session which might be anywhere near $500,000 and $600,000. The cost is out of line, and it seems to me when we become a state we will not have the aid of the federal government in paying the salaries of your legislators. Your legislators are, under the present territorial setup, are paid by the federal government. Now your taxpayers, the people whom you represent, will have to dig out of their pockets for this type of representation.

It seems to me that the proposal offered by Delegate Wirtz comes near in answering to all of the criticisms possibly of a smaller size Senate. If we are to have a 25 member Senate, it seems to me you will do away with the principle that the Senate should be a deliberative body because in my experience in serving in both the House and the Senate, in my experience in the House, there is a tendency of steam rolling because if debate were unlimited, as there is in the Senate, it would be very difficult to have legislation proceed in an expeditious manner, as we can well appreciate in this Convention. If debate were unlimited here and the matter of sixty days were to be invoked, we would never get through.

Therefore I believe that those who will support the amendment will be supporting a lower sized House, and those who will be supporting a 25 member Senate will be supporting a 51 member House. With the annual sessions plus the legislative council which is being proposed by a majority of the committee, we would be imposing a great burden upon the people whom we represent. The cry has been that we are being taxed to death. Now certainly we are encouraging that taxation without improving, it seems to me, the legislative process.

YAMAMOTO: Can I ask a question? Are we presupposing that our legislature for the new State of Hawaii will meet annually?

CHAIRMAN: Will the chairman of the Legislative Committee answer that question?

HEEN: That's correct; it is proposed in the article on legislative powers and functions that there are to be annual sessions, one to be known as the budget session and the other to be known as general session.

A. TRASK: I'm voting for the amendment because I think the taxpayers ought to have a break.

MAU: I am wondering whether the reduction of the Senate from 25 to 20 will increase the cost to a million dollars. I believe that that discussion should apply to the original motion made by the delegate from Maui who proposed a Senate of 15, so that it becomes a matter of degree. However, I don't believe that any one sitting in this Convention is disposed to disagree with what has been said insofar as the tax monies are concerned. But I am wondering whether or not in the past legislative sessions, if economy had been practiced, and I believe it could have been practiced, that the amount of money expended for the general sessions of '43, '45, '47, '49 could not have been cut down. I don't see any reason why even though you do have a Senate of 25 and a House of 51 that it need cost us a million dollars to run the legislative sessions. I believe that if the people are conscious of the fact that the legislative sessions are costing so much money that public opinion will restrain their hand on the public purse.

KELLERMAN: I'd like to speak in favor of the motion. I think we have one more factor to consider in addition to the fact that even this increase is an increase in one-third of the body proposed. The increase in one-third doesn't mean just salaries and it doesn't mean just clerks, it also means room for the members to meet, a room adequate for their sessions, adequate for the public and adequate for committees. I believe most of those who are in favor or contemplating favorably a 25 Senate are also the group favoring a 51 House.

I think, it may seem a short view, but it seems to me we're not writing a Constitution to which we are bound forever. If we feel that a 21 Senate or a 20 Senate with the lieutenant governor as the twenty-first member eventually does not prove to be adequately representative, we can amend the Constitution. In the interim period, we are making an increase of 33-1/3 per cent, and we would be increasing the body to a number that could be housed in our present facilities. If we go to a 25 Senate, which is I feel sure carries in its train a 51 House, we are going to find immediately upon our doorstep the necessity for a new capital building. A new capitol building is an outstanding edifice of any state government. It will mean millions of expenditure to provide the necessary facilities to accommodate a Senate and an increased House on that proportion; millions which at this time we can not afford to spend for such a purpose. And in view of the fact that we are not forever bound to the smaller Senate or smaller House if we do not consider that it works justifiably and adequately in representation, I feel that now of all times, we should limit this to what is still a considerable increase, a 33-1/3 per cent increase in the Senate.

The one more point about the lieutenant governor. It was brought up in committee and discussed at some length, that if the lieutenant governor is given the duty of sitting in the Senate he will be taken away from his necessary duties as lieutenant governor. As of that time we had not adopted an administrative director, or administrative assistant or administrator, whatever the term, to the chief executive. It seems to me that a lieutenant governor would have a very valuable education and ample opportunity to work as the governor's representative in the Senate, to work with the legislature, to be the go-between between the executive and the legislative process as we have in the Senate of the United States. I think it would be highly valuable as part of our cooperation of our two branches, executive and legislative branches of government, to have the lieutenant governor serve as president of the Senate. For those reasons I am in favor of the small Senate of 20 and of the lieutenant governor as the presiding officer.

SMITH: It just came to my attention that believing in distribution of powers—that there should be three branches of government. Here we would be having an instance where the executive branch will be an arbitrator in case of ties in the legislature. I am rather dubious on that, very much so.

CHAIRMAN: That is the same system that prevails in the Federal Constitution.

H. RICE: You have your memorandum of the cost of the legislature. Just for the record, in the Senate of 1919 I was chairman of the Committee of Accounts. We had $25,000 and I returned $4,000 to the Territory. We operated on $21,000. But here I'm surprised that these men in that industry wanting to build up, tied up your legislature; they're always saying, "Why don't you put your government on a business basis?" and here they get away from it. You're going wild in putting up your legislature to that amount; you don't take on ten men when one man or two men will do; you keep them down.

MIZUHA: The question was raised, how can an increase of five senators increase the cost of the legislative sessions a million dollars? It isn't only the cost of the legislative session that is concerned. Five more senators in the Senate of the State of Hawaii will have five more senators clamoring for their pet projects in Hookena and Kapalama and every place else and we'll get a library in every village and hamlet worth hundreds of thousands of dollars, and the final result will be an appropriation budget that we'll never be able to fund by our own income.

KING: I had not intended to speak on this subject but I don't think that those who have been arguing about the expense should be allowed to get away with a lot of information which is inaccurate. The argument as to the pending amendment is between 20 and 25 senators and the costs that have been put up defending the smaller number have to be taken into consideration with the period in which those costs were involved. We know that the dollar has shrunk in buying power tremendously in the last 30, 40 or 50 years. We know also that the population of Hawaii has increased tremendously. We know also that the annual budget has increased tremendously. Delegate Sakakihara has prepared a statement which was submitted to the Committee on Legislative Powers and Functions and was incorporated in the minutes of that committee's deliberations, showing that the per capita cost of the legislature is less today than it was 20 years ago and that the ratio of the cost of the legislature to the annual appropriation is less today than it was 20 years ago. That information should be offered to the members of this delegation so they will realize that this talk about the low cost in 1919 has no bearing whatsoever in the year 1950. I am opposed to the amendment.

CHAIRMAN: Delegate Kage, did you want to speak?

KAGE: I am in favor of the amendment. I am not a politician and I have never been one and I don't know whether I'll be one or not, so naturally my observation will be very, very simple. By and large, the larger the number the lesser the quality, by and large. Second, the larger the number the less the compensation, the less the compensation the bigger the chances of graft. The larger the number the less the attracting power. I am not worrying about the cost of the government. I think democracy is a very expensive form of government, but if we have a million dollars to spend why divide it among 75 people when you can divide it among 50 people? There is a question that I would like to ask of the chairman of the Legislative Committee. What is the minimum number of senators required to legislate for the State?

CHAIRMAN: Does the chairman care to answer that question?

HEEN: I don't exactly know what the purport of the question is. You mean for the proposed State of Hawaii?

KAGE: Yes. As I read your report it says here that 15 members was too small and that's the only reason that you give in your report that it should be increased to 25.

HEEN: That's the report of the majority of that committee. The minority of the committee proposed first a 20 member Senate—that was an amendment that was proposed by Delegate Wirtz of Maui—but that failed to carry. Then there was a proposal made to have the Senate consist of 21 members and that was voted down by a majority of the committee.

Personally speaking I think that the Senate can operate with either 20 members, the lieutenant governor serving as the 21st member without a vote except in the case of a tie, or with 21 members.

CHAIRMAN: Does that answer your question, Delegate Kage?

KAGE: The question that I'm trying to raise here is, what is wrong with the 15 members we have today?

CHAIRMAN: What was that question? Please address the Chair.

KAGE: The question that I wanted to be answered was, "What is wrong with the 15 members we have today?"

CHAIRMAN: That's the question before the body for debate. Are you ready for the question? Is there any further discussion?

DOWSON: I have here some figures as to the economy practiced in the Senate in 1949. They had appropriated to run the Senate about $225,000. After the regular session they returned $16,706.97. In the special session they had $75,000 to use and they returned $7,208.10.

AKAU: I just want to say a word against the amendment. We have heard the questions brought up about will there be no room, it will cost a great deal of money and that we don't have the kind of people or where will we get them, they'll be a dime a dozen. I'd just like to say, Hawaii has been in existence voting for people at least since it has been a territory since 1900. The people of the community, the people of the islands and the legislature have found ways and means of doing things they wish to do. This is another challenge, another opportunity for them to rise to the occasion just as well as they have done over a period of years. We can stand 25 people in the Senate. I am sure we can do it because we have all the capable people here who will find the ways and means.

ARASHIRO: The problem that I'm concerned about is not the question of how many senators, it's how many senators that we can afford to have in this state government of ours. I am for a smaller number because I want to see that the senators and representatives of the legislature be paid a sufficient amount of money. How many of you feel that $2,500 is enough to make a legislator be independent and not dependent upon some other source of income? He should be independent so he can act independently. But any time that we increase our legislature means that we cannot afford to pay our legislators sufficient amount of money and thereby making that legislator dependent on other source of income, whereby he will not be independent in his action and decision. That is the reason why I am for a lower number of legislators though I am interested in having more representation from all the districts and to preserve the democratic form of government. But yet I am concerned about the cost because I know that we cannot afford to pay a tremendous and exorbitant amount of money, and I still want to say that the legislator be paid sufficient amount of money so he won't be dependent upon some other source of income.

AKAU: Point of personal privilege. Mr. Chairman, point of personal privilege.

CHAIRMAN: State your point.

AKAU: I just want to say by the way, that Mr. Trask is now carrying out his promise regarding the ilima leis. He has now given each of the women delegates a beautiful lei for which we thank him very cordially.

SAKAKIHARA: So much has been said here in connection with the increase of the legislative branch of government. If the present membership of 15 senators should be increased to 25, I wish to call attention of the members of the Committee of the Whole [to] a fair comparison of the two branches of the government, namely, the legislature and the judicial. In 1949 the population of the Territory of Hawaii was approximately 493,348. The legislature in that session made a total appropriation of $71,709,698. Legislative expenses appropriated was $500,000. On a percentage basis, the percentage of the total appropriation amounts to 0.7 per cent and per capita $1.01. For the judicial, the legislature appropriated $1,857,652; percentage of total appropriation, 2.6 per cent to the legislative percentage of 0.7 per cent; per capita, $3.76. Now I have given this comparison to show how much it costs to run your judiciary, one branch of the government, to the legislative branch of the government.

ASHFORD: May I ask the foregoing speaker a question?

CHAIRMAN: State your question, Delegate Ashford.

ASHFORD: I would like to know if a large part of that increase in cost to the Territory was not due to the fact that the Territory took over the courts which had formally been supported by the county.

CHAIRMAN: Will you answer that, Delegate Sakakihara?

SAKAKIHARA: That is true. When the Territory took over the circuit courts, it became the obligation of the Territory rather than the county. But that fact nevertheless remains, this is one branch of the government, namely, the judiciary.

CHAIRMAN: Is there any further discussion? If not -- Delegate Rice.

C. RICE: I sent in a request to the director of the Bureau of Research, I wanted to find out these costs. We had 15 senators and 30 representatives in 1919 and we had the same number in 1949, but the costs went up tremendously. President King said before the session, "If we didn't have much money, we couldn't have any gravy trains." That's right. But it seems that all legislative bodies have "gravy trains." We're getting experts as we go along in government, and I just wanted to show the cost to the people. Maybe they can show that the cost is justified, but it's there. You can't have so much money for kindergartens if you spend it on the legislature. We're going to try to live within our budget and if we spend too much on the legislature, somebody else will have to suffer. Maybe you can run a 25 Senate as cheap as a 20; maybe you can, but one thing was pointed out, we had to move here because we have a 63 Convention. To have a 53 House, you'll have to build a new building. We are invited to go and see a million dollar building today. They'll have to have a two million dollar building for the next legislature if we increase it too much. I'm just thinking a little, that we are facing a little hard times now and we ought to cut down.

CHAIRMAN: The Chair will put the question. The question is on the motion of Delegate Wirtz.

DELEGATES: Roll call.

CHAIRMAN: Roll call demanded? And that is, the Senate should be 20 with the lieutenant governor as the presiding officer with no vote except in case of a tie, an amendment to the first sentence of Section 2 of Committee Proposal No. 29.

NIELSEN: Point of information. That would mean that the Senate would not elect their own speaker or the president of the Senate.

CHAIRMAN: That is correct. Do you want to answer that, Delegate Wirtz?

WIRTZ: That's been answered. I didn't know whether you wished me to read the exact words of the amendment. You stated it substantially.

CHAIRMAN: Would the body like to have the exact language read or do you have the substance already? The Clerk will please call the roll.

LARSEN: Mr. Chairman, while we're waiting for the vote, could I call attention to how little the tremendous argumentation has made any difference in the vote? I would like to suggest, and all of us have listened in on this committee - -

DELEGATE: Point of order, Mr. Chairman. I'm afraid he is out of order.

CHAIRMAN: I think that is correct. There's nothing before the house at the present time, Delegate Larsen.

LARSEN: I asked for permission, didn't I?

CHAIRMAN: You are recognized, Delegate Larsen.

LARSEN: May I continue? I'm merely asking for this deliberative body to recognize this, and it will save an awful lot of time because we've all talked to members and we've all sat in.

Ayes, 20. Noes, 43 (Akau, Apoliona, Bryan, Castro, Cockett, Crossley, Doi, Dowson, Fong, Fukushima, Gilliland, Hayes, Holroyde, Ihara, Kam, Kauhane, Kawahara, Kido, Kometani, King, Lai, Luiz, Lyman, Mau, Nielsen, Noda, Ohrt, Okino, Porteus, Richards, Sakai, Sakakihara, Shimamura, Silva, Smith, St. Sure, Tavares, J. Trask, White, Wist, Woolaway, Yamamoto, Yamauchi). Not voting, 0.

CHAIRMAN: The amendment is lost.

SERIZAWA: I would like to submit an amendment to the first sentence to read that: The Senate shall be composed of 16 members with the lieutenant governor sitting in as the president of the Senate without a vote except in the case of a tie and that the representation from each island shall be in equal numbers of four.

CHAIRMAN: Is there a second to that motion?

MIZUHA: I second the motion.

CHAIRMAN: Any discussion? All in favor of the motion - - Have you heard the motion? All in favor signify by saying "aye." Contrary "no." The motion is lost.

ARASHIRO: I wish to make an amendment making the Senate 21 members instead of 25.

MIZUHA: I second the motion.

CHAIRMAN: It has already been acted upon, I think.

ARASHIRO: Twenty-one.

CHAIRMAN: Is there a second to that?

ARASHIRO: The reason for my 21 is this, that I think there has been a tremendous discussion that has taken place in the committee - -

WOOLAWAY: Point of order. Is that seconded?

CHAIRMAN: That was seconded by Delegate Mizuha.

ARASHIRO: And then there is a statement here submitted by the delegate from the Big Island which reads in the first paragraph: "There are more than a dozen theories of apportionment. To name a few, rejected fractions, included fractions, Vinton method, geometric fractions, harmonic fractions, inverse range, inverse minimum range, smallest divisors, greatest divisors and the method of equal proportion," and so forth.

We are not considering this thing, but the amendment that I had offered is based on a compromise, a compromise which I think will be acceptable to the Big Island, will be acceptable to Oahu, and also to the rest of the islands which will have some tie with the apportionment of the House. Now, under this setup, Oahu will have two senators increase and the Big Island will have an increase of two senators. Maui will have an increase of one and Kauai one. That will make Hawaii six, Maui four, Oahu eight and Kauai three. And under this base I think it is acceptable to all the islands because Hawaii will probably not get too much increase in the House but will get two senators instead of one because of the increase in population. Oahu will get two senators because of the tremendous increase in population, and I think they should be satisfied with two because they are getting so much increase in the House of Representatives as has been proposed. So I feel that under this 21 base it will be acceptable if you are anticipating on the reapportionment of the House as has been proposed by the committee.

FUKUSHIMA: With all these numbers flying around, I'd like to ask the movant of the last amendment whether we are in a Constitutional Convention or in a bingo game.

CHAIRMAN: I think the point is well taken. Will the delegates take their seats.

DELEGATE: Question.

CHAIRMAN: All those in favor of the motion of Delegate Arashiro that the Senate be composed of 21 members signify by saying "aye." Contrary. The motion is lost.

The question is now on the first sentence of Section 2 of Committee Proposal No. 29.

HEEN: As I understand it, whatever action is taken upon that particular sentence it will be tentative.

CHAIRMAN: That's the understanding of the Chair.

HEEN: I would like to have that definitely understood because during these proceedings Delegate Lee and myself will file a minority report for a 21 membership in the Senate, but apportioned not along the line as stated by Delegate Arashiro, but apportioned five to Hawaii, four to Maui, nine to Oahu, and three to Kauai.

NIELSEN: Point of information. Now we are voting on the first paragraph I believe, not just the first sentence of that first paragraph?

CHAIRMAN: First sentence was the motion, the Chair's recollection.

NIELSEN: The first sentence is just senatorial districts.

CHAIRMAN: No, that's just description. The first sentence reads, "The Senate shall be composed of 25 members, who shall be elected by the qualified voters of the respective senatorial districts."

Are you ready for the question? All those in favor signify by saying "aye." Contrary. The ayes have it.

There is nothing before the body at the present time. Someone should move for the adoption of the remainder of the section.

KING: It will be proper for the committee to make in a form of motion that the second sentence be tentatively approved.

SAKAKIHARA: I think that any member of the Committee of the Whole can make such a motion. I move that we tentatively approve the remaing portion of Section 2.

BRYAN: I second the motion.

CHAIRMAN: The Chair didn't get your motion. Will you repeat it?

SAKAKIHARA: I move that the remaining portion of Section 2 be approved tentatively.

BRYAN: I'll second that motion.

CHAIRMAN: What do you mean by the remaining portion? The entire Section 2?

SAKAKIHARA: The entire Section 2.

CHAIRMAN: Is there a second to that motion?

BRYAN: I seconded that motion.

CHAIRMAN: It has been moved and seconded that the entire Section 2 be tentatively approved.

NIELSEN: I have an amendment. It's on the desks of all the delegates and that is to -- at the top of page two, Committee Proposal No. 29, change as follows: The first senatorial district, East Hawaii, Island of Hawaii, five; second senatorial district, West Hawaii, Island of Hawaii, two; and then renumber the other paragraphs so that instead of two, three, four, five, they will be three, four, five, six. I so move.

DELEGATE: I second the motion.

CHAIRMAN: It has been moved and seconded that the remaining language in Section 2 be amended in accordance with the amendment proposed by Delegate Nielsen, which is on the desks of the members. Are you ready for the question? Is there any discussion?

NIELSEN: May I speak on the --

CHAIRMAN: You may. Proceed.

NIELSEN: The reason for that is: undoubtedly we're going to have a 51 member House and with the 51 member House, Oahu gets an increase of 21 and on our island we remain the same eight that we have been for 20 or 30 years, but West Hawaii loses two. We only get 50 per cent of what we've had all this time. We only have two representatives, and East Hawaii will have six so in fairness to West Hawaii and the fact that if we're going on an area basis we should be entitled to really four out of the seven on our island in a 25 member Senate. However, I realize that is asking a whole lot more than we could get, so I'd like to see West Hawaii have two and East Hawaii five of the seven senators that will be assigned to this island.

Now the reason as stated for splitting Oahu is the fact that it will cut down the cost of campaigning and that is an expensive proposition. But I want to point to the fact that to cover West Hawaii—which has 2,234 square miles—but just to follow the road when you go out campaigning, you travel 384 miles. I imagine in the fourth district on Oahu, with only 78 miles against our 2,234 square miles, that they probably travel around 30 or 35.

Now if this is not put into effect, West Hawaii will have only two representatives and the senators being elected at large will, practically all of them, except when you have an outstanding man like Senator Silva, why, East Hawaii will elect all the seven senators. So in fairness to West Hawaii, I would like to see the delegates here kokua me on this amendment to kind of take care of the fact that we lose 50 per cent of our representation.

KAWAHARA: In looking over the report of the Legislative Committee, I see that somewhere along the line, the committee has agreed, at least in part, on the idea that the Senate shall be based on geographical representation and the House on the basis of population. I think if we're going to follow that principle, at least right close to the heart of the matter, I think perhaps when we consider the island of Hawaii, we should likewise follow that principle. For that reason, I believe that rather than setting the number of senators at five and two, if Oahu is to be divided between the third senatorial district and the fourth senatorial district, likewise the island of Hawaii, with its large area, likewise Hawaii should be divided into two senatorial districts.

However, in the division of the two senatorial districts, in the division of Hawaii, I believe in the Senate there should be more or less equal representation between the two districts. In the report of the Legislative Committee, there is already a proposal that East Hawaii shall get six members in the House and West Hawaii, two. Granted that this will be possibly considered seriously, I believe that in the Senate some guarantee should be given to West Hawaii which comprises a greater area of land than East Hawaii does. Some guarantee should be given that it be represented in the state legislature. For that reason I propose to amend the amendment as presented by the delegate from West Hawaii, so that the amendment would read: "First senatorial district, East Hawaii, island of Hawaii, four senators; second senatorial district, West Hawaii, island of Hawaii, three senators."

CHAIRMAN: Unless that's accepted by the proponent, the Chair will have to rule it's out of order at this time. Is that accepted by Delegate Nielsen?

SILVA: Speaking in opposition to the amendment of giving West Hawaii two senators, I am firmly of the conviction that the people of Hawaii will have more to lose than to gain. I have been elected from West Hawaii for the last four terms as senator from that area with the help of East Hawaii, and in no time in the history of the territory has that district, West Hawaii, gone without representation in the territorial Senate, with no law. Previously we've had two senators from West Hawaii, and with four we've had one. Surely with seven, there'll be times when we'll probably have three and East Hawaii with four. Sometime there will be times when we'll have one. But the point remains that for the interest of the people of Hawaii you will find that if they do run at large that the bargaining powers of the both districts are much stronger than having them divided.

Now I want to say this. In principle I do not believe in dividing the Senate by districts and I say this because I know that West Hawaii will stand more to lose than to gain. Senators shouldn't represent just a specific district, they should represent the counties which they represent. I am of the strong conviction that we should elect our senators at large throughout the territory rather than by districts. And I see no reason why West Hawaii -- There has been an argument, they say, "Well, maybe you're afraid Nielsen will beat you in West Hawaii." Well, hasn't that fact been proven already during the last election to this Convention? Who led the ticket in West Hawaii? I did. I don't want any credit for that but I want to point that out that is no argument.

The point that I'm trying to sell is that the people themselves will have more to lose by dividing their senatorial districts rather than by letting them run at large.

LEE: Mr. Chairman, will the speaker yield to a question?

CHAIRMAN: Delegate Lee is recognized.

LEE: Delegate Silva, is it your conviction that the idea that the senators should be elected from the entire island? All senators?

SILVA: I thought I made myself plain on that question.

LEE: Yes, I believe you did. And your answer would be that they should run from the entire island, is that correct?

SILVA: I just said that.

LEE: And the theory being that those senators would have a broader picture of the entire island while the representatives would be running from their respective districts.

SILVA: Whatever I say will be repetitious.

CHAIRMAN: Delegate Silva, if you've got anything to say, will you address the Chair, please.

SILVA: Mr. Chairman, whatever I say would be repetitious in answering those questions.

CHAIRMAN: Does that answer your question, Delegate Lee?

LEE: I believe my question answered itself.

MAU: I think we all know that in the territorial Senate in the past 16 years, the honorable delegate from West Hawaii, who last answered the question, is one of the youngest men in the Senate. By his argument, when he says that West Hawaii has not suffered in the past, I think it is because of his able representation of that section of the island in the territorial Senate for the past 16 years, but he presupposes that he will continue to remain as young as he is. I do hope he is in good health; I hope that he will live forever and ever and that he will be a senator forever and ever; then West Hawaii probably will never suffer. However, we are writing a constitution; it will last for many, many years beyond the lives of most of us and it seems to me that the amendment is one of the fairest proposals put before this Convention. It seems logical that a huge island like the island of Hawaii should be divided in two. If the proposed amendment, or rather the amendment to the first paragraph on page two of Proposal 29, contains the same number of representation in the Senate for that island so that the island will not suffer nor will West Hawaii suffer, I believe that the amendment should pass.

HAYES: I don't feel that West Hawaii will lose its representation if this amendment went through. I feel that she would be well represented because according to the amendment it would be two senatorial districts, East Hawaii, island of Hawaii, five; second senatorial district West Hawaii, island of Hawaii, two. Now when you have two senators running for the division of East and West Hawaii, I feel that West Hawaii deserves two senators.

A. TRASK: I am in favor of the amendment and I am in favor for this reason. The cost of campaigning was the moving consideration which will seek to divide Oahu into the third and the fourth senatorial districts. So how we vote on this question will also reflect itself on whether or not Oahu, which is now the third senatorial district, will be divided into the third and fourth senatorial districts. I am in favor of the amendment because of making or having the man with not enough money but with some talent to get an equal opportunity to get into this tough senatorial race which costs just absolutely plainly too much money. This business of campaigning on Oahu itself is so expensive that the ordinary fellow with an ordinary job just cannot and should not run in fairness to himself and to his family. And on the plain consideration of economy I am in favor of the amendment.

CHAIRMAN: Question is on the amendment proposed by Delegate Nielsen. Are you ready for the question?

SAKAKIHARA: May I make a statement here as to the standing of the Hawaii delegation on this amendment. The Hawaii delegation stands ten to two against the amendment.

YAMAMOTO: I'd like to say a few words in favor of this amendment. I come from the center of Hilo and I firmly believe that at all times there should be a representation from West Hawaii. The Constitution for the State of Hawaii that we the 63 delegates are drawing up now to be ratified by the people, the voters of Hawaii, will be the pattern of our government for many decades to come. The Constitution must incorporate the broad philosophy of government which will be the future guide for the legislature and the courts. In view of the fact that we have seven senators from Hawaii, and in view of the fact that we have able delegates and Senator Silva, in the future we might not have a representation from West Hawaii. I therefore maintain that we must follow the pattern of the government of the United States. No matter how small the minority is, we must have representation in our legislature. So I therefore ask each and every delegate here to favor the amendment.

LEE: I heard Delegate Sakakihara, I believe, make an announcement as to the standing of the Hawaii delegation. I didn't quite - -

CHAIRMAN: The Chair understood him to say that the - -

SAKAKIHARA: I would like to make a correction at this time for the information of the delegate from the fourth district.

CHAIRMAN: You may.

SAKAKIHARA: Nine to three.

CHAIRMAN: Nine to three. Will the delegate state that again, Delegate Sakakihara?

SAKAKIHARA: Nine to three against the amendment.

LEE: Mr. Chairman, I have the floor.

CHAIRMAN: Delegate Lee has the floor.

LEE: Will the delegate also yield to a question? Did your delegation - -

CHAIRMAN: Will you please address the Chair?

LEE: I addressed the Chair, Mr. Chairman. Will the delegate yield to another question?

CHAIRMAN: You have the floor, Delegate Lee, no question of anybody yielding.

LEE: Well, to a question, Your Honor, Mr. Chairman. What is the vote of your delegation as to the division of Oahu into senatorial districts, third and fourth?

A. TRASK: Mr. Chairman, this is not germane to the question. I think it is out of order.

LEE: I believe it is germane, Your Honor. The discussion is on the entire remainder of Section 2.

A. TRASK: I ask for a ruling from the Chair on this matter.

LEE: It is a discussion on the entire remainder of Section 2.

CHAIRMAN: You want to ask a question of Delegate Sakakihara?

LEE: That is correct.

CHAIRMAN: What is your question? Address the Chair, please.

LEE: My question is how does the Hawaii delegation stand then in the division of Oahu into two senatorial districts?

CHAIRMAN: Just a minute.

DELEGATE: Point of order --

A. TRASK: Mr. Chairman, the speaker is seeking to get a poll on an anticipated vote on the floor. I think it's out of order.

CHAIRMAN: The Chair will rule it is out of order. We are voting on the division of Hawaii.

NIELSEN: I want to say that the delegation is split on this. Naturally, with most of the delegates being elected from East Hawaii, there are only a very few of them that will go for this amendment, but I still say it's fair and that I'd like you to call for the question.

DELEGATE: Point of order.

CHAIRMAN: The Chair will recognize Delegate Ihara. He rose first.

IHARA: I don't want to give you delegates here the idea that perhaps there is some dissension among the delegation from Hawaii, but I would like to say this, that we are not in line with the opinion expressed by our Delegate Sakakihara. Not all of them, anyway.

HOLROYDE: I'd like to state that if I voted for this amendment, I would also have to vote for Koolau as a separate senatorial district. It's been unrepresented in the past in the Senate and has 6,200 voters, which exceeds the number from Kona.

CHAIRMAN: Is there further discussion or are you ready for the question?

DELEGATES: Roll call.

CHAIRMAN: Roll call demanded? The Clerk will call the roll.

Ayes, 29. Noes, 33 (Apoliona, Arashiro, Bryan, Crossley, Doi, Fong, Gilliland, Heen, Holroyde, Kawakami, Larsen, Lee, Loper, Luiz, Lyman, Mizuha, Ohrt, Okino, Porteus, H. Rice, Richards, Roberts, Sakakihara, Serizawa, Silva, Smith, St. Sure, Tavares, Wirtz, Woolaway, Yamauchi, King, Anthony). Not Voting, 1 (Wist).

HEEN: Mr. Chairman, may I ask what Delegate Arashiro's vote was?

CLERK: "No."

CHAIRMAN: The motion has lost.

HEEN: I now move that the committee rise and report progress and ask leave to sit again. When that occurs I would like to submit a minority report so that it can get into the hands of the printing committee to be printed.

CHAIRMAN: Is there a second?

WOOLAWAY: I'll second that motion.

CHAIRMAN: All those in favor signify by saying "aye." Contrary. Carried.

CROSSLEY: Couldn't we just recess till 1:30?

HEEN: No, I would like to offer the minority report, as it should be in the regular session.

KING: Mr. Chairman, does the chairman of the committee desire to offer a minority report? He's already signed a majority report and not concurred. Isn't that sufficient or is the minority report to be filed in addition?

CHAIRMAN: Mr. President, the vote was on the motion to rise and report progress and that motion carried.

Afternoon Session

MIZUHA: What is the order of business at this time?

CHAIRMAN: At the close of the last meeting in the Committee of the Whole we had just taken a vote on the amendment to Section 2, which was lost. As the Chair understands it, Section 2 was tentatively adopted.

MAU: We have before us Section 2.

CHAIRMAN: Section 2 is before the committee at the present time.

MAU: At this time I would like to offer an amendment to Section 2 by amending the third and fourth paragraphs of Section 2 of Committee Proposal 29, appearing on page two to read as follows:

> Third senatorial district: that portion of the island of Oahu, lying east and south of Nuuanu Street and a line drawn in extension thereof from the Nuuanu Pali to Mokapu Point, five;
>
> _____ senatorial district: (It will be either the fourth or fifth, depending on what the amendments are) that portion of the island of Oahu, lying west and north of the third senatorial district, five.

This language, Mr. Chairman --

KAM: Mr. Chairman, second that motion.

CHAIRMAN: Has that been printed, Delegate Mau?

MAU: I beg your pardon?

CHAIRMAN: Has that amendment been printed?

MAU: It has been printed and circulated.

CHAIRMAN: Placed on the desks of the delegates?

MAU: Placed on the desks of the delegates.

This language, Mr. Chairman, appears in the Organic Act. I have changed the designation in the Organic Act which covers the fourth representative district to the third senatorial district. It is my belief, Mr. Chairman, that the geographical division which has existed since the inception of the Organic Act and under which we have elected our members of the legislature from this island should be continued. It would eliminate the inclusion of Kailua and Waimanalo from the fifth district. The proposal before this body places these two districts into the fifth district, and it seems to me that we should continue what has been the geographical designation and representative districts for the past fifty years or so in the State of Hawaii. There is no good reason for gerrymandering this island by including Waimanalo and Kailua in the fifth district. It properly remains part of the fourth district.

Of course, the argument would be raised that in the Constitutional Convention election, Kailua and Waimanalo were included in the fifth district. I thought that that was wrong. As a matter of fact, I presented that argument to the attorney of the Territories Division of the Interior Department and explained the situation to him, and he agreed that that should not have been done, that that plainly looked like gerrymandering, that they picked a section, a slim slice of the northern section of the island and made it a representative district. Of course, the reason why nothing was done with the present H. R. 49 in the designation of districts for the constitutional election was that the Interior Department was afraid to jeopardize the statehood bill. They thought it was best to leave it alone, but they did not agree that that

was a fair designation on this island of representative districts. And for that reason, I submit that this amendment should carry, that these two sections of the island, Kailua and Waimanalo, should belong in the fourth -- present fourth district and that is what the amendment attempts to accomplish.

HOLROYDE: As a member of the committee as well as an elected representative of that district, as far as the committee considerations were concerned, it was a much more equitable division as far as the total voting population was concerned. As far as the people of that district are concerned, one of their major ambitions and desires is to have a representative district of Koolau. They feel that they do not have very much in common with the City of Honolulu as such. They feel that it is a rural district and part of the rural part of Oahu, and they want to be a representative district, and they'd actually like to be a senatorial district too, as Koolau. So I hope that you will see fit to vote down this amendment.

CHAIRMAN: No further discussion? Are you ready for the question? All those in favor of the amendment proposed by Delegate Mau signify by saying "aye." Contrary. The Chair's in doubt.

DELEGATES: Roll call.

CHAIRMAN: Call for a rising vote. Madam Clerk, will you call the roll, please.

Ayes, 31. Noes, 30 (Apoliona, Bryan, Cockett, Crossley, Dowson, Fong, Gilliland, Hayes, Holroyde, Kellerman, King, Lai, Larsen, Loper, Lyman, Ohrt, Okino, Porteus, Richards, Sakai, Sakakihara, Silva, Smith, St. Sure, Tavares, J. Trask, White, Wist, Woolaway, Anthony). Absent 2, (Castro, Phillips).

MIZUHA: I have an amendment.

CHAIRMAN: Has it been printed, Delegate Mizuha?

MIZUHA: It has been printed but there's a new version of the amendment.

CHAIRMAN: Has it been circulated?

MIZUHA: It hasn't come back from the printer as yet, and I would like to have the privilege of offering that amendment in print as it returns from the printer.

CHAIRMAN: Does it relate to Section 2?

MIZUHA: Yes.

WIRTZ: Point of information. Did the Chair announce the last vote and whether the motion -- the amendment carried or not?

CHAIRMAN: The amendment carried.

MIZUHA: I want to change that here. It is being printed. I'll read out my amendment and then it can be circulated afterward.

CHAIRMAN: Proceed.

MIZUHA: The second part of Section 2 to read as follows:

"First senatorial district."

CHAIRMAN: By the second part, what do you mean?

MIZUHA: Beginning with senatorial districts.

First senatorial district—East Hawaii, four;
Second senatorial district—West Hawaii, two;
Third senatorial district—the islands of Maui, Molokai, Lanai and Kahoolawe, five;

Then the fourth and fifth senatorial districts in accordance with Delegate Mau's amendment. The fourth senatorial district to read as follows:

That portion of the island of Oahu, lying east and south of Nuuanu Street and a line drawn in extension thereof from the Nuuanu Pali to Mokapu Point, five;

Fifth senatorial district—that portion of the island of Oahu, lying west and north of the fourth senatorial district, five;

Sixth senatorial district—the islands of Kauai and Niihau, four.

ARASHIRO: I second that motion.

CHAIRMAN: It's been moved and seconded --

SILVA: To expedite matters, I move at this time that action on this amendment be deferred.

CHAIRMAN: I think that's proper at this time until the delegates can examine the amendment.

SAKAKIHARA: Second it, Mr. Chairman.

SILVA: I think the motion was in order because the motion was made to adopt it and seconded.

CHAIRMAN: I didn't get your point.

NIELSEN: Mr. Chairman, could we have a two or three minute recess? It will probably be out by that time.

CHAIRMAN: We'll have -- Chair will declare a two-minute recess. Don't stray away, though, it ought to be here in a minute.

(RECESS)

CHAIRMAN: Will the delegates please resume their seats. Delegate Mizuha, your amendment has been printed and circulated.

MIZUHA: A motion was made for the adoption of that amendment orally.

CHAIRMAN: A motion has been made and has been seconded. Anybody want to discuss the motion?

SAKAKIHARA: May I ask the delegate from Kauai how he arrived at this apportionment of the senate, Hawaii, six; Maui, five; Oahu, ten; and Kauai, four.

CHAIRMAN: Care to answer that, Delegate Mizuha?

MIZUHA: Basically I don't know how the committee arrived at their own apportionment when they had Oahu, ten; Hawaii, seven; Maui, five; Kauai, three; and I believe just as much as the committee took it out from the heavens, I took it out from the heavens myself.

CHAIRMAN: That's an answer to question.

SAKAKIHARA: May I speak to the amendment?

CHAIRMAN: What was the statement?

SAKAKIHARA: May I speak to the amendment offered by the delegate from Kauai?

CHAIRMAN: You may speak to the amendment.

SAKAKIHARA: Mr. Chairman, members of the Committee of the Whole, I wish to call your attention to the fact that Hawaii, when they have 21,000 votes, Maui with 13,000 votes, five senators, Kauai with 8,600 votes should be entitled to four senators. I don't think this will be a fair distribution of the Senate.

WIRTZ: When Mr. Mizuha said he picked this out of the heavens, I don't think he quite meant that. This is based upon the logical increase by units of five. Everytime you increase the Senate five, it's one, one, one for each of the outside counties and two for Oahu and this is just going up two stages; so it increases Hawaii two, Maui two, Kauai two and Oahu four; so it is following in the same logical pattern.

BRYAN: I'd like to say that the committee didn't just pick the figures out of the air either. If you worked the percentages, you will find that the increase on each island is as nearly uniform percentage-wise as you can get it under the proposal that the committee made. It's 1.5 on Kauai, 1.66 on Oahu and Maui and 1.7 on the island of Hawaii. So we didn't pull it out of the air either.

CHAIRMAN: Any further discussion on the Mizuha amendment?

MIZUHA: May I speak on behalf of the amendment? Under the federal principle of representation, the Senate has always been a body of equal representation in the Congress of the United States, two senators from each state of the Union. Hawaii is seeking admission to the Union as the 49th state and asking that the Congress of the United States permit us, under the federal principle, to have two senators in the Congress of the United States. There is no doubt in my mind today, if we went to the Congress of the United States and said we would be satisfied with one senator, they would admit us tomorrow.

Under my amendment it increases the number of senators from each of the outlying islands by two; two for Kauai, two for Maui, and two for Hawaii and gives Oahu four. Under no conception can we believe that at the present time that the island of Hawaii will be entitled to three more senators and Kauai only one. I believe it is grossly unfair if we give to one outlying island three and another outlying county and island one because of the fact that under the federal principle of equal representation in the Senate the islands of Kauai and Niihau deserve that increase of two in the future State of Hawaii. Oahu will get its four, Maui will get an increase of two, but the island of Hawaii comes to this Constitutional Convention and asks for an increase of three.

We have to discuss the representation in the future State of Hawaii on the basis of statesmanship. We cannot go into this question on the basis of politics. We cannot go into this question on the basis of thinking who will be representatives and senators from the various outlying counties in the future State of Hawaii and what our chances will be for election under the basis of represenation as submitted by the committee.

I submit to the delegates here that if we are going to find ourselves in a position where we have to decide the issues of representation both in the Senate and the House of Representatives of the future State of Hawaii, we must decide it on the high principles of statesmanship, where we believe it will be to the best interests of the people of this territory and the future State of Hawaii. And if we are to recognize those outlying islands in the Senate of Hawaii we must give them a fair representation. Under the committee proposal, allowing seven senators from the island of Hawaii, it will divide the balance of power and place the balance of power in an outlying island with seven senators that will be in the end the basis for political manipulation in the Senate and will result in the detriment to the interests of the people of the future State of Hawaii. So I submit that the delegates consider this amendment on the basis of statesmanship and not political footballing.

CHAIRMAN: Are you ready for the question? Is there a roll call demanded? There is not sufficient showing of hands for a roll call. Roll call is required. Madam Clerk, will you please call the roll?

Ayes, 27. Noes, 33 (Apoliona, Bryan, Castro, Cockett, Corbett, Doi, Fong, Fukushima, Gilliland, Holroyde, Ihara, Kawahara, King, Lai, Larsen, Loper, Luiz, Lyman, Ohrt, Okino, Porteus, Richards, Roberts, Sakai, Sakakihara, Silva, St. Sure, Tavares, White, Wist, Woolaway, Yamamoto, Yamauchi). Not voting, 3 (Mau, Phillips, Shimamura).

CHAIRMAN: The amendment is lost. The matter before the house is still Section 2.

KOMETANI: I would like to move for reconsideration of the amendment that was proposed by Delegate Mau.

WOOLAWAY: I'll second that motion.

CHAIRMAN: It has been moved and seconded that the amendment adopted before the recess as proposed by Delegate Mau be reconsidered.

LEE: Delegate Mau isn't here. I just wondered whether the - -

CHAIRMAN: I was going to call that to the attention to the proponent of the motion, whether or not he would like to withhold that until the appearance of the movant.

KOMETANI: I will do so.

CHAIRMAN: The Chair will consider it withdrawn then.

KING: I feel very strongly that we can't hold up the progress of the Convention's considerations for the absence of one member, unless we have a recess until he can return. When the vote was taken, there were other absentees. Nevertheless the vote was taken, and I suggest, therefore, that we have a brief recess awaiting the return of Delegate Chuck Mau.

CHAIRMAN: I think, Delegate King, that we can instruct Delegate Mau to be present. That's what we got a Sergeant-at-Arms for.

KAUHANE: I'll second that motion for a recess.

CHAIRMAN: We'll take a short recess and in the meantime the Sergeant-at-Arms will get in touch with Delegate Mau.

(RECESS)

CHAIRMAN: The delegates will take their seats. The committee will come to order, please. Will the delegates please take their seats? The Committee of the Whole is in order.

KOMETANI: Is it my understanding that due to the absence of Delegate Mau that my motion was withdrawn?

CHAIRMAN: That is correct. You are now in order.

KOMETANI: Then I would like to make the motion to reconsider the amendment that was proposed by Delegate Mau.

CASTRO: I second the motion.

CHAIRMAN: It has been moved and seconded that the amendment to Committee Proposal No. 29, which was carried this morning in regard to the division of the third senatorial district be reconsidered. Is there any discussion on the motion?

DELEGATE: Roll call!

CHAIRMAN: Is there any discussion? Anybody want a roll call? How many want a roll call?

KELLERMAN: May I say a few words with respect to this proposal?

CHAIRMAN: You may.

KELLERMAN: During the recess I talked to several members from the outside islands who said they did not understand what any of the issues involved, so I think it behooves some one to speak on this point. It is my contention that Waimanalo, Lanikai and the Kailua area should belong in the district with the rest of the Koolau group. Their interests are essentially windward Oahu interests. They are not interests of the City of Honolulu. They do not even use—that is the Lanikai-Kailua area—do not even use the transportation around the end of the island of Makapuu Point.

CHAIRMAN: Delegate Kellerman, does that go to the merits of Delegates Mau's motion or to the matter of reconsideration?

KELLERMAN: It goes to the merits of the question, and therefore I think they might wish to reconsider their vote if they realize that there are merits on the issue. For that reason I think it's pertinent.

KING: I had expected to seek recognition to speak on the merits of the amendment after the vote on reconsideration had been taken, but I do feel it was appropriate to offer to the Convention - - or the committee some reason for the vote for reconsideration.

CHAIRMAN: Roll call has been demanded. Madam Clerk, please call the roll on the motion to reconsider Delegate Mau's amendment relating to the division of the third senatorial district.

Ayes, 39. Noes, 22 (Akau, Arashiro, Ashford, Doi, Fukushima, Heen, Ihara, Kam, Kanemaru, Kauhane, Kawahara, Kawakami, Lee, Luiz, Mau, Nielsen, Noda, C. Rice, H. Rice, Shimamura, A. Trask, Wirtz). Not voting, 2 (Phillips, J. Trask).

CHAIRMAN: The motion is carried. The question is now on the amendment, I believe, proposed by Delegate Mau.

KING: When the motion was offered to adopt this amendment, perhaps some of us didn't read it as carefully as we might have. I realized what it meant but did not rise to speak against the amendment.

The statement was made that this was gerrymandering to put Waimanalo and Kailua into the fifth district. Gerrymandering, if any, was done at the time of the adoption of the Organic Act. They went up to the top of the Nuuanu Pali then drew a straight line through the Mokapu Peninsula and said that all that lies east and south of that line would be the fourth district, and all that lies north and west of that line would be the fifth district. At that time Kailua and Waimanalo did not have a very great population. In the meantime those two sections have filled up with a rather large population and they are part of Windward Oahu. The ahupuaa of Kailua and Waimanalo are a part of the old district of Koolaupoko. Further on in the report of the Committee on Legislative Powers and Functions, it is proposed to create a separate representative district of Koolau. That may or may not pass. That is immaterial. Nevertheless, these two pieces of land are an intrinsic geographical part of the district of Koolaupoko and has been for many many years. They lie over the mountains from the fourth district.

Now, the City of Honolulu is defined as being that area of the island of Oahu lying between Makapuu Point and Red Hill. It's the urban section of the island of Oahu. As a matter of fact, it's almost identical with the ancient Hawaiian district of Kona of the island of Oahu—we had a Kona too as well as Hawaii—and Waimanalo and Kailua lie outside of that urban area. Furthermore the fourth district of Honolulu comprises that part of the urban area that lies east and south of Nuuanu Avenue to Makapuu Point and goes over the mountains to include these two precincts of Kailua and Waimanalo.

At the time that H. R. 49 was under consideration many of us sat in on various committees to devise a more representative way of electing delegates to the Constitutional Convention. I served on the committee with Delegate Heen and the late Judge Robertson and the former Senator David Trask and several others and we devised this program that was carried out in H. R. 49 and in Act 334 of adding Kailua and Waimanalo to its proper geographical unit, the geographical district of Koolaupoko. That was approved by the legislature and sent to Congress and introduced by Delegate Farrington and is embodied in the provisions of H. R. 49. Then later it was approved by the legislature and embodied in the provisions of Act 334.

Now this discussion of some attorney in the Department of Interior not approving is no relevance to the matter at all. As a matter of fact, I doubt very much whether the Department of Interior would commit itself one way or another as to the zoning of our election districts for the Constitutional Convention. Their interest lies more in the material matters of public lands, and so forth, and had the attorneys of the Department of Interior made any suggestions to the committees of Congress to change it, it probably would have been disregarded since it was in the bill introduced by the Delegate, approved by the legislature and enacted into law in Act 334.

I feel very strongly, and the people who live in Kailua and Waimanalo feel very strongly, that they should be a part of rural Oahu and not a part of urban Honolulu. There is no common bond of interest. There we still have agricultural industries, they have dairies, they have commuters and are owners of suburban homes, and we have all of the rest of the attributes of a rural and suburban area. So I feel that this particular amendment should not carry and the division proposed in the committee report should carry.

Now while I'm on my feet and as I have not exhausted my time, I'd like to discuss the general attitude of the committee report. The committee report made a majority report, and as I recall the vote, it was nine to three in favor of the provisions of this report as submitted to this Convention. As it happens the chairman of the committee is not in favor of the majority report. The chairman and two other members have submitted a minority report. That's well and good. That's their privelege. Nevertheless the majority report consists of nine members of that committee that went over the provision of reapportionment and apportionment of the Senate and of the House very thoroughly and very exhaustedly and as far back as June sixth the provision in this proposal of twenty-five senators allocated as it is in this proposal was agreed upon. The motion was put on June seventh to reconsider that action and that motion was voted down on a nine - three vote. Then later on, it was brought up again and discussed and discussed verbatim in all of the angles and phases of it and the final decision was to submit this report with nine members of the committee in favor of it.

Now I think it comes with ill grace to members of the other islands to question what the people on Oahu have decided by a majority, to divide this island into two senatorial districts. Either vote down the senatorial district as a whole or support the committee report as to their division between

the fourth and the fifth district. So, I would urge the Committee of the Whole to vote down the proposed amendment.

LEE: I'm surprised, I don't hear any answer in the rebuttal. I don't want to take the floor on this too long either. But I'd like to say the first time I have heard the President say that the committee has voted nine to three, after going through exhaustive studies. I agree that we had gone through exhaustive studies. I might say to the committee that at one occasion after reconsideration the committee voted for 43-21, 41-21, somewhere along the line where there was only twenty-one senators. Then the matter was reconsidered. So that actually there is a great deal of doubt on this particular point.

It seems to me that it's unfair to say that the people of Kailua and Lanikai have nothing in common with the City of Honolulu. I have a lot of friends who live out in that area who have always voted along with the fourth district. That has been the part of the fourth district for over fifty years. It seems to me that the statement that Kailua and Lanikai have no common interest with the rest of the fourth district, in my opinion they have more of a common interest with the rest of the fourth district than with the fifth district.

FUKUSHIMA: I would like just to say one sentence. Kailua is no more rural than Aina Haina or Portlock Road which is also part of the fourth district.

HEEN: When the report was signed by the members of the Committee on Legislative Powers and Functions there were six delegates who did not concur with Section 2. Delegate Lee, Delegate Kellerman, Delegate Wirtz, Delegate Serizawa, Delegate Kawahara and myself, all six did not concur with the provisions of Section 2.

CHAIRMAN: The Chair would like to ask Delegate Heen a question. That is, whether or not in the course of this debate, some place along the line, the body is going to be informed why we need this increase. I know a great many delegates have spoken to me about this vast increase. I think the body would like to hear about it.

CROSSLEY: I would like to say that what the chairman of the committee has just said is right. There was a nine to six vote on this, on concurrence. The reason that the six did not concur was not based on a division of the areas. They were not concurring because of numbers. Just to get up and say that the six did not concur; they did not concur for different reasons. As a matter of fact, I don't recall that there was any disagreement as -- yes, there was some, but only minor disagreement, certainly not six disagreeing with the cutting up of the districts the way they are. I believe that's what President King had reference to when he was talking. The non-concurrence didn't go to the point of this amendment.

APOLIONA: I think we have heard all the reasons and I think lot of the delegates' minds are satisfied, and now I move for the previous question.

CHAIRMAN: Delegate Kawahara, did you want to be heard?

KAWAHARA: Yes, on the matter of the way -- of the voting of the committee. Some sentiment is being expressed here that if it's a matter of Oahu, we leave it up to Oahu, and if it's a matter of Hawaii and Kauai -- or Kauai, we should leave it up to the various islands, and yet when it comes to the voting everybody participates. I don't see any logical reason between the two ideas that if it is a matter for one island, then leave it up to the island and in the final analysis the whole convention -- the whole committee votes and what happens?

In reference to the report of the committee, Delegate Crossley has mentioned that perhaps some of us signed and some of us did not concur on the various sections for various reasons. I signed it and said that I didn't concur, and one of the reasons why I said I didn't concur was because of the fact that I wasn't quite enlightened on this matter of redistricting Oahu. In fact, I am still open for suggestion as to how to vote, what to do, what not to do.

The second point is this; I signed the report saying I didn't concur because I thought that the redistricting of the island of Hawaii for example wasn't quite complete. Anybody can see that the redistricting of the island of Hawaii isn't quite, you might say, artistic anyway. East Hawaii is divided into three districts. West Hawaii is divided -- is not divided into three districts, the whole of West Hawaii is district four. While I didn't vote against it nor did I vote for it, I think we still have a lot more to go as far as investigating the possibilities of this business of redistricting.

KAUHANE: I believe statements are being made here that should be answered; first of all, the delegate from the fifth district who stated that while he was back in Washington, he met with officials of the Interior Department of Insular and Territorial Affairs, and that this matter of the reapportionment which is contained in H. R. 49 was taken up. Certainly the matter was taken up with the officials of that body. The Democrats who appeared in Washington felt that it was gerrymandering because in H. R. 49 we have a stretch of a combination of precincts arriving at Aala Park and we run away over about two and a half miles and take in Precinct 17; that's the Kalihi Pumping Station. We showed the officials in Washington what has been done.

This same setup of reapportionment when it was first submitted to the Congress of the United States back in 1941 was objected to strenuously by the Democratic Party. The same provision which was objected to by the Democratic Party in 1941 is contained in H. R. 49. So much so, that those of us who are of the Democratic faith appearing in Washington made every means to see that that provision was not carried forth in H. R. 49. The ultimate goal was statehood for Hawaii, and because that was put to us we felt that we should sit back and take a back seat and let the ultimate goal, statehood for Hawaii, go through. We felt that upon returning to Hawaii that we would meet with those of the Republican faith and sit down and decide with them and talk over with them the method of reapportionment. Certainly the committee has studied reapportionment, and yet when we came back before the legislature and tried to arrive at a common ground, what had happened? The result was the passage by the legislature and adoption of a provision of reapportionment similar to that as contained in H. R. 49.

Reapportionment under the Organic Act should be based and made according to the population as to citizens of the Territory of Hawaii, and not to citizens of the United States. That's the requirement of reapportionment under Section 55 of the Organic Act. The Bureau of Census has not yet submitted to this body or any body interested in reapportionment, the citizenship with respect to citizens as to the Territory of Hawaii. Even up to the last census taken by the Census Bureau, there is no report to show citizens as to the Territory of Hawaii as well as citizens to the United States. And in order for us to comply with the section of the Organic Act, 55, we must arrive first as to citizens of the Territory of Hawaii, then, from then reapportionment shall be based accordingly.

The amendment proposed here by the delegate from the fifth district which was carried and which now has been overridden by reconsideration brings only one factor to my mind, that we are voting on this thing on a partisan basis—Democrat versus Republican. That is the only reason by which the reconsideration has been asked. As reconsideration as I say would be sincere and is asking if we come back and say that the Senate shall be composed of twenty-one members, twenty-one members which was agreed to by the Senate in the 1949 session, when they passed Senate Concurrent Resolution No. 21. In Senate Concurrent Resolution No. 21, the senators voted for a twenty-one member Senate and a forty-two member House. It came to the House of Representatives, and we agreed to the amendment of the Senate, and we passed it back to the Senate except to increase the senatorial membership to twenty-three following the proposal, the amendment that was offered by Representative Arashiro. When it got to the Senate, the Senate changed it from twenty-three senators to twenty-one, and it came back to the House, and there it died for lack of having sufficient votes to carry. Certainly the twenty-one House -- Senate --

CHAIRMAN: Excuse me, is that relevant to the amendment? Delegate Mau's.

KAUHANE: It is relative to the amendment.

CHAIRMAN: Would you just point out the relevance.

KAUHANE: What's that?

CHAIRMAN: Would you point out the relevance. It's not clear to the Chair.

KAUHANE: As to the twenty-one membership and forty-two House?

CHAIRMAN: No, as to Delegate Mau's amendment. That's what is before the house.

KAUHANE: Yes, we are considering whether or not to adopt Chuck Mau's amendment or reject Chuck Mau's amendment. On the basis that Chuck Mau's amendment presents a pattern by which we should follow in adopting the apportionment of the Senate by the division of the district of Oahu into fourth and fifth districts as far as senatorial districts are concerned. What I am trying to show is the membership of the Senate as increased and agreed to by the last legislature to where the Senate and the House has agreed that the membership should be twenty-one and then which could be applied in the same division, as offered by Chuck Mau, in the division of Oahu as far as senatorial districts are concerned in the fourth and fifth districts. We can apply that figure as well to the amendment offered by Chuck Mau. Chuck Mau's amendment, I think, has a lot of merit, merit where we are getting away from a pattern which we have followed for the last fifty years clamoring for reapportionment. If we are concerned about reapportionment, then let us go reapportionment, all out for reapportionment, and adopt the proposal as offered by the delegate from the fifth district for the division of the senatorial district on Oahu.

MAU: The statement has been made that originally Congress in passing the Organic Act for the Territory of Hawaii gerrymandered this island. I don't believe that's true. They cut the island in two using Nuuanu and Nuuanu Pali as the boundary line. But assuming for the purposes of argument that that statement is correct, if that was gerrymandering should this Convention continue to gerrymander this island worse than it was in 1900? Look at the map of Oahu when you come to it later. You will find distinctly gerrymandering. The statement has been made that an attempt has been made in creating these representative districts to put people in those districts who have common interests. I don't believe that that's true. You will come to it when you see representative district number five, all of Manoa, part of Manoa going all the way down to Waikiki. Their interests with the people of McCully, Bingham Tract are the same? That is not correct.

When the statement is made that the windward Oahu people have common interests, that too is incorrect as a matter of fact. The vast majority of the people who live in Lanikai, Kalama and Kailua and some even in Hauula, work in the heart of the city. They are middle class people and some upper middle class. That's a fine residential section out there. But I think the true situation concerning this gerrymandering is simply this, one of your strong Republican leaders told me this morning that he was in favor of that because the fifth district as it stands now is too strongly Democratic and we have to overcome that. That is the sole purpose.

CHAIRMAN: Ready for the question?

ASHFORD: May I ask a question of the last speaker? I never have understood what middle class and upper middle class was. I'd like a definition.

CHAIRMAN: That was running through the Chair's mind, too, Delegate Ashford.

HOLROYDE: I was very glad to hear the last speaker quote that the people of Lanikai, Kailua and Hauula had something in common. That's all.

CHAIRMAN: The question is on Delegate Mau's amendment. Is there roll call requested? Roll call?

DELEGATES: Roll call.

CHAIRMAN: The Clerk will call the roll. The vote is on Delegate Mau's amendment which was adopted this morning. Then, there was a motion to reconsider. We are now voting on the merits of Delegate Mau's amendment, which reads as follows: Amend the third and fourth paragraphs of Section 2, of Committee Proposal No. 29 to read as follows:

> Third senatorial district; that portion of the island of Oahu, lying east and south of Nuuanu Street and a line drawn in extension thereof from Nuuanu Pali to Mokapu Point, five;
>
> _____ senatorial district; that portion of the island of Oahu, lying west and north of the third senatorial district, five.

LOPER: Mr. Chairman, would you remind the delegates please to use their microphones; we can't hear back here.

CHAIRMAN: I have asked the body to do that.

HAYES: I believe the point that we would like to know would be, those who vote for the amendment would do this, and those who vote against it would do this. Will you state that please?

CHAIRMAN: Those who vote in favor of the amendment are in favor of Delegate Mau's motion and you vote aye. If you're against his motion you vote no.

WIRTZ: Slight point of order. I don't want the delegates to be confused. We voted on this after lunch, not this morning, shortly after lunch.

CHAIRMAN: I think the Chair was in error in that. Reconsideration was voted after lunch.

ARASHIRO: Is it still going to read as the " Third senatorial district"?

CHAIRMAN: Afraid I didn't understand your question.

ARASHIRO: It says, "___ senatorial district; that portion of the island of Oahu, lying west and north of the " third or fourth?

CHAIRMAN: Will you answer that, Delegate Mau?

MAU: That was purposely left blank depending on what amendments came. When this was drafted, there was an amendment before that from one of the delegates from Hawaii, which used the first and second, rather than cover Hawaii by the first senatorial district. If this amendment does pass, then the Style Committee can - -

CHAIRMAN: Insert the appropriate number.

MAU: Insert the proper for each blank - - number to the blank.

CHAIRMAN: Will the Clerk call the roll?

Ayes, 30. Noes, 32 (Apoliona, Bryan, Castro, Cockett, Crossley, Dowson, Fong, Fukushima, Gilliland, Hayes, Holroyde, Kellerman, Kido, King, Kometani, Lai, Larsen, Loper, Lyman, Ohrt, Porteus, Richards, Sakakihara, Silva, Smith, St. Sure, Tavares, J. Trask, White, Wist, Woolaway, Yamauchi). Not Voting, 1 (Phillips).

CHAIRMAN: Amendment is lost. We're still on Section 2.

CROSSLEY: I have an amendment. I'd like to amend -.-

CHAIRMAN: Has it been printed, Delegate Crossley?

CROSSLEY: No, it's an oral amendment, it's easy to follow. Where it reads: " First senatorial district, the island of Hawaii," change " seven" to " six." Where it reads " Fifth senatorial district, the islands of Kauai and Niihau," change "three" to "four."

MIZUHA: I second.

CHAIRMAN: That's in Committee Proposal No. 29, Delegate Crossley?

SILVA: Point of order. I think that that question has been settled a moment ago, about four senators for Kauai.

CHAIRMAN: The Chair is trying to get what the amendment is, Delegate Silva, if you'll permit me.

CROSSLEY: The change is reducing the committee proposal which calls for seven from Hawaii to six, and increasing the fifth senatorial district in the committee proposal from three to four. I might say that in the previous amendment put in by Delegate Mizuha it was tied in with the Oahu, all of the rest of the senatorial districts. It was tied in with the senatorial district proposed by Delegate Mau which has since been brought up for reconsideration and defeated and therefore I felt that it was in order to offer this new amendment.

CHAIRMAN: Is there a second to that?

MIZUHA: I second that.

SAKAKIHARA: I believe the amendment is not in order. The amendment offered by Delegate Jack H. Mizuha is just what the amendment now proposed by Delegate Crossley of Kauai is which reads that Hawaii is entitled to six senators and Kauai four, leaving Oahu and Maui the same. The vote has been taken here on that amendment and that amendment was defeated.

CHAIRMAN: The Chair ruled that the motion is in order.

SILVA: If that is in order, I would like to further amend, you can have one more amendment. The amendment would read that in the first senatorial district, leave it at seven, and in the fifth senatorial district, two.

CHAIRMAN: You're amending - - Just a minute. You are amending what, Delegate Crossley's motion?

SILVA: The amendment offered by Crossley, the fifth senatorial district, cut it down to two and take the extra one and give it to Oahu.

DOI: I second the motion.

CHAIRMAN: The Chair doesn't consider that as an amendment, because the original proposal said the island of Hawaii, seven, and the amendment was to six. So you've just changed it back again. A vote on the amendment will - -

DELEGATE: No, no, the amend- -

CHAIRMAN: - - accomplish your purpose.

DELEGATE: Point of order.

WIRTZ: Will the last speaker yield to a question? Which district, which senatorial district in Oahu will get the extra senator?

SILVA: That - - well, we can decide that later on. They may run at large.

CHAIRMAN: Chair will recognize Delegate Crossley.

CROSSLEY: That last motion is out of order because it changes the purpose of mine by diminishing instead of increasing. That's just the opposite.

CHAIRMAN: That's correct. The Chair has so ruled. You understand the motion?

SAKAKIHARA: Point of order.

CHAIRMAN: If I might state the substance of it, that would reduce the number of representatives in the Senate on the island of Hawaii from seven to six and increase the number on the island of Kauai from three to four. Is that correct?

SAKAKIHARA: All right, Mr. Chairman. I believe that question was disposed of, Mr. Chairman. I think if you will play the recording, it'll bear me out.

CHAIRMAN: The Chair has already ruled on that.

DOI: We wish to appeal to the Chair, your honor, Chairman. We wish to appeal from the ruling of the Chair. I think should we replay the recording there, all of the discussion on the amendment offered by Mr. Mizuha was confined to the question of increasing Kauai and decreasing Hawaii.

HEEN: As I understood Delegate Mizuha's amendment, it divided the island of Oahu into two senatorial districts, one to have four senators and the other to have two, so that identical question hasn't - - is not the same as what you have now. You don't divide up the island of Oahu into two districts now, left as one senatorial district with the same number of senators. Therefore, we did not pass on this identical question at any time.

CHAIRMAN: That's the Chair's interpretation. I think if Delegate Silva will examine the proposal, you'll find that statement of Judge Heen is accurate.

APOLIONA: If my memory serves me correct, this morning we approved tentatively the first sentence of Section 2. Then a motion was made to approve tentatively the

rest of Section 2. That being the case, Mr. Chairman, Delegate Silva's motion is in order.

CHAIRMAN: Are you ready for the question? All those in favor signify by saying "aye."

SAKAKIHARA: What's the question, Mr. Chairman?

DELEGATE: Point of information; what is the question?

CHAIRMAN: The question is on the amend -- the Chair will state the amendment. It's an oral amendment made by Delegate Crossley, page 2 of Committee Proposal No. 29, second line, strike out the word "seven" and insert the word "six" and the last line of Section 2, strike out "three" and insert "four," Am I correct, Delegate Crossley?

CROSSLEY: Yes.

SAKAKIHARA: I demand roll call.

CHAIRMAN: Is roll call demanded? Madam Clerk, please call the roll.

Ayes, 23. Noes, 37 (Akau, Apoliona, Ashford, Bryan, Castro, Cockett, Corbett, Doi, Fong, Gilliland, Hayes, Holroyde, Ihara, Kawahara, King, Kido, Lai, Larsen, Luiz, Lyman, Nielsen, Ohrt, Okino, Porteus, Richards, Roberts, Sakai, Sakakihara, Silva, Smith, St. Sure, Tavares, White, Wist, Woolaway, Yamamoto, Yamauchi). Not voting, 3 (Loper, Phillips, J. Trask).

CHAIRMAN: The amendment is lost.

LEE: I have an amendment which has been circulated.

CHAIRMAN: Has it been printed, Delegate Lee?

LEE: Yes, printed and circulated, amending Section 2. All this does is make Oahu into one district so that the ten senators from Oahu shall run at large over the entire island instead of the two districts, conforming with the rest of the other islands where the senators run county-wide. I move for the adoption of the amendment.

> Section 2. Senate; senatorial districts; number of members. The Senate shall be composed of twenty-five members, who shall be elected by the qualified voters of the respective senatorial districts. The districts, and the number of senators to be elected from each, shall be as follows:
>
> First senatorial district—island of Hawaii, six;
> Second senatorial district—the islands of Maui, Molokai, Lanai and Kahoolawe, five;
> Third senatorial district—island of Oahu, ten;
> Fourth senatorial district—the islands of Kauai and Niihau, four.

DELEGATE: Roll call.

HEEN: I think in order to bring that issue directly before the members of this committee, I might suggest and if that appeals to the members of the committee, change that to a motion, I would suggest that it is the sense of this committee that the island of Oahu be not divided into two senatorial districts.

LEE: That's acceptable to the mover.

HEEN: I so move --

DELEGATE: Second the motion.

HEEN: That is the sense of this committee that the island of Oahu be not divided into two senatorial districts, If we can clear that question, then I think we can proceed much faster with the further consideration of Section 2.

CHAIRMAN: Do you accept that, Delegate Lee? Delegate Lee? I wish the delegates would take their seats. The Chair's having difficulty getting your attention. Do you accept that amendment?

LEE: Yes, Mr. Chairman.

CHAIRMAN: The question, then, is whether it is the sense of this Convention that the island of Oahu be not divided into senatorial districts.

SAKAKIHARA: Is that the amendment?

CHAIRMAN: That's the motion moved and seconded—moved by Delegate Lee and seconded by Delegate Heen.

CASTRO: I would amend that motion so that it is easier to deal with. That it is the sense of the Convention -- either ask Delegate Heen to state it another way, either that the island be placed in one senatorial district or be placed in two; "not," that's a negative statement and it might confuse some of the delegates in voting.

HEEN: I was waiting for someone in the majority because I am in the minority. I'm opposed to dividing Oahu into two senatorial districts --

CASTRO: Then I will make that amendment.

HEEN: -- but in order to put that question definitely before the Convention, I had to do it that way, following my stand upon that issue. If someone would want to put it the other way, it is just all right with me. In other words, it might be put by those who favor the division to move that it is the sense of this committee that the island of Oahu be divided into two senatorial districts.

HOLROYDE: I think that issue is before this Committee of the Whole now. Delegate Lee's motion to amend and change that would clarify the problem.

CHAIRMAN: Chair understands the question is perfectly clear before the body, and that is whether or not we want Oahu divided into more than one senatorial district. That's the purport of the motion.

SAKAKIHARA: Would that dispose -- Mr. Chairman.

KING: Mr. Chairman.

CHAIRMAN: Delegate King. Who was it rose?

KING: Delegate, Mr. Chairman, I thought that Delegate Sakakihara was seeking recognition. I yield to Delegate Sakakihara.

CHAIRMAN: Delegate Sakakihara.

SAKAKIHARA: Point of order, Mr. Chairman. There is an amendment before the Committee of the Whole offered by Delegate Lee which purports to reapportion the senatorial district --

LEE: Point of order, Mr. Chairman, point of order.

CHAIRMAN: State your point.

LEE: That motion has been withdrawn in favor of the suggestion made by Delegate Heen, and the motion before the committee is whether Oahu shall be divided into one senatorial district or into two senatorial districts.

PORTEUS: Point of order, point of order, Mr. Chairman.

CHAIRMAN: State your point of order, Delegate Porteus.

PORTEUS: The motion that was pending before this committee is to approve the balance of this section. There is now an entirely new motion not amending the motion that's put,

that was now before us. In order to get into the discussion and present these other amendments, the motion was made, as I understood it this morning that we approve of the balance of the section and on that basis these other amendments have been presented. Therefore it's in order for anyone to make any motion he wishes to as to any amendment as to the setup, and I think since the majority of the committee has come forward with a specific proposal, the majority of the committee desires to have anyone who wishes it differently present the amendment. A motion is now before the house and the other motion is not germane to it, it is not amendatory to the other motion in any respect.

HEEN: Point of personal privilege. The idea was to facilitate further consideration of Section 2. I presented it in that spirit.

KING: I think the point of order made by Delegate Porteus is quite appropriate, quite in order. What's before this Committee of the Whole now is the Section 2 of Committee Proposal No. 29. Any amendments to that would be in order, but a motion to agree on a general principle is not pertinent to this particular section. Now, if Delegate Heen wishes to accomplish his purpose to have an expression of sentiment regarding the division of Oahu, let's vote on Section 2. The passage of that section would immediately automatically divide Oahu into two senatorial districts. If it is voted down, the business before the house then is to have one senatorial district.

And let me say further that if Delegate Heen finds himself a little embarrassed to act as the chairman of the committee because he's in the monority, let's suggest that the vice chairman, who is in the majority, take the discussion on Sections 2 and 3 until that's out of the way and then we can go on with the balance of the committee report.

ROBERTS: If Senator Heen would withdraw his motion for the sense of the committee, I would move the amendment proposed by Senator Lee with two slight amendments: one, the first senatorial district, change the word "six" to "seven" and the word on the island of Kauai "four" to "three" so that the actual section before the committee, Section 2, remains identical except that the fourth and third senatorial districts will be combined in one. If I may have a second to that.

YAMAMOTO: I second the motion.

LEE: This amendment was prepared when Delegate Mau's amendment had passed. Since the action has been reconsidered and it has failed, I am agreeable to the suggested amendment made by Delegate Roberts.

CHAIRMAN: Will you state your amendment again, Delegate Roberts?

ROBERTS: The amendment is the one proposed by Senator Lee, which is on the desk of every delegate, except that in the first senatorial district, the number "six" be changed to "seven," and in the fourth senatorial district, the number "four" be changed to "three." So that the only issue on the floor is the question as to whether or not the island of Oahu should be one senatorial district.

HEEN: I would like to amend that motion so as not to be involved in the question as to how many senators shall represent any senatorial district. In order to bring it to an issue, I move, by way of an amendment, that the third senatorial district and the fourth senatorial district be deleted from Section 2, together with the language attached to each of these senatorial districts and substitute in place of those two senatorial districts the following: "Third senatorial district, island of Oahu—nine," or you could leave the nine out.

WOOLAWAY: Second the motion.

HEEN: Is not the question definitely before the Convention as to whether we shall have one senatorial district on Oahu or more than one? Therefore can we leave the number of senators out for the time being, because when we think of numbers then we get all confused, and there is so much difference of opinion as to how many should represent each senatorial district. Let's get that other issue decided at this time—whether Oahu is to be one district or more than one district.

PORTEUS: Did I understand that the word or figure nine was used? Number nine. It seems to me that we tentatively adopted the first sentence setting the number at 25, and Oahu's proportion of that would be ten rather than nine. Then if you reconsider -- if there's any other action, it could be changed. Bring it to ten.

HEEN: I'll put in that figure ten, but I won't be bound by that figure ten. I want the other issue settled first.

CHAIRMAN: I think that's perfectly clear. We can vote on that simple amendment using the figure in the committee proposal, then if there is any desire on the part of any of the delegates to change that figure, that can be done later.

SHIMAMURA: Point of information, Mr. Chairman. What is the question before the house, Mr. Chairman?

CHAIRMAN: The question before the house is the amendment to Committee Proposal No. 29 which would create the island of Oahu, the third senatorial district, with ten senators, one district.

SHIMAMURA: Is that the only question?

CHAIRMAN: That is the only question.

SHIMAMURA: Thank you.

NIELSEN: I am in favor of that as long as we've already taken the vote that on the island of Hawaii that there is to be only one senatorial district. So I think this is all right.

CHAIRMAN: Any further discussion?

LEE: I would like to speak in favor of the amendment. It would seem to me that this Convention or committee at the present time certainly would be accused of possible gerrymandering when we vote for senators on the three other islands, Hawaii, Maui and Kauai, on an entire county basis while we are voting for the division of the senatorial district into two districts on Oahu. Let us be consistent.

ARASHIRO: Has Delegate Roberts' amendment been accepted?

CHAIRMAN: It has been withdrawn and the question that has been stated by the Chair has been substituted.

ROBERTS: My motion was still pending but in the --

CHAIRMAN: In the shuffle, I think it was withdrawn.

ROBERTS: -- for clarity I will be willing to withdraw it.

J. TRASK: For information, Mr. Chairman. What have we got before the floor at the present?

CHAIRMAN: The question before the body at the present time is the motion of Delegate Heen, seconded by Delegate Lee, that the island of Oahu comprise one senatorial district and have ten senators. The number which is inserted is for convenience only and the movants feel free to change that

number at a later date. The purpose of the amendment is to get a vote on the simple question, whether or not you are going to divide the island of Oahu in two or more senatorial districts.

PORTEUS: I've hesitated to speak on some of the various issues before the Convention because I felt that there were so many that were well qualified to speak on the subject and I didn't wish at the time to take the additional time. This is a matter, however, I think of some concern to all of us, those that are in office, and those that are in the Convention and the people, at least certainly on the island of Oahu. I say that I favor the division of the island of Oahu into two senatorial districts, each district electing five senators. It seems to me that has certain advantages. It has the advantage of assuring to one part of the island five senators and to the other part five, rather than a concentration of senators from any particular area. I think, too, from the point of view of those who come from the rural portions of Oahu that their vote will loom larger in the total vote to be cast for five senators with the divided island than their vote will be if the island remains undivided.

There are those of us that have spent -- there are those delegates here who have spent many more years in politics than I have. I am a junior to many of those who come from, or at least one of those who comes from the island of Kauai and one from the island of Maui; junior, too, to at least one of the senators who is a delegate here, who has been in the Senate rendering creditable service for many years. It has been my experience, however, that running in the fourth district only, with some forty odd thousand voters, that without making much of a splash in the way of a political campaign that it cost me in excess of a thousand dollars to be elected last time. I filed with the Secretary's office an expense of $997 for the primary—that's a sworn statement, a matter of record—and $400 in the general. So it cost me $1400 to get elected, $1400 of my money, not someone else's.

Now, I hear it said that there are those who are fortunate enough to be elected senators without spending a thousand dollars. I don't know how they do it. I only had one ad in the Star-Bulletin before the primary, seven inches long and two columns wide, and it cost me $42. I used the same ad in the Advertiser, one insertion only, for another forty odd dollars. And then I ran a thank you ad after the primary in each of those papers of the same size, because I wanted to say "thank you" in as big terms as I had asked for a vote. That's all the political advertising, no half pages, no quarter pages, no more than one insertion and no full pages. I know it is the experience of the people on Oahu who have seen those who have sought Senate office to have a full page ad. A full page ad in the Star-Bulletin runs $2.80 a column inch and there are 168 column inches on a page, that is almost $490. They'll give you a discount to take the full page of somewhere around -- it comes down to somewhere around $450 or $470. Now, many of the senators that are running don't pay that themselves and I don't blame them.

But it is true that when you seek election and you seek to reach over 80,000 voters, it is necessary for the new man to spend money, either to spend it himself or to accept the backing of an individual who will finance him or have his friends go out and collect money in order to put his campaign over the top. In the money that I spent, I had some cards printed. I had also some penny postals, some letters printed. Just the cards for the fourth district in the primary only cost me $350.

Now, my point that I wish to make is this, that if somebody who has been elected four times straight and seeking his election the fifth time finds it necessary to spend as much money as that without radio, without any buttons, and a few newspaper ads which I have spoken of, and if he also has had no paid workers—I had no paid workers, I paid for no cars, I didn't provide a lot of lunches, I had no luaus, I paid for no drinks. My campaign was not a splash campaign. It was a campaign where some friends did a little talking for me, and I am very grateful to them.

But I feel this, that at present, it is very difficult for the new person coming into politics to hope to get the attention of the public and hope to get elected. Out of the fourth district now, with six elected to the legislature, it's very difficult for the new man to come in and make himself known to so many voters. He has got to spend a lot of money or someone else has got to spend a lot of money for him. Now, I believe that if the island is divided into two senatorial districts, if the House is divided up into smaller districts, that we will then give the newcomer in politics a chance to come in and get elected.

I'm supposed to be an oldtimer from the fourth district. My fellow delegate from the fourth district has been in there five terms as I have. There's just the two of us. But I feel that it is a healthy thing in politics to attract new able fresh faces into politics and have them campaign and put their ideas before the public. Even if they don't get elected at least they do this, they keep the oldtimers on their toes and hustling. I think it makes for better government. I think anything that will enable more young people to run for office on their own ability, on their own financing, that we are better off, rather than giving the advantage to those of us who are supposed to be oldtimers to hold the vote, if for no other reason than that the 80,000 people or forty odd thousand people haven't heard of them before.

If you will pardon the personal reference, in the last campaign I had 25,000 votes in the fourth district in the House. The lowest man had 20,000 votes and there are none of us that admit that we know individually 20,000 people. We just don't know them and the 20,000 people may have heard of us, but they don't know us personally. And I'm for the smaller district with lower cost and an opportunity for more people who wish to render service to this Territory being able to come in and offer their services within their purses, within their capacity to foot the bill. It either is going to mean that the man has got to have a lot of money or it means that he has got to have someone come and finance him. Sorry to have taken so much time and I hope that you see the point with which I've been trying to make.

CHAIRMAN: The Chair would like to ask the speaker a question. This is for my own enlightenment. What is the reason for districting the island of Oahu and not districting a much larger island, like Hawaii? I don't quite understand that.

PORTEUS: On Kauai, Mr. Chairman --

DELEGATE: Hawaii.

CHAIRMAN: Island of Hawaii.

PORTEUS: Well, we'll start with the islands and go to Kauai. Kauai has between 7,500 to 8,000 voters and the cost is not very great. The island is of considerable size but it is a belt road island with laterals going out from that. We'll go to Maui. Maui, of course, is divided over several of the islands. On Hawaii, as I understand it, there's a total vote of about 20,000 voters. The majority of the Hawaii delegation felt that the senators elected from that island could run the island as a whole and successfully do it. They can reach 20,000 voters without excessive cost. Twenty thousand voters is only fifty per cent of the number of voters that

would be on one of these senatorial districts if we cut the island of Oahu in half. We have over 80,000 voters with a prospect of increase, and the expenses -- I checked as to what it would cost to just have an envelope addressed to send to these voters and was told that it would cost three cents, so it would cost you $2,400 to go to a commercial concern for addressing envelopes. And I think that there is a vast difference between having over 80,000 voters and 20,000 voters. I don't know, Mr. Chairman, whether this is being persuasive insofar as your point of view is concerned, but it is one of the bases on which I have made this decision myself.

HEEN: This statement about spending three cents on an envelope and circular addressed to 80,000 voters is far fetched because you could do that by a postal card for one cent unless you want to be a little high toned and send it out in letter form. And furthermore, when you send out letters or postal cards to the voters, you're not going to send them to all the voters because there are a lot of them you know who will not vote for you anyhow. I wouldn't send one to Delegate Porteus and ask him to vote for me because he is a rabid Republican and I wouldn't send one to say friends of mine because it is just wasting postage on friends, and I am not going to send two postal cards to man and wife. I'll send only one to a man and his wife. So you could cut the cost down considerably. This idea of $2,400 is just an exaggeration.

PORTEUS: May I say I have enjoyed receiving the campaign literature of the senator from Oahu, and from both senators from Oahu that are in this convention hall, and my wife has enjoyed receiving the same. On several occasions we were able to talk to the children and I had to promise them to see if I couldn't get for each one of them a letter also, because I got one and my wife got one, too.

HEEN: That was a mistake on the part of my clerk, and just a waste of postage there. He made a mistake.

APOLIONA: I want to also thank the honorable senator from the fourth district for sending me that letter.

A. TRASK: I am for dividing Oahu in two parts. In the words of Kamehameha, if we divide Oahu in two parts, we'll have equal opportunity for the big man, the small man, the aged man and the ladies. Aloha.

CHAIRMAN: Are you ready for the question?

C. RICE: Did Mr. Porteus know that those papers were of general circulation? Just the same as it went all over the islands as in only one district. But as I would say from the outside islands, maybe it would be a good idea to divide Oahu. They wouldn't stand so solid then.

CHAIRMAN: The question is on the motion of Delegate Heen that the island of Oahu consist of one senatorial district having ten senators. Are you ready for the question? All those in favor, signify by saying "aye." Contrary. The motion is lost.

ASHFORD: In consideration of the clerks, I move for a brief recess.

CHAIRMAN: A recess is declared.

(RECESS)

CHAIRMAN: The committee will come to order.

HEEN: I now move that the committee rise, report progress and ask leave to sit again.

PORTEUS: I find it great pleasure to second the senator's motion.

CHAIRMAN: It has been moved and seconded that the committee rise and report progress and ask leave to sit again. All those in favor, signify by saying "aye." Contrary. Carried.

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CHAIRMAN: The Committee of the Whole please come to order. Delegates please take their seats.

HEEN: At this time I would like to submit an amendment to Section 2 of Committee Proposal No. 29. In view of the fact that yesterday this committee went on record for dividing Oahu into two senatorial districts, and in order to be -- rather in order to conform to that decision, I have had redrafted the amendment attached to Standing Committee Report No. 99 and that redraft of that amendment is on the desk of every delegate, I believe, at the present time.

CHAIRMAN: Delegate Heen, will you please read the caption of that redraft so all the delegates --

HEEN: The caption of the redraft is "Amendment to Committee Proposal No. 29, substituted in place of amendment attached to Standing Committee Report No. 99." Now this amendment divides Oahu into two senatorial districts and provides for a 21 membership in the Senate; and in the division of Oahu into two senatorial districts, the number of senators for the third senatorial district is placed at five, and that for the fourth senatorial district is placed at four. This is on account of the difference in population of registered voters. There were 44,249 registered voters in the third senatorial district, which of course includes Waimanalo, Lanikai and Kailua, and in the fourth senatorial district -- or rather which excludes Waimanalo, Lanikai and Kailua, and in the fourth senatorial district which includes Waimanalo, Lanikai and Kailua, the population of registered voters there is 37,179. These figures were in connection with the Constitutional [Convention] election. Now I move for the adoption of this amendment.

SECTION 2. Senate; senatorial districts; number of members. The Senate shall be composed of twenty-one members, who shall be elected by the qualified voters of the respective senatorial districts. The districts, and the number of senators to be elected from each, shall be as follows:

First senatorial district: the island of Hawaii, five;

Second senatorial district: the islands of Maui, Molokai, Lanai and Kahoolawe, four;

Third senatorial district: that portion of the island of Oahu, lying east and south of Nuuanu Street and Pali Road and the upper ridge of the Koolau range from the Nuuanu Pali to Makapuu Point, five;

Fourth senatorial district: that portion of the island of Oahu, lying west and north of the third senatorial district, four; and

Fifth senatorial district: the islands of Kauai and Niihau, three.

DOI: Point of order.

CHAIRMAN: State the point of order.

DOI: I believe yesterday we decided on the question of the number of the members of the Senate. It was decided to be 25. This amendment here proposes 21. The question has been already settled. Also the question as to the number of

senators from Hawaii has been already settled; also the number of senators from Kauai and Niihau has been settled; the only question as to number which hasn't been settled is Oahu and Maui.

CHAIRMAN: The Chair will rule that there is only a tentative agreement. The point of order is not well taken.

PORTEUS: May I understand what the ruling of the Chair is here? I can't quite agree with this theory. When you go down sentence by sentence and take a vote on it, it's tentatively agreed subject to the adoption of the entire section, but once the vote is taken on a sentence or on some provision like that, it was the custom with the other Committees of the Whole to require that a vote to reconsider be made in order to get at that particular subject.

HEEN: I think the Chair will recall, as well as the delegates will recall, that at one point when we decided on the division of Oahu into two districts I put in the figure ten and that was supposed to be only tentative because I had in mind that I would later on submit a proposal advocating a membership of 21 members.

CHAIRMAN: The Chair believes the ruling is correct. This is one of the most important issues to be settled by this Convention. The Chair is not going to make any technical ruling that's going to shut off a full and free debate on the constitution of the legislature.

FONG: May I ask what we are voting for? Are we voting just for fun in this assembly here?

A. TRASK: I second the motion made by Delegate Heen.

FONG: I just want to know what we've been voting for; are we just voting for fun? We have voted on the issue and whether it's tentative or whether it's permanent, we have voted on the issue and once we have voted on the issue, I think that - -

LEE: Point of order.

CHAIRMAN: State your point of order.

LEE I think the Chair is absolutely correct in its ruling. The question of the 21 membership in the Senate has not been voted upon. The only thing that has been voted upon was the 20 member Senate with the lieutenant governor The proposal presently made by Senator Heen at the present time calls for a membership of 21 senators regardless of the lieutenant governor. Is that correct, Senator Heen?

HEEN: That's correct.

FONG: As I understand, Mr. Chairman, the question of 21 has been voted upon.

CHAIRMAN: Has not been voted upon.

SAKAKIHARA: Point of order.

CHAIRMAN: Delegate Sakakihara, state the point of order.

SAKAKIHARA: I have a memorandum before me that we have voted on the 21 member Senate yesterday. That amendment was proposed by Delegate Arashiro of Kauai and I respectfully request that the Clerk, I refer to the minutes of the Clerk here, it will show that this Committee of the Whole voted down overwhelmingly by voice vote Delegate Arashiro's motion at yesterday's session.

CHAIRMAN: The Chair is in agreement, the Chair's notes show that there was a motion by Delegate Arashiro, seconded by Delegate Mizuha, on a 21 Senate. That motion was put and lost. The Chair still adheres to its ruling that it was only tentative, and the present motion is in order.

LEE: Point of order.

CHAIRMAN: State your point of order.

LEE: The point of order that I'd like to make is that your ruling is absolutely correct; that the motion put by Delegate Arashiro went into the membership of the various islands, which is different from the membership as pointed out by Delegate Heen.

FONG: May I ask for an explanation of the word "tentative"? Now as I understand it, the word "tentative" is only used for the purpose of taking up the question sentence by sentence or paragraph by paragraph, and that the whole thing will be voted upon as a whole afterwards. That's the only meaning of "tentative" as far as I am concerned. Now we, if the Chair means that - - if the word "tentative" means that we can vote on it and keep on voting on it, and keep on voting on it, I think that is not the meaning of this assembly.

CHAIRMAN: The Chair has stated what its position and ruling, still adheres to the ruling that there should be a full and free debate on the constitution of the Senate and the House of Representatives. Thus far, that has not occurred and the Chair will maintain its ruling.

DELEGATE: What is before the committee?

CHAIRMAN: Before the committee is the motion to amend moved by Delegate Heen and seconded by Delegate Trask.

DELEGATE: I'd like to hear from the proponent of the motion.

HEEN: In support of the amendment which has been submitted, I want to read the minority report in this connection:

[Standing Committee Report No. 99]

We, the undersigned members of your Committee on Legislative Powers and Functions, do not concur with the majority report of the committee insofar as it establishes a Senate of twenty-five members.

A Senate of twenty-five members was chosen by the majority of the committee to assure that the precise ratio of 40.0 per cent Oahu members to 60.0 per cent neighbor island members would be retained.

That ratio is the mathematical result of the present senatorial apportionment, not the underlying reason for it, and we are unable to discover any justification for its unequivocal retention.

That exact ratio was not intended to become a sacred and inviolate standard. The framers of the Organic Act stipulated that the Senate, as well as the House, was to be periodically reapportioned on the basis of citizen population. An apportionment, if made today on the basis of total population (citizen population statistics are not available) would result in the following distribution of members:

(a) for a Senate of twenty-five members: First senatorial district, three; Second senatorial district, two; Third senatorial district, 18; Fourth senatorial district, two; and the ratio would be 72.0 per cent for Oahu, 28.0 per cent for the neighbor islands;

(b) for a Senate of twenty-one members: First, three; Second, two; Third, 15; Fourth, one; and the ratio would be 71.4 per cent for Oahu, 28.6 per cent for the neighbor islands.

It may be seriously doubted that the use of citizen population, if available, would have any material effect on the above apportionments.

We accept the proposition that no single major island group should be in a position to control legislation for the state. We are not advocating such control when we propose a Senate membership of twenty-one.

The apportionment of members among the several senatorial districts as proposed by the amendment (the substitute amendment here) as a part of this minority report is the same as that contained in Senate Concurrent Resolution No. 21, adopted on third reading by the Territorial Senate during the 1949 regular session. While the Senate was unable to concur in a conference committee report on that resolution, no better plan was proposed.

We agree with the apportionment attempted in 1949. The ratio under such an apportionment is 42.9 per cent for Oahu members and 57.1 per cent for neighbor islands. We believe this apportionment eminently fair to all concerned.

KELLERMAN: I should like to say that had this amendment, which divides the island of Oahu into two districts, been attached to the original minority report I also would have been one of the signers of that minority report. I don't want to over-labor the question of expenses, but I cannot but feel that when you have attained a number adequate to do the job—and no one has held out the point that it takes 25 senators rather than 21 to do the required work on a high standard—whenever you increase beyond those needed, you necessarily of course increase expenses all down the line, but you also diminish to that degree of increase the prestige of belonging to that body. It is far more important to be one of 21 than one of 25 and as I feel strongly those who favor the large Senate will also probably favor the very large House—the two go together in thinking, in psychology, and in results—the same question is even more pertinent when it comes to the 51 House as against the smaller House.

I cannot but feel that we are going overboard on this enlargement. To increase from 15 to 25 in the Senate is a sixty-six and two-thirds per cent increase, to increase from a 30 House to a 51 House is almost as large, in fact a little larger. There has been no evidence that a tremendous increase is necessary to do the work required on a high standard, and the greater you dilute the prestige and the responsibility the greater chance you have of not getting into either of your two bodies the most capable people because the reward of prestige which is probably the greatest reward for good public service is not held out in the same degree.

I feel that we should consider this very seriously. It isn't a matter of politics. We are writing a constitution. We should be keeping in mind the best governors whom we can get, the best legislators whom we can get to serve the public at a recognizedly amount of salary which is in no sense a real compensation. It is merely a token. I would ask all the body to consider these points very seriously.

ARASHIRO: I am thinking in line of having something to protect you and all of us no matter what changes take place in our political setup and other changes that will have any relation to our future legislature. For the matter of record, I wish to make a statement to the assembly that I only wish that we did consider this matter from a layman's point of view and judge it accordingly. If politics is the theory that we are basing on this issue of reapportionment or apportionment, then I need not go further. But I do not think that we are basing this on the theory of politics. We are, to my assumption, basing this on some fair method whereby the committee and this assembly has come to a conclusion that a bicameral legislature is necessary to attain this fair method.

Where there exists this bicameral legislature, there are many theories behind the setup of a bicameral legislature. To name the few they are as follows as I said yesterday from the statement submitted here by the delegate from the second representative district where he stated that we can have rejected fractions, included fractions, and Vinton method, geometric fractions, harmonic fractions, and other methods. But whether we can pick any one of the above methods and say this is the one for the State of Hawaii is, I presume, unacceptable to your delegates and the same applies if we were to choose a constitution from any one of the 48 states in total and say this is the one for Hawaii. Now we cannot pick any one constitution in total or any theory or method in forming the bicameral legislature. We are here to create, make or propose one that will fit and work here in the State of Hawaii.

What I am driving at is this, that with all the information we have to date, and forgetting politics, we should work on the theory of just fair and uncontrollable legislature by any one or two counties. This is the $64 question. What is just and fair in trying to set up a fair method of representation in our legislative branch? If we are going to base the representation on population alone, then I would say we should recommend a unicameral legislature; but if we are going to base our representation on [inaudible] for the purpose of the above state a fair one, then a check and balance method of a bicameral legislature is our choice. Let us agree, and there is no question that one house will be on the basis of population but the other on the basis of a just and fair method where the check and balance is not only a word but something that is in practice.

Now to me, whatever method you use, I do not think that when you set up a Senate for the State of Hawaii that can be controlled by two counties it's right, and especially when one house is already controlled by one county. Under the present proposal, what assurance can be given to the counties of Maui and Kauai if Oahu and Hawaii should have a different type of people sitting in the future legislature than the kind that we had in the past that we can look back with some pride? Every legislation that comes to the Senate will be disposed of just the way Oahu and Hawaii want, since the ten Oahu and seven Hawaii senators is far more than the necessary majority of the total 25, and so will the same apply to a coalition of Oahu and Maui of ten and five. The Hawaii delegation may be assuming at present, or the Oahu delegation for that matter may be assuming that a coalition between Oahu and Hawaii, but it might turn out the other way. For a coalition of Oahu and Maui can really hurt the Big Island which really needs and are so far back in their public improvements and projects.

What I am trying to get is this, leaving the House aside —which I don't think there exists much difference in the opinion for the matter in which we are going about in setting up the House and so there's no question or argument in the reapportionment of the House—however, I do not want to see a Senate to be controlled by any two counties but, being in the minority, I thought that the fair proposal and one that can be accepted by the majority was the one I offered yesterday. That is a 21 member Senate with six from Hawaii, four from Maui, eight from Oahu, and three from Kauai, but dividing the Big Island into two senatorial districts and Oahu into two senatorial districts. In this setup no two senatorial districts will control the Senate and the number

will be a very workable one with the minimum cost of operations.

But if the assembly still prefers a 25 member Senate that is still acceptable to me, except that I still want to see that the counties having six or more in a 25 member Senate to be divided so we base our balance and control of power in no two senatorial districts. But if you on the majority will lean a little to the minority then I would prefer you making it that no two counties will control the Senate.

From my experience in the legislature I can say this, what I have said here today is something I wish you delegates will give serious thought and consideration because I do not think that in my thinking—if my thinking should be followed or carried out—that Oahu, Maui, Hawaii or Kauai can be mistreated and neither one or two counties can abuse their powers, and that is the balance of power I want to remain in the majority county. But under the proposed proposal, as tentatively adopted, there is a grave danger as I pointed out previously.

To clarify this, may I briefly explain it. Under my plan the present setup of Oahu will by far have the majority in the House. That means they can stop any outside island legislation in the House, but in the Senate this power of Oahu cannot be offset because it will require more than two counties to stop it, which is of course very hard. This is to point out to the Oahu delegation that their legislation cannot be easily killed in the Senate. So I see no fear there as far as the Oahu delegation is concerned. As far as the other islands are concerned, we will need the help of Oahu because the snag and obstacle for the outside islands will be in the House.

So, you see, there is a check and balance there where no counties can monopolize the legislature. For monopoly in our democracy is a dangerous thing no matter where it is and what kind it is because monopoly means the loss of control of the power of the majority. The control in any faction—it may be in big business, big politics, big union—I say this that there will be some abusement, for that is human nature and you cannot help that.

You are here laying the basic law of the State of Hawaii that will have much to do with our future legislation and especially the kind of taxation system we will have; and to me when you are not just legislators, but writing a constitution and so doing can whole heartedly push something down the throat of the minority, then I say they are the kind of actions that breathe foreign ideology. By finding out the real faults of our system where in one breath [we] say it is a democracy and on the same breath have a monopoly. In business, we call business monopoly or an industrial monopoly or a labor monopoly, but in politics we call it a dictatorship or some sort of a totalitarian government with a democratic front.

So in conclusion, please, I humbly plead to you delegates, let us work towards preserving this democracy by preventing this means of giving or creating any sort of a monopoly or giving any group or any faction a chance of monopolizing.

CHAIRMAN: Before proceeding with the debate, I think this is a serious question. A lot of the delegates are paying no attention, reading newspapers. I suggest we get down to business on this.

LEE: It seems to me that it's very important to keep an open mind on this question. I know that long before we had discussions on this matter, various delegates of this Convention have gone around arguing for their plan and practically, you might call it, doing a snow job, and a lot of the other delegates probably have been committed by the arguments of which they have heard only one side concerning the matter. Delegate Kellerman's statement was a statesman-like approach to the problem but I didn't hear very many people listening.

As a member of this committee, this legislative committee, I'd like to state as to how the figure 21-51 was reached. How was it reached when after various statements were made by the members of the committee that the membership was unwieldy, was impractical and highly over expensive, statements made by the members who voted for this proposal in the majority. Then how can they reconcile their view points? Their reconciliation it seems to me comes back -- well, it's a matter of compromise. Certainly, politics is a matter of compromise. Nobody will question that. But also balanced against the principle of compromise is the principle of what is best for the people and not what is best for our particular political aspirations or the political benefit of each particular island.

I know that there are members of the outside islands who feel that since they are yielding to Oahu the lower chamber, that they should control the upper chamber. The majority of them, in fact I believe all members of the committee, were willing to go along with that principle, but not content with that the idea was to preserve the principle or the ratio of 60-40 control. And so in order to preserve that ratio of 60-40 control you had to reach the figure of 25. That was the only way you could preserve that ratio.

Then there was an able member of the committee who realized that difficulty and also realized the expensiveness of the entire legislature which would mean a 51 House—we've got to consider a 51 House, unwieldy, admitted by the majority or a great number of the majority in the report that came up, was produced by the majority of the committee—this member proposed a 20 House, with a lieutenant governor -- Senate. Your ratio would be preserved. The outside islands' ratio would be preserved. And with a 20 House you'd have a far better chance of having a House which is not unwieldy -- not a House which is not unwieldy because you have a 51 House. You've got to consider both of them, you can't only consider the Senate. You have a 25 member Senate, there's no question you've got to go up in the air to 51. Admittedly unwieldy. Are we representing the people of the entire territory or aren't we when we go up to a figure of 51, admittedly unwieldy?

It would seem to me therefore that the better part of wisdom is to bring down the figure and the only way you will bring down the figure of the House is to bring down the figure of the Senate. And the only way you'll be able to bring down the figure of the Senate and to preserve that ratio is to pass a proposal which you refused to pass yesterday. It is not too late to reconsider. You will preserve your 60-40 ratio and you have a man presiding as lieutenant governor, the lieutenant governor presiding over the Senate. And it seems to me that the rest of this committee should understand what is involved in this entire picture.

CHAIRMAN: The Chair would like to ask the chairman of the committee a question. What was the basis for the division of the senatorial representation on the island of Oahu? I note that your amendment would give five to the fourth district and four to the fifth district. What is the basis of that division?

HEEN: The third senatorial district, which is the present fourth representative district plus Waimanalo, Lanikai and Kailua, has a total population of registered voters of 44,249 as against 37,179 in the other district.

BRYAN: I'd like to perhaps clarify a few points as brought up by the last speaker on the floor regarding why

the number 25 was picked. I was in the majority of the committee that came out with the report requesting a Senate of 25 members. Now he reviewed the thing and practically answered his own question. It was a case of preserving the ratio of 60-40. Now it's been stated that that can be done with a 20 member Senate and it can be done with a 25 member Senate. I believe that the question of the 20 member Senate was fairly well settled yesterday on the basis that you were putting the controlling power of the Senate, in other words the deciding vote in the case of a tie, in the hands of the executive department, and I think that was the basis that many people refused to go along with that proposal yesterday. The whole history of this committee action shows that the only thing that a majority of the committee could agree upon - -

CHAIRMAN: Pardon me, Delegate Bryan, did you say executive department?

BRYAN: I said executive department.

CHAIRMAN: You explain that a minute?

BRYAN: Yes, on the basis - - I was talking to the ratio of 60-40. The ratio of 60-40 can be maintained with a 20 member Senate or with a 25 member Senate, either one, not with a 21 member Senate. And the reason that we picked 25 was when you pick 20 you give the deciding vote, which is actually the chairman's vote in case of a tie, which is the deciding vote on important or controversial issues, to the lieutenant governor who would be a member of the executive department. Does that clarify that?

When the figure 21 came up on the basis presented by Delegate Heen this morning, the committee could not get together on it because it destroyed the 60-40 ratio, as his proposal this morning destroyed the 60-40 ratio. In every vote that was taken the only thing that a majority of the committee could agree on—the minutes I am quite sure will prove this—as far as the Senate is concerned was 25. I hope that answers the question as to why we ended up with 25 so many times in the committee.

MIZUHA: I don't see how the legislative branch will be taking over some of the executive authority by having the lieutenant governor cast a vote in case of a tie. That has always been done in the United States Senate. I think it's a principle that has been firmly established. It's a weak excuse for a 25 man Senate.

I would like at this time again to reiterate the federal principle upon which those people who wrote the Federal Constitution decided to have equal representation in the Senate and representation according to population in the House of Representatives of our Federal Congress. In the proposal as submitted by the committee giving us that 25 man Senate for the Territory of Hawaii, they have discarded that principle and engaged in a sort of exchange which has given an increase to some of the outlying islands far above those of other outlying islands. By giving Hawaii seven, they have increased the senatorial representation of the island of Hawaii 75 per cent and gave the island of Kauai just a 50 per cent increase.

However, whatever the composition is with reference to the 21 man Senate as proposed by Delegate Heen at the present time, I must speak in favor of a smaller Senate and I'm speaking in favor of it, sounding a warning to all of you delegates here, especially those of you who are engaged in industry here in the Territory of Hawaii and who will be engaged in industry in the future State of Hawaii. And it is a warning which I give for the record because as the State of Hawaii takes its place in the sisterhood of states we will be continuously confronted with the problem of raising sufficient moneys for the expenses of government. Under a 25 man Senate we will have an increase of ten senators in our State legislature. The increase of ten senators may not materially increase the expenses of our legislative sessions, even though they might come annually. The increase may be only $200,000 or $300,000 or half a million because of the fact that the federal government won't be paying the salaries of our legislators. But when you have ten more senators in the State legislature, every senator who goes back to his constituents must return home and stand re-election from time to time and tell them what improvements he has secured for his constituents in the State legislature, and senators, being what they are, are not going to divide the credit for some capital improvements. We had that problem on the island of Kauai when two senators wrangled as who got the airport for the County of Kauai. Every senator will have his pet project; it may be a library, it might be a flood control, it might be a new kindergarten, it might be a new school gymnasium and so forth. But the answer from some of those who have written debt limitations into our Constitution say, "Well, you have a constitutional provision you can't go over 60 million or 15 per cent so we're not worried about what the ten additional senators will do."

But there is the crux of the warning right now. Those ten additional senators, if they cannot raise the money for capital improvements by floating bonds, will go to your tax structure; and industry will be taxed more than any other group here in the Territory, proportionately, to get the revenues for those improvements that ten additional senators would like to have for their constituents on the outside islands; and that is fact because we see that in the federal government today. Every senator is seeking to railroad into that public improvement or flood control - - army program for flood control and rehabilitation, their pet projects; and we have seen continuously appropriations by the Federal Congress for improvements, capital improvements that are far out of line, and as a result there has been a deficit in our federal budget since the end of the war. A bigger deficit than the war even brought about in our federal budget.

If you think that ten additional senators are just going to stand by and not make appropriations or get the money for those appropriations because of debt limitations, I believe you are all wrong because they will raise the income tax, they will raise your gross income tax, they will raise all the taxes to get the money to get their pet projects through so that they can tell the people back home, "I got you this at our State legislature." And it's a warning I would like to sound now because if industry raises a howl, if our tax structure goes awry, and increased taxes face the industries of the territory, they may as well say that they gave us that Constitution in a State legislature [sic] that permitted that, and they cannot howl afterwards.

HOLROYDE: It seems to me that, at the moment, we're debating a choice between 21 and 25 which is a difference of four men. We're not debating 15 as against 25. Now I think it's been obvious from the debate and the problem that this Committee of the Whole has had as to the problem that your committee of the legislative division had wrestling with this problem. We wanted to be fair to the representatives from the other islands and as the previous speaker said, we tried to maintain that ratio. We reconsidered our action on these figures of 25 and 51 on three different occasions and tried desperately to find a suitable compromise of some kind and that was the only one that your committee, the majority of your committee, could reach.

Now you've heard a lot of discussion on the cost of the legislature, about how much is this increase in the legislature going to cost you? It's going to cost you just as much as you allow your legislators to spend. Now you've had a legislature of 45 members for the past many years and you look at the records that are on your desk of the increased cost of that legislature maintaining the status quo in number of members. I maintain that if the people of the territory want their legislature to operate economically and do their job on that basis that, with the amount of money spent right now for your legislature, you can almost finance a legislation that the committee has proposed as their proposal.

MAU: I would like to ask the proponent of this amendment whether it would be agreeable to him to have Oahu be a little bit more than fair. It will take a licking by having only eight senators, giving the lieutenant governor a right to vote in case of a tie. In other words, you would have a 20 member Senate. The third senatorial district instead of having five, would have four. The fourth senatorial district will remain at four. Then amend the portion covering the third senatorial district, striking out the words " Pali Road and upper ridge of Koolau Range" and inserting in lieu thereof the words of the Organic Act "a line drawn in extension thereof," that would put Kailua and Waimanalo in the fourth. If that is agreeable to the proponent of the measure, maybe we can get somewhere, particularly insofar as the Oahu members are concerned. If they want to be what I call overly fair, beyond the 60-40 representation, we take less. Possibly the outside islands may agree. I'm making that just as a suggestion.

KING: I make a point of order against that suggestion. Before the proponent of the amendment - -

CHAIRMAN: Delegate Mau has subsided, Delegate King. Is it still open to make a point of order now that he's left the floor?

KING: I make a point of order against his suggestion.

CHAIRMAN: Very well.

KING: That it is simply a rehash of what we decided yesterday. As a matter of fact, I am convinced that a point of order justly lies against this proposed amendment. But the Chair has ruled that it's open for discussion and to be discussed, so I'm not making that point of order. Now, I'd like to be recognized to speak in opposition to the amendment offered by the chairman of the committee on behalf of himself and two other members of the committee.

MAU: Point of order on the statement made by the speaker.

CHAIRMAN: State your point of order.

MAU: There's a difference in the proposal offered yesterday.

CHAIRMAN: State your point of order, Delegate Mau.

MAU: The point is this. Yesterday's proposal on 21 did not reduce Oahu's representation in the Senate. This suggestion made does reduce Oahu's representation in the Senate.

CHAIRMAN: Proceed, Delegate King.

KING: The amendment offered by Delegate Wirtz was exactly along the lines of his proposal of eight senators from Oahu, and the amendment offered by Delegate Chuck Mau was exactly along the lines of restoring Waimanalo and Kailua to the fourth district. Now, in speaking against the amendment offered by Delegate Heen, I'd like to refer to the Manual of the - - on State Constitutional Provisions. On page 11 of that manual is listed the states of the Union, the numbers of senators and representatives. If the committee will bear with me, I'll have to take my glasses off to read that. I'm only going to read the states that have comparable population to Hawaii. Arizona, 19 senators, 58 representatives. Arizona is a state that has a slightly larger population than Hawaii. For a long time during the time I was in Congress it had only one representative in Congress. I believe it has since gained one more. We are to have two representatives, if the provisions of H.R. 49 are carried out. We go down to Delaware, small state with a population less than ours, it has 17 senators and 35 members. We go down to Idaho which has only two representatives, 44 senators, and 59 representatives. We go down to the next state of comparable population, Montana. Montana has two representatives in Congress, has a population slightly greater than Hawaii.

CHAIRMAN: Delegate King, you might give us the page in the Manual so the delegates - -

KING: It's page 11.

CHAIRMAN: I think the delegates are worth - - this is material worth listening to.

KING: It's page 11 of the Manual. I announced it I thought at the beginning, and if the delegates will turn to page 11 you look at Arizona, Delaware, Iowa, Idaho, and I was down to Montana. Montana has 56 senators and 90 representatives. Nevada with a population of about one-fourth of our population, less than a fourth, has 17 senators and 41 representatives. Get down to New Mexico with a comparable population, 24 senators and 49 representatives. Go down to North Dakota, a large state, only two representatives, population only slightly greater than ours; North Dakota, 49 senators, 113 representatives. Turn on the next page, page 12. Utah, a large state with a population not very much greater than ours, 23 senators, 60 representatives. Vermont, with a population of 350,000 people, one of the old states, of course—not one of the original 13 colonies but came in immediately after the Revolutionary War—Vermont has 30 senators and 246 representatives. Get down to the last state, Wyoming, the state that is represented in the United States Congress by that very distinguished senator, Senator O'Mahoney, Wyoming had in the 1940 census 350,000 people, its population has now shrunk to 285,000 people. State of Wyoming now has 27 senators and 56 representatives. Let's forget this business about increasing the Senate to an exorbitant number.

A. TRASK: Mr. President.

KING: I do not yield unless it is for a question.

A. TRASK: Yes, it is for a question.

CHAIRMAN: Does the delegate yield?

KING: Yes.

CHAIRMAN: State your question.

A. TRASK: Mr. President, are you - - by those figures which you have read - -

CHAIRMAN: Will you please address the Chair?

A. TRASK: Mr. Chairman, do you gentlemen - - President mean that he is in favor of senatorial and representative houses based on population?

CHAIRMAN: Will you answer, Delegate King?

KING: That is not the point at issue. It is merely the size of the Senate I am discussing at this time. It has been repeatedly said that we are going to increase the cost of government tremendously, and a comparison was made between 15 senators and 25 senators. That's not the issue. The issue is 21 senators or 25, or at the least 20 or 25. The move to retain the membership of the Senate down to 15 has been lost. It has been the consensus of the committee that 15 is too small and it must be increased. Even the proponents of this amendment and the proponents of the other amendment use 20 or 25 and not 15. So let's discard 15 as the figure, that isn't in the picture at all. The picture is 20 or 25, or 21 or 25, that's the only question before this Committee of the Whole.

Now, when we get down to cost, it has also been brought up by Delegate Sakakihara that the per capita cost of the legislature is less today than it has been in the past. The dollar has shrunk in buying value, our population has increased threefold, the appropriation made by the legislature at every session has doubled twentyfold. So that the cost is not an important feature in this discussion.

Now, this amendment proposes to allocate nine delegates to Oahu, divided five and four, and that of course, would penalize the fifth district. Now, the fifth district with the addition of Waimanalo and Kailua has a population equal to the fourth district. It has a registration of voters somewhat less than the fourth district but actually the population of the fifth district is equal to that of the fourth district under the provisions that were adopted in the committee report including Waimanalo and Kailua into the fifth district. We are not using population as a figure in the Senate distribution, we're using an arbitrary figure because it has been generally agreed that the theory of the balance of powers should be maintained; that Oahu should have the control of the lower house because of its greater population but that Oahu should concede to the other islands the control of the Senate.

I have been one of the advocates of reapportionment for many years. As a matter of fact, I introduced a bill in Congress in 1939 or 1940 when the legislature of Hawaii agreed upon a basis of reapportionment that does, I will say frankly, follow the line of this amendment of 29 senators and 41 representatives. At that time I predicated my advocacy of reapportionment on three or four premises. First, that Oahu was entitled to a majority in the House of Representatives. No one questions that and that majority should be a fairly substantial one, but I added to that premise, second, that the other islands should not have their representation in the House decreased, that Hawaii, Maui and Kauai should not have less than they now have. It is true that they are not entitled to what they have now under the terms of the Organic Act. We have not obeyed the mandate of the Organic Act. We have not reapportioned in accordance with citizen population by election districts. If we had done so Oahu today would have 21 representatives out of 30 and would have nine senators out of 15, but it hasn't been done and that's water over the dam. I never did favor it. But let me repeat the two premises on which I based my championship or advocacy of reapportionment. First, that Oahu should have a majority in the lower house, a substantial majority, and that the other islands should not have any of their representation reduced. Second, in the Senate, that the other islands should have a majority but that Oahu should have its representation substantially increased in that body and that Oahu should be divided into two senatorial districts and that it should be divided into smaller representative districts.

Now, with those four premises I sat in, and I advocated that and submitted memorandums to the Committee on Legislative Powers and Functions. We tried to come to an agreement in that committee. I was an ex officio member without a vote and if I'd realized what a tough nut it was going to be, I would have assigned myself to that committee with a vote. But I sat in their many hearings and over and over again every possible combination of the House and Senate was submitted to that group of 15 delegates, representing this Convention, coming from all of the islands of this group, but they could not come to any other agreement except 25. That was the least common denominator over which there was a majority in favor and a minority in opposition. On many occasions, it was a nine to three vote in favor, ten to four vote in favor, but in every other possible combination including this one here that is being proposed by Delegate Heen, there was no majority in the Committee on Legislative Powers and Functions.

Now I feel that after all, we can't sit here as a Committee of the Whole with 63 members and go over all the ground that's been gone over before. One or two other remarks made here today merely repeated the remarks that were made yesterday, and it seems to me that we should come to a conclusion, vote on the subject, down or up, and then go on to the next order of business. I am not going to move for previous question because I do feel that is uncalled for, but, nevertheless, there is no question that the argument lies only between, shall we have a Senate of 20, or 21, or 25. The pending amendment says "21," so let's vote on that.

CHAIRMAN: Delegate King, I have a question, if you'd inform the Chair. I noticed in the table that you read from, the New Jersey Senate is 21. Now, that's the most recent constitutional revision. Did that revision change the membership in the Senate, do you happen to know?

KING: I do not know and I do not care what the states of large population do. You can turn to California which has seven million people, it has a Senate of only 40. You can turn to New York.

CHAIRMAN: Can any member of the committee advise the Chair of that fact?

KING: Well, let me finish my reply, the Chair asked me a question. I said that I did not know and I did not care that New York with 15 million people has only a Senate of 56, so there's no comparison between large populations. Now I'm comparing Hawaii with the states of comparable populations of 250,000, 285,000, 350,000, 525,000. If we are satisfied to base our representation on the standards adopted by California, Pennsylvania and New York, we'd have a Senate of two members and a House of five.

WIRTZ: I just want to clear up one possible misapprehension that might be left with this committee in regard to per capita costs of the legislature. It is true that the delegate from Hawaii did submit to the committee certain figures based upon the relative inflation of the dollar, and as I recall the discussion of the committee, it was pointed out that like all comparable tables of that nature, it depended where you started with the dollar and that those figures were rejected by the committee. As one of the delegates who is a businessman pointed out, they just didn't make sense.

A. TRASK: I think as the President has indicated, there are as many ideas on the subject as there are delegates here in this Convention. What I am concerned about is what theory can this Convention pose to the people as being the basis of whatever agreement we reach. How are we going to justify to the people the basis and theory upon which this legislature is to be apportioned. I would like to know, as vice chairman of the Committee on Submission and Infor-

mation, which is the official organ of this Convention to sell the idea, I'd like to know.

Now this is my thinking about the subject. Let us read what the Organic Act says in Section 55:

> The legislature at its first regular session after the census enumeration shall be ascertained, and from time to time thereafter, shall reapportion the membership in the Senate and House of Representatives among the senatorial and representative districts on the basis of population in each of said districts who are citizens of the Territory.

Now, that's a plain and simple statement. The question first to be considered is, are we to depart from that principle of reapportionment in the House and the Senate after a census enumeration, which hasn't been done and which fault lies at the very foundation of the Republican party? Let's find out if this principle is to be departed from. It has been departed from in the last 50 years. Now having been departed from, what principle therefore are we proceeding on? Now to me that is basic. How are we going to justify any kind of reapportionment and as fair-minded men and women concerned about trying to give a proper answer to a proper question, what is the theory upon which we are proceeding? Obviously the theory is this: we shall reapportion the House but we shall not reapportion the Senate. That, to my mind, is the basic thinking unless this Convention admits of selfishness and personal gain. There is no other question but that the thinking basically, if it is to be justified at all, is on the principle that we shall reapportion the House but the Senate shall remain the same. To me 21, 25, 20 and the various questions of whether or not the lieutenant governor or not stays in as a president pro-temporare of the Senate -- if we do not apportion the Senate according to population we're just juggling it to our own provincial aims.

It seems to me therefore, that the most logical thing is to maintain the Senate at 15 and the House according to population, on the basis of population of the districts who are citizens of the Territory. It seems to be altogether that that is the theory. It's the history of the legislature. It's the history of the thinking here, unless we admit of other ideas than that of honesty. So therefore, 15 having been voted down—I wonder how we're going to justify 15 having been voted down when we go on the basis of population for the House. Are we apparently to abandon and say to the people, "Even though we have a principle in the Organic Act we disregard it altogether, it is not binding." And yet, on the other hand, we have put into this Constitution many provisions, and we say, "Ah, it is in the Organic Act and therefore we must follow it." I submit therefore, that as far as any proper thinking can be an excuse, the thinking is obviously this: reapportion the House, but do not reapportion the Senate. But the 15 is killed so the only other figure, and I am supporting as the second to Delegate Heen's motion, if we are to justify this thing at all, we can only justify it by voting for 21.

CHAIRMAN: The clerks have been busily engaged for the last hour. If there's no objection the Chair will declare a short recess.

DELEGATE: I second the motion.

CROSSLEY: What I have to say will only take 30 seconds.

CHAIRMAN: Very well, proceed.

CROSSLEY: I'd like to say, as chairman of the Committee on Submission and Information, and as one of the committee who has done a great deal of work with other members of the committee in trying to get this information out each week to the people, I am not a bit concerned with going back to the people and saying that what has been decided on this floor is the majority opinion of the people you elected to represent you in writing a constitution. It's just as simple as that. I'm not going to try and justify my vote on any issue or anyone's vote. I'm simply going to say, "There are lots of things that were controversial in here; there are lots of things in this Constitution with which I don't agree personally but they're in there because a majority of the people wanted them. Now, it's up to you people."

I resent the innuendoes remarks that constantly go on when I try to put across a point.

C. RICE: I move we take a recess.

CHAIRMAN: Any second to that motion?

WIRTZ: I second that motion.

CHAIRMAN: All in favor. Contrary.

(RECESS)

CHAIRMAN: The Committee of the Whole will come to order. Delegates take their seats please. Ladies and Gentlemen of the Convention, just before the recess, Delegate Crossley was speaking and he was obstructed in his addressing the Convention by some remarks that came from some place. I don't think that's conducive to earnest and sincere and effective debate. I think we ought to get rid of that sort of thing. The Chair will recognize Delegate Crossley in case he has something further to say.

CROSSLEY: I was trying to make the point that had been raised by the delegate from the fifth district that we might have a very difficult time in explaining some of the actions. The point that I wanted to make, the point that I think is so important for all of us to remember is that there may be many controversial issues embodied in the Constitution. I don't think that you can pick out any one of them and say that that is going to be it. There will be some people who will fully agree with some of the actions, there'll be many people who will disagree with some of the actions. You're going to sell the Constitution as a whole. That will be one of the jobs of the Committee on Submission and Information. Therefore, I think it's erroneous to state that on one issue alone-whether you may agree or disagree with the action finally taken—I think the Constitution is going to be presented to the people on the basis that it is the majority opinion in each of the issues that has been settled, that that be decided as the article to go into the Constitution, and that is the reason that it's there. In some cases, it may have been that they were unanimous decisions, in more cases it will be that they were majority decisions and that is how democracy works. That was the point that I wanted to make.

I find that my sense of humor is not as good as it was 60 some odd days ago and for that I'm sorry because I appreciate a sense of humor as much as anyone and I don't like to be short, but I was so serious and intent yesterday and today on the two subjects on which I was talking that I did resent interference.

KAGE: I'd like to make my remarks toward the statement made by Delegate King in reference to the ten comparable states as far as Hawaii is concerned. We all speak about money and we say an expense is nothing, but money is a necessary evil in our civilization and no matter what you do you just got to consider money. Most of us are unwilling to work for love.

CHAIRMAN: Delegate Kage, I think if you'll hold your microphone a little closer you can be heard better.

KAGE: Now, getting back to the ten states that were referred by Delegate King: Arizona, Delaware, Idaho, Montana, Nevada, New Mexico, North Dakota, Utah, Vermont and Wyoming. Of those ten states, Nevada pays the highest salaries to the legislators. Nevada pays for a two-year period $900.00. According to the proposal of the Committee on Legislative Powers and Functions, they are allowing a salary of $2,500 for each session. For the general session $1,500; for a budget session, $1,000. The question that is going around and around and around in my mind is these ten states that were named. Is it not possible that they would like to have a smaller Senate than the Senate that they have today? I would also like to make another reference to a very interesting book published by the -- Report of the Subcommittee of the State Constitutional Convention of the Hawaii Statehood Commission. I notice that there is a report on reapportionment and I notice also that the chairman of the Legislative Powers and Functions, Mr. Heen, is the chairman. And I also found out that the other members of the committee are Thomas E. Waddoups, Charles Kauhane, Rhoda Lewis and Judge Wirtz. I think this material here deserves consideration. Thank you.

SILVA: I'm just wondering whether it's timely for us to discuss the costs. If it is, then it is proper and fitting that at this time that we fix the salaries of the legislators. Otherwise we're just wasting a lot of time about -- talking. about the costs and what the various states pay their senators and legislators, unless we agree that in discussing the number we shall also discuss what their salaries shall be, if that is going to be relevant to the subject. Otherwise we should settle the number first and then come to the cost. For us to bring the question of cost now in comparisons for the various states, in my opinion is not a proper one unless the Convention decides that we should talk about both of them at the same time.

CHAIRMAN: You wish to make that in form of a motion, Delegate Silva? The Chair thinks there's a good deal of relevancy to what you have to say there.

SILVA: I just want to point that out that I just hope that they save their breath in talking about the cost if that is not the intent of this Committee of the Whole. If we're going to discuss the number that is to be decided upon, whether it's 21, 15 or 25, then let's stick to that issue. Then later on when we come to costs, it's a different subject.

H. RICE: I am perturbed about the size of the Senate because I think it will have a bearing on the size of the House, and I quite agree with Delegate Kawakami that when you dilute the milk it might not be as good, but I think that when you dilute these bodies you won't have the same responsibilities. I am fearful that with these large Senates you'll have a 51 House which I will surely oppose as well, and I think if we could get down to 21-41 or 43, it would be far better.

In Delegate King's analysis of the different states, they are not comparable to Hawaii because they have -- take the case of Vermont. I think all the legislators go home every night. They don't have the same situation and the same responsibilities really, that go here. And as I say it's made a big difference and I am hoping that we have statehood soon because I don't think there's anywhere in any state where you have to pay tax to go from one county to the other, the way you do here. And the sooner we get statehood the better.

I realize, too, that we should have more help. Today I got a report from the Full Employment Committee and we have 26,288 individuals who were helped in the month of May at a cost of $672,360. And you know, fellow delegates and Mr. Chairman, that with 8,000 more graduates from our University, there's quite a responsibility that goes with it all, and I think that if you have these larger houses they will shirk their responsibility.

On the Aeronautical Commission we have one delegate from the County of Hawaii, the County of Maui and the County of Kauai that always show up. We have six representatives from the island of Oahu and we can hardly ever get them together. The others realize their responsibility in these airports on the other islands, and they always are meeting when they're called. It's the same way with our school commission and other commissions, but the whole government -- I think that the Territory is in a critical situation on account of this unemployment and I think that two counties are floundering, the County of Hawaii and the County of Maui, on account of their finances. Kauai is pretty well off, so is Oahu. I think you can bring a few people together much easier than you can bring a lot, and I think that you won't have the responsibility that goes with the office if you have bigger ones. I'd rather have 15, but that's out. Looks like you probably will kill 21, then they have 25, by jove, you have 51 House! I don't think you can sell that kind of a House and Senate to the territory. That's my firm belief, that the people when they realize what it means will think it's ridiculous. What did those fellows do in those 63 days up there and then finally work out a legislature of this kind. I think it's ridiculous!

YAMAMOTO: The legislature is possibly the most vital branch of representative democratic government.

CHAIRMAN: Excuse me. Will the delegate speak a little closer to the microphone; I don't think the delegates can hear you.

YAMAMOTO: Here today, we are debating on the most vital and important factor of this Convention—reapportionment—whether we are giving equitable or justifiable representation to all sections or districts throughout the new State of Hawaii.

To give a slight phase of how other states of the Union base their representation, let me explain the system carried by the great state of California, which state that is represented by the Honorable Governor Warren, who is one of the greatest proponents for statehood for Hawaii, and the state that is closest to Hawaii.

Under the present California "Federal Plan" of representation, the 80 assembly districts—to us the House of Representatives—are apportioned on the basis of population, while the 40 senatorial districts are formed on a county basis, with the restriction that there may not be more than one district per county nor over three counties per district.

It is the contention that such procedure is necessary to protect the rural interests of the state which play an important part in the economic structure.

I like to back up the past statements by quoting our President of the United States, the Honorable President Harry S. Truman, the strong advocator of equal rights to all.

On May 6th of this year President Truman urged the Senate to "strengthen the security of our nation" by granting statehood to Alaska and Hawaii.

"I know of few better ways in which we can demonstrate to the world our deep faith in democracy and the principle of self-government," the President added.

Mr. Truman made this plea in a letter to Chairman Joseph C. O'Mahoney (D. Wyo.) of the Senate Interior Committee. Noting the contention of opposition forces that admission of the two territories would give them the same representation in the Senate as the most populous states, the President said, " This argument is not only entirely without merit, but also directly attacks a basic tenet of the constitutional system under which this nation has grown and prospered. Without the provision for equal representation in the Senate for all states, both great and small, regardless of population, there probably would have been no United States. There is no justification for denying statehood to Alaska and Hawaii on the basis of an issue which was resolved by the Constitutional Convention in 1787."

Don't we consider the above statement by our great President, Harry S. Truman, of great significance?

Let us consider other states of our great union. Ten states, Alabama, California, Florida, Idaho, Iowa, Maryland, Montana, New Jersey, South Carolina, and Texas, provide in their constitutions that each county be limited in representation to one senator.

Therefore, honorable delegates, I plead to your good judgment to give this matter of apportionment serious consideration on the merits of principles on which our nation is based on—to preserve certain rights of the minority. I reiterate again and plea to you all delegates with a clear conscience of mind to weigh the merits of equality. This Constitution must be approved by Congress and the President of the United States after ratified by the people of Hawaii.

I like to leave with you, fellow honorable delegates, a thought. We want statehood, so let us be fair to all so that Congress and the President of the United States will grant us that wish of approving our Constitution. Thank you.

MIZUHA: May I ask the previous speaker a question?

CHAIRMAN: Address the question to the Chair, please.

MIZUHA: Mr. Chairman, does the speaker desire equal representation from all counties in our future State Senate?

YAMAMOTO: Yes.

MIZUHA: Then I believe that the delegate is in a position to reconsider our action on the previous apportionment of senators because there is an equal representation at the present time and I believe he voted for the proportion of representation as it exists on the ten, seven, five, three basis.

CHAIRMAN: I think that's correct.

CORBETT: I'd like to speak in favor of the amendment offered. I believe it's the first debate we've had when someone hasn't mentioned the Organic Act and its virtues and how well we've done for the last 50 years. Of course that's because we're all in agreement on the need of reapportionment. But I do feel we should recognize the strides that the Territory has made under the apportionment made by the Organic Act under the small Senate and the small House. The Territory of Hawaii is recognized everywhere as being advanced, particularly along social lines. Now this is something that we should not forget.

DOI: I would like to ask the movant of this amendment a question.

CHAIRMAN: Address your question to the Chair, please.

DOI: Yes. I understand the House is apportioned on the basis of population. I would like to know just exactly what the movant based his senatorial distribution of members, just exactly what did he base it on?

CHAIRMAN: Would you answer that, Delegate Heen?

HEEN: It is based partly on geography and partly on population in terms of registered voters. It is almost in the same proportion that exists now of 40 per cent for the island of Oahu and 60 per cent for the outlying islands. It's only a small difference in percentage here under this plan of 21 membership in the Senate.

DOI: Will the movant also yield to another question, and that is, whether he feels that the 40-60 per cent ratio should also be retained in the House. Of course, reversed.

HEEN: I do not think so. I don't think that was the standard that was fixed by the drafters of the Organic Act because in the matter of reapportionment of both the Senate and the House of Representatives, they set a different pattern. Those two houses were to be apportioned on the basis of citizen population.

DOI: It is my conclusion that all these bases used here are simply arbitrary.

HEEN: That is correct, a little arbitrary in creating a little difference in the proportion.

MIZUHA: May I ask the delegate from the first district a question?

CHAIRMAN: You may.

MIZUHA: Isn't the proportion that now exists in the proposal of ten to Oahu, seven to Hawaii, five to Maui and three to Kauai, arbitrary also?

CHAIRMAN: You have any views on that, Delegate Doi?

DOI: Yes, I do, Mr. Chairman, I think it is arbitrary.

ROBERTS: I haven't spoken on the general question of the Senate. I'd like to make a few observations which I think we ought to keep in mind on the question that is being voted on. The purpose of the Senate and the House, I think, has been adequately discussed. I think that there is a need as we see it, to increase the representation in the Senate in order to provide a little more representation and to prevent the body from acting in such a capacity that it does not give broad representation and provides too much veto power over the House. I favor some increase in the Senate. Whether that number is 21 or 25 is not material to me.

It seems to me that the problem raised on the question of cost which I discussed in part yesterday can be divided in two sections. The first is the cost of the representatives themselves, whether they be House or in the Senate, and the second is the cost of maintaining the operation. The figures which I have indicated, that the cost -- average total cost expenditure per legislative day in the Territory of Hawaii apart from the cost -- expenses of salaries and travel, runs in excess of $7,000 per day. That's excessive. I don't believe, however, there's much we can do about it in the Convention. That problem, it seems to me, is the problem which the people have got to face. If the costs can be reduced, they ought to be, and the pressures ought to be exerted, but not in the Convention.

The question we have is whether the 21 Senate or 25 Senate meets the need. It seems to me that that basically, however, is not the problem which has caused most concern on the floor. The question is how that 21 or 25 is to be apportioned, that's the big issue and it seems to me that we ought to face that issue, and in writing something into our Constitution as we're planning to do now, we ought to be extremely careful. I personally have been very happy that

we've had two full days of discussion even though at times, perhaps, a little too many overtones in terms of volume. I think it was a good discussion, I think it raised the basic question. But we ought to focus on the problem and the problem to me is the problem as to how you apportion that 21 or that 25. That's the real problem. Not the problem as to whether it's 21 or 25 because the total cost and the total savings that you can make on the salaries are small. You can't keep the other costs down by any provision in the Constitution. That you've got to leave outside.

I'd like therefore to address myself to what should constitute a proper basis for the distribution in the Senate. I have a general feeling that the senators ought to be basically representative of broader areas than the members of the House. They ought to view the overall problems in terms of the larger aspects of the entire community, the entire territory. Therefore, the larger the unit from which the senators come, to me the better. I, therefore, supported yesterday that the island of Oahu and the island of Hawaii each be one unit so far as senatorial representation is concerned. However, there seems to be a strong feeling on the floor, and the majority has voted that Oahu ought to be divided into two districts, two senatorial districts. The issue there it seems to me is quite clear. The issue is in two districts, the issue is what is to happen to Lanikai, Waimanalo and Kailua. And it seems to me that we ought to face those issues. The same thing it seems to me applies to East Hawaii and West Hawaii. If there's good logic in having two districts in Oahu, there is good logic for having it in Hawaii. And even though I did not support two districts for Hawaii, if you're going to have two in Oahu, I think you can support as well logically and reasonably two for the island of Hawaii.

It seems to me therefore that we ought to have the problems clear before us as to basis. All figures that we pick, whether it be 15 or 21 or 20 or 19 or 25, are all basically arbitrary, there's nothing scientific about it. It seems to me therefore that once we agree on the general figure, let's face the real issues in terms of the distribution. It seems to me that we in the Constitution ought not to consider the political question as primary, but consider the overall problems of the Constitution as primary.

As you recall, a few days ago we took up the question of revision and amendments and in that section we inserted a proviso which prevents any constitutional amendment, which prevents any reapportionment of the Senate from now until hereafter except under very unusual and difficult circumstances. It seems to me, therefore, that the problem of apportionment of the Senate ought to be on logical and reasonably sound ground. I did not support that proviso in the section on revision and amendments. It doesn't make good sense to me to tie the hands of any future constitutional conventions. There may be some question as to whether you can do it, but if you write it into the Constitution you say in fact that you do believe in it. Having written it in by majority vote, it seems to me that we've got to give it earnest and serious consideration to the basic issue of distribution of our 21 or 25 senators, and I therefore urge that the problems be focused. Let's have a degree of logic and sense in our distribution even though we recognize that basically the number that we choose and the distribution is arbitrary.

CHAIRMAN: Delegate Roberts, are you suggesting that we amend the present motion to attack your problem logically, as you described it?

ROBERTS: I haven't made any motion, Mr. Chairman. I just wanted the issue focused on the floor and if a proposal is made for reconsideration on the question of East and West Hawaii, I will support it even though I personally favor distribution of the island of Hawaii as one and Oahu as one.

DOWSON: Representation, I believe, should keep up with the population increase to a certain extent. The population has trebled since the Senate was set at 15. The amount of milk has trebled, the amount of cream has trebled. We need not have fear for the lack of good candidates for a Senate of 21 or 25. I am in favor of an increase from 15 to 21; however, I am more in favor of an increase to 25.

HEEN: If there are no other delegates who would like to speak, perhaps I should take the opportunity at this time to close the debate. Now in addressing myself to what Delegate King said in his remark comparing Hawaii with Arizona, Arizona has 19 senators and in 1940 Arizona had a population of 499,000, and in 1940 Hawaii had a population of 423,000 and in 1950 Hawaii has a population of 493,000. Now take the State of Idaho, that has a Senate of 44 members. In 1940, it had a population of 524,000. Montana in 1940 had a population of 559,000. Now this is the one that should have been pointed out to the members of the Convention. New Jersey has a Senate of 21 members and in 1940 New Jersey had a population of 4,160,000, and before the revision of the Constitution of the State of New Jersey in 1947, prior to that time, New Jersey had a Senate of 21 members. At the time of the revision, the State of New Jersey had the opportunity to increase the membership of its Senate from 21 to some higher figure, but it did not do that, but left it at the same number of 21.

Now one comparison that was made by Delegate King was the one in connection with the State of Vermont. In 1940, Vermont had a population of 359,000 and the membership of the Senate in Vermont is 30 and the membership in the House of Representatives is 246. Obviously that is altogether out of line, therefore it should not be used as a basis of comparison; and in addition to that, in Vermont they pay the members of the legislature there $375.00 per annum or $750.00 for two years. Therefore, it shouldn't be used as a basis for comparison at all. It is altogether out of line. Now you take the State of Washington, they pay the members of the legislature there $5.00 a day for a 60 day session.

Now in closing, I would like to quote the words of Alexander Hamilton discussing the membership of an assembly.

> One observation, however, I must be permitted to add on this subject as claiming, in my judgment, a very serious attention. It is, that in all legislative assemblies the greater the number composing them may be, the fewer will be the men who will in fact direct their proceedings. In the first place, the more numerous an assembly may be, of whatever characters composed, the greater is known to be the ascendancy of passion over reason. In the next place, the larger the number, the greater will be the proportion of members of limited information and of weak capacities. Now, it is precisely on characters of this description that the eloquence and address of the few are known to act with all their force. In the ancient republics, where the whole body of the people assembled in person, a single orator, or an artful statesman, was generally seen to rule with as complete a sway as if a sceptre had been placed in his single hand. On the same principle, the more multitudinous a representative assembly may be rendered, the more it will partake of the infirmities incident to collective meetings of the people. Ignorance will be the dupe of cunning, and passion the slave of sophistry and declamation. [THE FEDERALIST]

KING: Since the chairman of the committee represents the minority opinion, I think he should not necessarily have the last word.

CHAIRMAN: He can have the last word on his amendment, Delegate King.

KING: I should like to answer the comparison he made with my statement. I took all of the states that had a comparable population. The eastern states such as Vermont, New Hampshire and Connecticut, they have a House of Representatives based on the old township principle of New England. They all have very large numbers, three hundred and so forth and so on. Delegate Roberts told me that New Hampshire recently had a constitutional convention instructed to revise and reduce the House of Representatives. They had a House of Representatives of over 400. After several days of deliberation, they reduced it from 450 to 399. But I'll grant you that the New England states are not a comparison. Delegate Heen neglected to make a comparison with Wyoming. Wyoming had a population in 1940 of 350,000 in round numbers. It has lost population and now has a population of about 285,000. It has a Senate of 27 and a House of 56 and so the comparison can be made. The only point I was trying to make is that states of comparable population have in many cases as large or larger legislatures than we are proposing to establish for the State of Hawaii.

Furthermore, in reply to the quotation that Delegate Heen read that came from Alexander Hamilton, the great federalist who didn't believe in democracy anyhow, he wanted to make George Washington the king of the United States.

ROBERTS: May I add a footnote, a very brief footnote to Mr. Chairman King's statement? The finance committee report of the New Hampshire convention to which he has reference reported out the payroll for the cost of the convention. That payroll provided for the services at $3.00 per day for the 451 delegates to the convention for a total cost of $5,400.

CHAIRMAN: For the purposes of the record -- Delegate Hayes.

HAYES: May I just give the delegates a little information that I just read from our legislative book here—that Manual, that they have already 95 patterns on reapportionment, so this will be the hundredth pattern.

CHAIRMAN: The Chair would like to state its position on -- Does Delegate Doi wish to speak? Delegate Doi is recognized.

DOI: I too am not in favor of a large numbered House and Senate, but as Delegate Roberts has very adequately stated the question is distribution, a fair distribution, and if a fair distribution is not meted out then probably we'll have to have a large Senate and House. In line with that few remarks, I would like to suggest that some of the members on this floor have worked out a plan which we believe is fair in distribution and is also reasonable in the number as to the Senate as well as the House. And specifically this is the recommendation. The Senate according to this idea will be composed of 19 members. It will be distributed on this basis: Oahu, seven; Hawaii, five; Maui, four; and Kauai, three. The House will be composed of 37 members and that 37 will be divided into the following numbers: Oahu, 22; Hawaii, seven; Maui, five; and Kauai, three. I believe the numbers in both houses are reasonably small and adequate enough to do a good and efficient job. It also gives fair representation to the people of the respective areas in the state.

ROBERTS: A point of information. The figure that you gave for Oahu is 22, isn't it? Not two?

CHAIRMAN: It was 22, Delegate Roberts, it was 22.

DOI: That is only a suggestion I wanted to mention before we voted on this Heen amendment.

ARASHIRO: Is the last delegate who spoke proposing to offer that as an amendment after this amendment is voted down?

CHAIRMAN: He offered that as a suggestion. He'd like to have it before the body before the vote is taken.

A. TRASK: Point of order.

DOI: If it is in order to amend the amendment on the floor at this time -- is it in order to do so?

A. TRASK: Point of order.

CHAIRMAN: State your point of order, Delegate Trask.

A. TRASK: I think the Chair should rule out the presumption of fact made by the delegate from Kauai that this is going to be voted down.

DOI: Point of information. Is it in order at this time to amend with the suggestion, the amendment of Delegate Heen's?

CHAIRMAN: I believe it is although -- Delegate Heen.

DOI: If that is the case, I would like to so move.

DELEGATE: I second the motion.

PORTEUS: I wonder whether since we have debated at such length the scheme presented by my fellow delegate from the fourth district, whether or not we might not vote on that and then turn to the suggestion from Hawaii, because if his suggestion as an amendment is put before us, it will require, I think, rather extended debate. If it passes, that's fine; but if it does lose, then we'll be up against the proposition of debating the Heen amendment all over again. So if we could dispose of, either accept or reject the Heen amendment and then turn to the amendment that is being offered by the gentleman from Hawaii, it might expedite matters.

CHAIRMAN: The speaker agrees that the amendment is in order?

PORTEUS: Yes.

CHAIRMAN: Delegate Doi is recognized.

DOI: For the sake of orderly procedure and the saving of time, I wish to withdraw my motion and reserve right to submit it later.

LEE: I was just going to suggest to Delegate Doi that it might be a good idea to offer your amendment at this time so that the discussion could go immediately into that point and it's perfectly proper to propose an amendment to any motion and I believe the delegate from the fourth district was merely making a suggestion.

HEEN: I don't think it's in order to consider any amendments along the lines advocated by Delegate Doi from Hawaii at this time. If an amendment of that type is to be offered it should be complete in itself. That requires the setting up of different districts as representative districts throughout the whole State of Hawaii and also would require the setting up of senatorial districts. Now the Committee of the Whole has already gone on record, perhaps permanently or tentatively, that Oahu is to be divided into two districts;

therefore, in order to have a complete amendment before the Committee of the Whole, that amendment both as to the House and to the Senate should be complete.

OKINO: I realize that it is not in order at this time to consider the number of representatives to our state legislature but I feel that the determination of the number of senators for the State of Hawaii is dependent considerably upon the numbers in the House.

CHAIRMAN: The Chair agrees with the speaker. I think the two things must be considered together.

KING: The only question before the committee is the amendment proposed by Delegate Heen, and unless there's further discussion on it, I suggest the Chair call for a vote on it.

ARASHIRO: I think the amendment made by the delegate from Hawaii is in order and then if that amendment is voted down, then we vote on the amendment.

WOOLAWAY: Point of order. The delegate from Hawaii has withdrawn his motion.

CHAIRMAN: There's been no second.

ROBERTS: I have a point of information, that if the Heen amendment is adopted, that will be subject to amendment subsequently?

CHAIRMAN: That is correct as the Chair understands it. Before voting on this, the Chair would like to make known its position. I have listened with great attention and careful attention—I'm not a politician—to the debate and I'm not persuaded.

KING: Point of order.

CHAIRMAN: State the point of order.

KING: When I was on the Chair and started to make some comment, I think it was Delegate Anthony who rose to call me to order.

CHAIRMAN: Since then—the point is not well taken—I have examined the rules on the Committee of the Whole, the chairman is entitled to participate in debate.

LEE: Mr. Chairman, I believe that your remark to the President was when the Convention was convened. This is the Committee of the Whole.

CHAIRMAN: That's correct. That's the difference. I have not been persuaded from anything that's been said on the floor of this House, that we should depart from a 15 man Senate to a 25 man Senate. I agree that it should be increased. I agree with the basic principle that the outside islands should control the Senate, but I can not see any real basis for the figure of 25. The Clerk will call the roll.

DELEGATE: I demand a roll call.

CHAIRMAN: Roll call demanded?

DELEGATE: Roll call demanded.

SILVA: I was under the impression that the words used by the chairman was " Clerk call the roll," which is the chairman's privilege.

CHAIRMAN: I wanted to be in order, Delegate Silva. I didn't know that I had that right.

AKAU: Is it the amendment we are voting on or is it the proposal?

CHAIRMAN: We are now voting on the amendment offered by Delegate Heen.

Ayes, 20. Noes, 42 (Akau, Apoliona, Bryan, Castro, Cockett, Crossley, Doi, Dowson, Fong, Fukushima, Gilliland, Hayes, Holroyde, Ihara, Kam, Kanemaru, Kauhane, Kido, King, Kometani, Lai, Luiz, Lyman, Mau, Noda, Ohrt, Okino, Phillips, Porteus, Richards, Roberts, Sakai, Sakakihara, Shimamura, Silva, Smith, St. Sure, Tavares, White, Woolaway, Yamamoto, Yamauchi.) Not Voting, 1 (Wist).

CHAIRMAN: The amendment is lost.

DOI: I wish to move to amend Section 2 of Article 29 by changing the members of the Senate to 19, and as to distribution of senatorial districts, Hawaii, five; Maui, four; Kauai, three; and Oahu, seven, with this understanding, that the question of whether Oahu is to be split into two senatorial districts could be decided later, the island of Oahu, seven.

ARASHIRO: I second that motion.

PORTEUS: If the maker of the amendment tends to leave for a later time the question of the division of Oahu, I would like to object to that in that that matter was voted on more than once yesterday. It was reconsidered and then voted on again and under the rules no question may be twice reconsidered unless there is the suspension of the rules, and the rules can only be suspended on a 32 vote. I'm not objecting to his presentation of the 19, but I am trying to stay out of the fight which I think has already been settled.

DOI: I believe the chairman ruled this morning that all that we have agreed to this morning have been tentative.

CHAIRMAN: That's what the Chair said.

PORTEUS: I know that was what the Chair said, but at the time Delegate Heen presented his amendment, at that time yesterday he left the number blank that he was going to place on Oahu. I was one who stood and asked whether or not he couldn't follow the form of the committee proposal leaving the words "ten for Oahu" and the chairman said that he would be willing to do that provided however, that he had the right to come back at a later time with a further amendment on the question with respect to the number on Oahu, and I think that was accepted by the assembly.

CHAIRMAN: Delegate Porteus, there's a motion. Are you speaking to the motion?

PORTEUS: I am speaking on the point of order with respect to the ruling of the Chair as to whether or not—I believe it was perfectly proper under the understanding of yesterday—to have Delegate Heen's motion considered. I do object however to a consideration of this other question which was voted on, reconsidered and voted on again. If the chairman of the Committee of the Whole will turn to his rules on this matter, the rules are very specific.

CHAIRMAN: Pardon me, I think what's before the house is the motion of Delegate Doi. He's not asking to reconsider anything as the Chair understands it.

PORTEUS: He is making an amendment that would leave Oahu in its entirety again, and that matter has been debated and settled more than once. In that respect the amendment is out of order. If he wishes to divide it among Oahu, then it is in order.

CHAIRMAN: I think the point is well taken, Delegate Doi.

ROBERTS: I'd like to speak to that ruling. The rule is quite clear, it seems to me. If a motion to reconsider is

lost, it cannot be repeated except by consent. The question that we took yesterday in reconsideration was won, and therefore it goes back to the original motion, and therefore it can be reconsidered. The purpose of the motion for reconsideration is that it shall not be acted on twice in the same manner, but that question is not now before us, Mr. Chairman. The question I think can come up if and when that problem is faced by us, not now.

CHAIRMAN: I'd like to speak to Delegate Roberts. If you will examine Rule No. 39, Delegate Roberts, that rule provides, "When a motion for reconsideration is decided, that decision shall not be reconsidered, and no question shall be reconsidered twice." It does not use the words "lost," as far as I can see. Any error in that?

MIZUHA: Under that rule, as mentioned by the chairman, it can be reconsidered twice and it was reconsidered only once and if the question does arise again on the floor for another reconsideration, it can be again reconsidered because our rules allow any problem to be reconsidered twice.

SILVA: Mr. Chairman. I've been standing here for an hour, Mr. Chairman.

CHAIRMAN: Delegate Silva, I'm sorry that you've been standing there for so long.

SILVA: Thank you. Thank you. I move we recess until 1:30 o'clock p.m.

H. RICE: Second the motion.

CHAIRMAN: All in favor signify by saying "aye."

(RECESS)

Afternoon Session

CHAIRMAN: The committee will come to order. Will the delegates please take their seats. At the conclusion of the recess this morning, we were discussing a proposed amendment by Delegate Doi. That, I understand, has been printed and is circulated. The Chair would like to make this suggestion, if it meets with the approval of the body. It seems to the Chair that there have been five or six votes on the combination as to the constitution of the Senate and the present difficulty seems to center about whether or not the action taken yesterday in regard to a Senate of 25 was tentative or final. It is the suggestion of the Chairman that we at this point move for the adoption of Section 2 which will place squarely before the body a Senate of 25. Those members who are against a Senate of 25 can exercise their right to vote on that question. Then later, whatever number is determined upon or whatever combination is determined upon, can be voted upon by an appropriate amendment. If that meets with the approval of the body, the Chair would be glad to entertain such a motion.

SAKAKIHARA: I now move the adoption of Section 2.

WOOLAWAY: I'll second that motion.

DOI: Do I understand that all the issues we've already passed on are declared as not having been decided, that we are starting all anew again?

CHAIRMAN: The Chair made no such statement. The difficulty that we're in is in regard to the technical use of the language "tentatively agreed upon." It was the view of some members of the body that that meant tentatively and it was open to change without a vote to reconsider at any time. It is the view of others as a practical matter, as the history of past debates have shown, once we have passed something tentatively it has been final and not tentative. Now my suggestion to resolve the difficulty is to take a vote on Section 2 which will clear the decks. If that's not satisfactory, the Chair will entertain any other motion.

MAU: I believe that the Chair's understanding of the practice and the agreement of this Convention in adopting any provisions or proposals tentatively was that anyone could make any amendments to it without moving for reconsideration. We had agreed to that. That was a definite understanding.

CHAIRMAN: Delegate Mau, that was the Chair's understanding, but there is a disagreement.

MAU: I think the Chair is right.

CHAIRMAN: Delegate Mau, will you please yield a moment? There are other delegates who entertain a different view, and it seems to me we can resolve this question in the manner suggested by the Chair.

J. TRASK: I so move, Mr. Chairman, at this particular time that any question that a motion is made on, any question that is seconded and approved tentatively, be subject to amendment at any time.

SILVA: May I point this out to this Convention, especially we who are sitting in Committee of the Whole, that all action no matter what it is taken in the Committee of the Whole is only tentatively any way, and that the final action on any measure will have to be taken when we sit in Convention rather than in Committee of the Whole, and when we say "tentatively" that is the definite meaning of that word. In the Committee of the Whole you cannot take final action on any measure and that's why the word "tentative" was used, no final action is taken in the Committee of the Whole. We all know that and those that don't know should know.

WOOLAWAY: Point of information. Did you recognize my second to the amendment?

CHAIRMAN: I recognize you now. Do you second? Second the motion?

WOOLAWAY: I do.

CHAIRMAN: It has been moved and seconded that we adopt Section 2. Is there any discussion? Not tentatively. We adopt Section 2.

HEEN: I move that if we adopt Section 2 that we do so tentatively.

WIRTZ: I second the motion.

KING: It's my recollection that when we were considering various measures in the Committee of the Whole, we adopted one section or one paragraph of a section or one sentence of a section tentatively and then we moved on to the next paragraph, sentence, or section. We did not continue to discuss possible amendments to the material that had been adopted tentatively. As Delegate Silva has pointed out, all action to the Committee of the Whole are tentative, but it was in an effort to get along with the rest of the legislation pending before us, the proposal that we were discussing, to say all right, we'll adopt Section 1 tentatively and now consider Section 2 and the committee in charge would make a pro forma motion, "I move for the adoption of Section 2." It

would be seconded and that would be subject to amendment. We have adopted, by the minutes which I have just read, the first sentence of Section 2 tentatively, and we should now be discussing the remainder of that section with no further amendments to be considered to the first sentence of Section 2 unless by a motion to reconsider, which has to carry. That has been the procedure right along to the best of my recollection. Now, if we're going to sit here and talk about further amendments to the first line, first sentence of Section 2 and all the variations from 15 to 25, we'll have a profusion of amendments that will not mean anything. Twenty has been voted down; 21 has been approved. Now we have a new amendment that's going to propose 19 and its only basis in reason is that it has a different apportionment, and it raises another point that has already been settled by the Committee of the Whole and that is the division of Oahu into two senatorial districts. I feel that we are wasting our time and I certainly do urge that the Convention -- Committee of the Whole vote on at least on the first sentence of Section 2 at this time.

CHAIRMAN: That's what is before the house now.

DOI: Point of information. Do I gather that the motion on the floor at this moment is just to the first sentence of Section 2 or is it to the whole section, Section 2?

SAKAKIHARA: May I answer that question? I am the movant of that motion to adopt the whole of Section 2, not the first sentence of Section 2.

DOI: What is the ruling of the Chair?

CHAIRMAN: That was not the Chair's understanding of the motion. It was the first sentence but if you'll bear with me a minute I'll check with the Clerk. The Chair rules that it was the first sentence of Section 2. It was the motion of Delegate Sakakihara; however, we will permit the delegate to amend his motion if he so desires.

SAKAKIHARA: In order to straighten the record, I move that we adopt Section 2 in toto.

WOOLAWAY: I'll second that motion.

DOI: I move to amend Section 2. In the first line in Section 2 changing the word "twenty-five" to "twenty-one" members. On the next page, first senatorial district from "seven" to "six."

BRYAN: I would like to raise a point of order before we go further.

CHAIRMAN: State your point of order, Delegate Bryan.

BRYAN: As I understand it we have voted on the first sentence of Section 2, which vote was carried, approving that as written by the committee. When that vote was taken it was with the understanding that it would not prevent a consideration of the minority report of the committee. The minority report of the committee has been considered on this matter and that consideration is finished. I believe that if we're going to amend the first sentence of Section 2 it would be necessary to ask for a reconsideration of that vote. The only proviso when that was first passed was that the minority report of the committee would be considered and that is finished. Now, if there're going to be other amendments, other than the minority report, I believe that we would have to reconsider our action on the first sentence of Section 2. I believe that would clear the whole situation.

J. TRASK: Correct me if I am wrong but I believe the Chair has ruled that the motion for consideration was not entirely in order, that the delegates were free to amend any particular sentence they wished of Section 2. Isn't that my understanding, Mr. Chairman?

KING: I certainly did not hear the chairman make any such ruling. Speaking to the point of order raised by Delegate Bryan, I should like to read what happened yesterday.

> Delegate Arashiro had an amendment pending. It was voted upon and the motion was lost. The Chair then stated that the question before the committee was the first sentence of Section 2 of Committee Proposal No. 29.
>
> Delegate Heen stated that as he understood, whatever action is taken on that particular sentence, it will be tentative.
>
> The Chair stated that that was his understanding.
>
> Delegate Heen thereupon stated that he would like to have that definitely understood because during this proceeding he and Senator Lee will file a minority report for a 21 membership in the Senate, but not apportioned along the lines stated by Delegate Arashiro.
>
> The Chair thereupon stated that the question was the adoption of the first sentence of Section 2, reading "The Senate shall be composed of 25 members who shall be elected by the qualified voters of the respective senatorial districts," and he thereupon put the motion, which motion was carried.

And then in the next action:

> Delegate King suggested that it would be proper for the committee to make a pro forma motion that the second sentence be tentatively approved.
>
> Delegate Sakakihara thereupon moved that the committee approve the remaining portion of Section 2. Seconded by Delegate Bryan.

And that motion is pending. That is the only motion that's pending other than the courtesy extended to the chairman of the committee to bring up his minority report this morning. That was debated exhaustively, amendments were suggested to it, it was defeated by a roll call vote before we rose in recess, and now I may say, Mr. Chairman, that the only motion pending before this Committee of the Whole is the motion to approve the balance of Section 2 and that the first sentence of Section 2 has already been approved insofar as the Committee of the Whole can approve any provision.

DOI: Mr. Chairman, what is the ruling of the Chair?

CHAIRMAN: I didn't hear, Delegate Doi. What was your question?

DOI: What is the ruling of the Chair on the point of order raised?

LEE: Before you rule, may I have your attention, Mr. Chairman? According to the information read by Delegate King I believe there is possible one of two constructions. When Delegate Heen wanted it understood by the committee that the adoption of Section 1 should be tentative, he stated that he had in mind the consideration of the minority report. That's correct, that has been disposed of. But when the Chair ruled that that was his understanding and the understanding of the committee, that the action taken on the adoption of Section 2 is only tentative, it did not preclude any one from offering amendments other than the minority group, although at that time Delegate Heen was only interested in his consideration of the minority report. So I believe that the Chair's ruling as to the tentative adoption is correct and it bears out the conclusion brought out by Delegate Silva that anything we do here, even though we adopt

this section using the language offered by Delegate Sakakihara it would still be tentative and subject to amendment.

CHAIRMAN: The Chair will state that it was the purpose of inviting a vote on the first sentence of 21, of Section 2 on the constitution of the Senate to avoid a resolution of what we meant by tentative. The Chair had one thing in mind and I know a number of delegates have a different thing in mind. Now, if Delegate Sakakihara would withdraw his motion and make a motion that the first sentence of Section 2 be adopted it seems to me the purpose of the body, namely to get a vote on whether you want 25 or 21, would be accomplished. That is just a suggestion of the Chair.

FONG: I thought we voted on the number of 25 yesterday. Now is it my understanding that the Chair is now ruling that our vote on 25 was a non-entity vote, that that doesn't mean anything? That we can now revote on that question?

CHAIRMAN: The Chair's understanding was that it was a tentative vote. If the Chair is wrong he'd like to be instructed by the body.

BRYAN: I think if we're going to revote on the first sentence, then we should first vote to reconsider the first sentence and then vote on it again, if that's what would clear the air because I believe our practice has shown in here that we have voted on sections or parts of sections tentatively, the idea being that when we come to the end of the section we would vote in toto on the whole thing. On several occasions when we have adopted sections or parts of sections and at the end different delegates have had questions on previous sections, we have reopened the matter on a motion to reconsider. Even on tentative votes. We have always reconsidered in order to go back to something that was tentatively adopted. Therefore, if we are to vote on the first sentence of Section 2, we should reconsider and then vote on it again. There has to be another vote. That's my opinion.

WHITE: I'd like to ask the chairman a question. Under your interpretation of it, when would you ever get through with this section?

CHAIRMAN: When the final reading of the article is made and the committee makes its report, that was my understanding.

WHITE: What's the purpose of a vote? We take a section or we take a paragraph and we vote on it, then we pass on to the next paragraph on the theory that that reflects the thinking of the Convention on that particular thing until we get through the complete proposal; then we act on the complete proposal. But as we're going now, an action or a vote means nothing if we can continue to offer amendments to actions that are already taken.

CHAIRMAN: The difficulties the Chair is having, Mr. White, is the use of the word "tentative," which has been used throughout. Apparently it means something different that I thought the word meant.

LEE: In order to bring this to a head, I move that we reconsider our action in adopting tentatively Section 2.

DOI: I second the motion to reconsider.

SAKAKIHARA: Point of order, Mr. Chairman. I thought the Chair had ruled that we can reconsider.

CHAIRMAN: I didn't hear the statement of the delegate.

SAKAKIHARA: I thought -- oh, let it go.

CHAIRMAN: In order to get the record straight I request that Delegate Sakakihara withdraw his previous motion so we can have a vote on this question.

SAKAKIHARA: I made no motion for a previous motion, Mr. Chairman. I just raised a point of order. I thought the Chair had ruled that you cannot reconsider.

CHAIRMAN: No, the Chair had made no such ruling. It has been moved and seconded that we reconsider our action on sentence 1 of Section 2.

WOOLAWAY: Point of information, Mr. Chairman. If the vote to reconsider is lost, then the Senate still stands at 25? Am I correct?

CHAIRMAN: That's correct. Are you ready for the question? All those in favor signify by saying "aye." Contrary. The Chair is in doubt. Better have a roll call. The Clerk will call the roll.

LEE: There has just been called to my attention that I am not able to make a motion for reconsideration and since I'm always trying to be technically correct, I withdraw my motion for reconsideration.

PORTEUS: The subject is now before the body. I don't think it's within the power of the delegate to withdraw it. There's been a motion, there has been a vote in which the body is in doubt and now in order to clarify the question as to how the vote went, we're now proceeding with a demand for the roll call vote.

CHAIRMAN: The Chair will so rule.

LEE: That may be correct, Mr. Chairman. I just merely wanted to make my position clear. If the majority wants to let the motion stand, that's O.K. with me.

CHAIRMAN: The Chair will so rule. Roll call will proceed.

Ayes, 31. Noes, 30 (Akau, Apoliona, Bryan, Castro, Cockett, Crossley, Dowson, Fong, Fukushima, Hayes, Holroyde, Kido, King, Kometani, Lai, Larsen, Loper, Ohrt, Okino, Porteus, Richards, Sakai, Sakakihara, Silva, Smith, St. Sure, Tavares, White, Wist, Woolaway.) Not Voting, 2 (Gilliland, Kam).

CHAIRMAN: The motion is carried.

DOI: Is it proper to move for an amendment of Section 2 at this time?

CHAIRMAN: The first sentence has been voted to reconsider.

DOI: Just the first sentence?

CHAIRMAN: That was the motion, to reconsider the first sentence. Is the Chair correct in that?

KING: Point of information, The vote to reconsider the first sentence having carried, I would feel that if Delegate Doi has an amendment that goes to the remainder of the section, there could be no objection because he's not only going to propose a different number but a different apportionment and it might expedite matters if --

CHAIRMAN: If there's no objection from the body the Chair will make that ruling. That wasn't the precise motion though. The Chair will so rule then that the entire section is open.

TAVARES: I don't like to be obstructive but earlier in this argument we were asked to vote on a question of principle among other things. One was, shall we have one

district or two senatorial districts on Oahu and we were expressly asked to vote on the matter of principle so we wouldn't have any more arguments about wording on that. Now, are we going to change that too, without reconsideration? We were asked to do one thing to avoid this trouble, then we still have the same trouble. I think that it's not open, at least to that extent, because we voted on the matter of principle for the express purpose of avoiding - -

J. TRASK: Point of order.

CHAIRMAN: State your point of order.

J. TRASK: There is nothing before the floor of the Convention. The movant, Delegate Doi, made a motion to amend. It was not duly seconded.

CHAIRMAN: The Chair will rule that the interpretation of the motion was that the first sentence was reconsidered. Thereafter at the suggestion of President King the Chair made its ruling that it would apply to the entire sentence [sic]. Now if the body is not in accord with that ruling, we can go back and the Chair will reverse itself. I was trying to expedite it in accordance with the wishes of Delegate King.

KING: I merely made a suggestion but I feel that those who have raised the point of order gave that as correct and the amendment should be to the first sentence of Section 2 only, as the only matter before this committee.

CHAIRMAN: The Chair will so rule. What has been moved and voted to reconsider is the first sentence.

LEE: I move that we reconsider the action taken on the other sections in Section 2.

DELEGATE: Second the motion.

CHAIRMAN: It has been moved and seconded that we reconsider the remainder of Section 2.

FONG: Point of order. I understand that Delegate Lee was on the losing end of that reconsideration motion and therefore he cannot ask for reconsideration.

CHAIRMAN: The point of order is well taken.

KING: Another point of order. The remaining part of Section 2 was not before the Committee of the Whole. No action was taken on it.

ARASHIRO: To conform with the rule and the request from Delegate Trask, I move that we adopt Section 2, then we'll be in order.

PORTEUS: I wonder whether this would be acceptable to the gentleman from the island of Hawaii who wishes to put the subject before this Convention as to the number in the Senate. We have reconsidered our action on adopting 25. The question will be clean cut as to whether it will be 21 or 25 - - pardon me, I think the amendment that was being proposed this morning was 19 - - or is it 21? - - then back to 21. Under those conditions I think it would be a reasonable portion of the debate to have the gentleman offering the amendment explain that if his motion for 21 carries, how he intends to apportion the 21 among the various districts. Then we can argue that point later and I am sure that he can tell us the scheme he has in mind and I think we can get at it.

CHAIRMAN: I think the Chair was in error a moment ago. When we reconsider the first sentence of Section 2, it seems to the Chair now just a matter of simple arithmetic, you've got to consider the rest of the section. Otherwise you wouldn't have enough senators to go around. If you reconsider the first sentence of Section 2, then that wouldn't add up to what is contained in the remainder of the sentence. Therefore, the ruling of the Chair is that the remainder of the section is open.

PORTEUS: I think the Chair is correct on the addition. I don't agree with the chairman insofar as the scheme of senatorial districts is concerned. Your numbers will total more than 21. But the matter has been settled more than once with respect to senatorial districts.

CHAIRMAN: I agree with the delegate. The Chair will so rule as to the division of the island of Oahu. That has been voted on and will require reconsideration.

DOI: Am I correct in assuming then that the number of the Senate is subject to amendment as well as to the distribution of that particular number, but not as to the division of senatorial districts?

CHAIRMAN: The Chair will so rule.

DOI: In that case, at this time I would like to move to amend Section 2, first line, by deleting the word "25" and inserting in lieu thereof the number "21". And on the second page, first line, first senatorial district, island of Hawaii reduce the number "seven" to "six"; and in the second senatorial district, reduce the number "five" to "four"; and in the third senatorial district, reduce the number from "five" to "four"; and the fourth senatorial district, reduce the number from "five" to "four;" and in the fifth senatorial district keep the number "three" as is.

CHAIRMAN: Is there a second to the amendment?

ARASHIRO: I second that motion.

CHAIRMAN: It has been moved and seconded that Section 2 be amended in the following respects: second line of the sentence, "21" in lieu of "25"; first senatorial district "six" instead of "seven"; second senatorial district "four" instead of "five"; third senatorial district "four" instead of "five"; fourth senatorial district "four" instead of "five"; fifth senatorial district "three." Is there any discussion? Are you ready for the question?

FONG: May I ask the movant a question?

CHAIRMAN: You may address your question to the Chair.

FONG: What is the proportional representation of the island of Oahu at the present time in the Senate? The percentage.

CHAIRMAN: Will the movant or Delegate Heen answer that question?

NIELSEN: I can answer it. The outside islands would have 61 and 7/13.

FONG: That didn't answer the question.

WOOLAWAY: I believe it's 40 per cent as it now stands.

FONG: At the present time, 40 per cent. With the Senate set at 21 with Oahu receiving only seven, what is that percentage? Does Oahu win, lose or do we come out equal?

DOI: Mr. Chairman, correction, Oahu gets eight in this deal.

CHAIRMAN: The amendment was four for the fourth district and four for the fifth district as the Chair gets the amendment. They would have a total of eight, Delegate Fong.

FONG: My question has not been answered, Mr. Chairman. Do we lose in percentage on Oahu or do we gain in percentage or do we retain our 40 per cent?

BRYAN: The percentage goes from 40 per cent to 38 point -- I think it's .15 but I can't remember exactly.

FONG: In other words, Oahu will lose some more in percentage. Is that correct?

SILVA: Mr. Chairman, the exact figure is six-tenths of one per cent.

CHAIRMAN: What is that figure again?

SILVA: Six-tenths of one per cent.

CHAIRMAN: Will be lost by the island of Oahu?

NIELSEN: I'd like to correct that.

RICHARDS: I have to disagree with the delegate from the island of Hawaii because it is approximately a two per cent loss, just under two per cent.

CHAIRMAN: Is an accountant in the delegation that can give us the figure here? It's a simple matter.

NIELSEN: The exact percentage is that Oahu would lose one and seven-thirteenths per cent.

CHAIRMAN: Does that answer your question, Delegate Fong?

FUKUSHIMA: Correction please, 1.99.

BRYAN: I think this can be put on -- The easiest way to answer this is that Oahu loses six-tenths of one senator.

CHAIRMAN: If there's no further debate, the Chair will put the question. All those in favor of the amendment signify by saying "aye." Contrary. The Chair is in doubt.

DELEGATES: Roll call.

CHAIRMAN: Will Madam Clerk please call the roll.

Ayes, 23. Noes, 39 (Akau, Apoliona, Bryan, Castro, Cockett, Crossley, Dowson, Fong, Fukushima, Gilliland, Hayes, Holroyde, Kauhane, Kido, King, Kometani, Lai, Larsen, Lee, Loper, Noda, Ohrt, Okino, Porteus, H. Rice, Richards, Sakai, Sakakihara, Shimamura, Silva, Smith, St. Sure, Tavares, J. Trask, White, Wist, Woolaway, Yamamoto, Yamauchi.) Not Voting, 1 (Kam).

CHAIRMAN: The amendment is lost.

FONG: I move that we adopt sentence one of Section 2, not tentatively.

AKAU: I second that.

CHAIRMAN: It has been moved and seconded that we adopt sentence one of Section 2. Are you ready for the question? All in favor signify by saying "aye." Contrary. The ayes have it.

LOPER: I move that we adopt the second portion of Section 2.

LAI: I second that motion.

CHAIRMAN: It has been moved and seconded that we adopt the remainder of Section 2. Is that the motion, Delegate Loper? Are you ready for the question? Is there any discussion?

J. TRASK: Is that tentative?

CHAIRMAN: No.

AKAU: Will you kindly have the Clerk or somebody read how the first senatorial district reads, all the words in those three lines, please?

CHAIRMAN: First senatorial district, the island of Hawaii, seven. No change from the committee proposal.

NIELSEN: Now that there has been a definite decision to split Oahu in two senatorial districts, I feel that the consideration on the Big Island should be taken up, as undoubtedly when many of them voted against splitting the Big Island it was for the reason that they were on record and wanted to be on record not to split Oahu. Now those maps up there are quite deceitful as to scale because if you scale the island of Hawaii the same as you do the fifth district it would be bigger than that whole blackboard. To give you some relative --

CHAIRMAN: Do you have a motion, Delegate Nielsen?

NIELSEN: Well, I'd like for someone, in fairness to West Hawaii, to present this.

H. RICE: I am in order. I move for a reconsideration of the island of Hawaii senatorial districts.

KAWAKAMI: Second the motion.

CHAIRMAN: It has been moved and seconded that the senatorial districts on the island of Hawaii be reconsidered.

NIELSEN: May I talk now? We have the cost of running for election in West Hawaii as we have to cover 383 miles.

SILVA: Point of order. You have to put the motion first for reconsideration before you can debate the subject.

CHAIRMAN: You are quite right. The Chair is in error. Are you ready for the question? All in favor of reconsidering the senatorial district of the island of Hawaii signify by saying "aye." Contrary. The ayes have it. Proceed, Delegate Nielsen.

NIELSEN: We have to look at this on a basis of a constitution and not political finagling or chicanery, or some of the words attached thereto. Now, you've got people of the fifth district, when you run I don't suppose you have to cover over a hundred miles; the fourth district is only 78 square miles. We have 2,234 square miles in West Hawaii with a 383 mile trip to make to be elected and we don't have the wealth there. We don't send up here any wealthy senators or wealthy representatives from West Hawaii. Those kind of people just don't live down there. We have to live on climate—we've got a lot of that.

Now, I think in all fairness to West Hawaii, to give us a little break, instead of having to travel around the entire island and also to guarantee that that great geographic belt will have some senators up here in the future that we should consider giving two senators to West Hawaii and five to East Hawaii. Now, I'm not hoggish in that because we have 55 per cent of the area of that island. We have a community that may grow some day. I doubt that it will grow very much if Pele keeps up her erupting because she's taken acreage out in the hundreds of acres—several thousands this last shot she took at us—but we do really need consideration of our problem insofar as splitting up the two districts.

CHAIRMAN: Delegate Nielsen, would it not be better to make your motion so we, the committee know what your motion is in regard to districting? I didn't want to interrupt your train of thought but it might --

NIELSEN: I move that we divide the Big Island of Hawaii into two senatorial districts making the first one have five, which is East Hawaii, and the second district, two.

YAMAMOTO: I second that motion.

NIELSEN: I'm not going to talk very long because we've been over this once, and I think that due to the fact that we have a change now in Oahu and have split the fourth and fifth districts that we are ready for consideration of the Big Island's problem. Anyone who says that West Hawaii is well represented and has been, all they have to do is come down there and drive our one-way roads, where you're taking your life in your hands many times a day, as against any other part of the island. I say that without fear of contradiction. So far as water, you just get what God gives you in your tank back of your home in Kona and that goes for all of Kona. You don't have any water system. In fact you sometimes think living over there that the good Lord just wants to let us live on fish and poi and drink brackish water. But we do have something to sell the tourists and we do want to get some representation up here in the Senate so that we can develop that back country as the playground for all of Hawaii and I'll appreciate kokua on the motion.

HEEN: Will the last speaker yield to the question?

NIELSEN: Surely.

HEEN: Will two guaranteed senators bring water to Kona?

NIELSEN: Well, it would certainly help because we can build a little bigger fire up here when we do come up to the session.

SILVA: I have made my stand clear on that; I have made my stand clear on Oahu the other day; and surely just because Hawaii's excuse that not knowing of Oahu's intent to divide into two senatorial districts that some of the members of this Convention had changed their minds, they had to start somewhere. If they did not start with Hawaii they would start with Oahu. By the same token if they started with Oahu then those on Hawaii could say, well we didn't know you were going to divide, therefore I'd like to reconsider my action because of this division. I thought that was made very plainly. But I would like to state at this time that the majority of the island of Hawaii and I were amazed and surprised to find the good Senator Harold Rice from Maui, trying to see what he can do for Hawaii by cutting us up into two, had seconded the motion by a delegate from Kauai. I think when the fifth district's turn comes, I think we'll have a few of our boys trying to cut up Kauai, too. I would like to make this point very clear that a majority of this group, I'm not saying how many, have gone on record I think, sometime back - -

SERIZAWA: Point of order.

SILVA: I am speaking against the motion.

CHAIRMAN: State your point of order.

SERIZAWA: The motion to reconsider has already been passed.

CHAIRMAN: The point of order is not well taken. The delegate is speaking against the motion.

SILVA: I am speaking against the question of division. I am very much in order. Just to please the delegate I'll call myself out of order if it makes him happy.

CHAIRMAN: If there's no further discussion, the Chair will put the question on the division of the senatorial representation in the island of Hawaii.

SAKAKIHARA: I demand a roll call.

CHAIRMAN: Is a roll call demanded? The Chair will rule that there's not enough showing here for a roll call. Sufficient? The Clerk will call the roll.

KAM: Will you please state the question?

CHAIRMAN: I didn't get the statement, Delegate Kam.

KAM: Will you please state the question?

CHAIRMAN: The question is on the motion of Delegate Nielsen to divide the island of Hawaii into two senatorial districts, one and two; the first senatorial district to have five in the Senate and the second to have two. Is that correct, Delegate Nielsen?

NIELSEN: That is correct. West Hawaii would have two.

Ayes, 33. Noes, 29 (Apoliona, Ashford, Bryan, Castro, Cockett, Crossley, Doi, Fong, Gilliland, Holroyde, King, Kometani, Lai, Loper, Luiz, Lyman, Ohrt, Okino, Porteus, Richards, Sakakihara, Silva, Smith, St. Sure, Tavares, White, Woolaway, Yamauchi, Anthony). Not Voting, 1 (Larsen).

CHAIRMAN: The motion is carried. Delegate Bryan's recognized.

BRYAN: Now that Oahu and Kauai have divided Hawaii, I move that we approve Section 2, as amended.

WOOLAWAY: I'll second that motion.

CHAIRMAN: It has been moved and seconded that Section 2, as amended, be approved. Are you ready for the question? All in favor - - Delegate Arashiro.

ARASHIRO: I wish to change the word on the thirteenth line from three to four.

CHAIRMAN: The thirteenth line of what?

ARASHIRO: The second page of Proposal 29.

CHAIRMAN: The Chair doesn't understand your motion.

ARASHIRO: On Proposal 29, page 2 on the thirteenth line, where there is the word "three" to change to "four."

CHAIRMAN: The Chair will rule that is out of order. The Chair will now put the question. Are you ready for the question? All those in favor - -

KAUHANE: Since we have reconsidered the action taken as to the division on the island of Hawaii I would like to amend, if permitted to do so, the language appearing in Proposal 29 on page 2 with reference to the third senatorial district.

PORTEUS: Point of order. I think it requires a vote to reconsider on that matter.

KAUHANE: It requires a vote to reconsider? I so move, Mr. Chairman. I move that we reconsider the action taken.

PORTEUS: Point of order. I think that the gentleman who is making the motion voted in the minority on that matter and is not in a position to make the motion.

KAUHANE: But I thought your ruling was, Mr. Chairman, when you stated that all matters under reconsideration of Section 2, first paragraph, where you stated that the whole thing is open. Basing your ruling to be the rule of the Convention I thought that I am in order now to ask for an amendment be made on the third senatorial district that the language should be changed, basing your ruling that the remainder of Section 2 is now open for discussion. Am I right or wrong?

CHAIRMAN: That was the Chair's ruling. I'd be glad to be informed by Delegate Porteus on the point of order.

PORTEUS: Mr. Chairman, in the matter of the question of 25 or 21 senators the vote was finally put on the motion to reconsider. This matter was discussed at some length yesterday, voted on and disposed of. It requires another motion to reconsider on this particular matter as there was a requirement of the motion to reconsider with respect to the number in the Senate. The difficulty is if we don't move along in this matter, if this rule is not adhered to, then we are going to keep going over and over and over again.

CHAIRMAN: The Chair wants to adhere to the rule, but what is the point of order?

PORTEUS: The point of order is that this matter was set yesterday. It takes a motion to reconsider, to have it reconsidered, to open it up, and it also requires somebody that voted in the majority to make the motion.

CHAIRMAN: The Chair will so rule. Unless you voted with the majority, Delegate Kauhane, your motion is now out of order.

KAUHANE: Mr. Chairman, I am only basing my attempt to have that language changed on your own ruling, when you reversed your second ruling. The Chair has made two rulings, the second one was to this effect; the Chair has reversed his ruling and that motion taken is on the first paragraph only. You later made a further ruling that the remaining portion of Section 2 is still open for discussion. That being so, Mr. Chairman, on the motion - -

SILVA: To expedite matters, Mr. Chairman, I voted in the affirmative yesterday and I so move we reconsider our action.

KAUHANE: Second the motion.

CHAIRMAN: It has been moved and seconded that we reconsider the action in regard to the districting of the island of Oahu.

KING: I'd like to make a point of order that such a motion is a second motion to reconsider. This is the second motion to reconsider. Rule 39 I believe forbids such action. If the Chair will turn to Rule 39.

CHAIRMAN: Rule 39 provides that "When a motion for reconsideration is decided, that decision shall not be reconsidered, and no question shall be reconsidered twice." It is the ruling of the Chair that this motion to reconsider is out of order.

KAUHANE: I rise to a point of order. Yesterday, Mr. Chairman, the motion for reconsideration was on the amendment offered by Chuck Mau which was pertinent to the main question as contained in Proposal 29 which we are now considering. The main question that was put was amended when Chuck Mau offered his amendment, so the reconsideration was taken on the reconsideration of the adoption or rejection of the amendment offered by Chuck Mau. That being the case, the ruling I believe holds true only to the main subject matter, that it cannot be reconsidered twice. The motion for reconsideration was on the amendment that was offered by the delegate from the fifth district in amending the main subject matter.

CHAIRMAN: Delegate Kauhane, I think that's incorrect. I've got before me Delegate Mau's motion. Reads as follows:

Third senatorial district: that portion of the island of Oahu, lying east and south of Nuuanu Street and a line drawn in extension thereof from the Nuuanu Pali to Makapuu Point, five;

____ senatorial district: that portion of the island of Oahu, lying west and north of the third senatorial district, five.

The Chair's understanding is that was voted on first and it was carried. Then there was a motion to reconsider and the motion was carried. Then the proposed amendment of Delegate Mau was voted down.

KAUHANE: I am still on the point of order. I feel I am entitled to defend my position on the question that is now being raised. I say that the motion on the adoption of the Chuck Mau amendment was to the main subject matter as contained in Proposal No. 29 of the majority committee report. We voted to adopt that. A reconsideration was asked on the adoption of the amendment that was offered which is a part of the general or the main subject, so that was lost but the main subject matter was not lost. So the reconsideration is on the main subject matter, not on the amendment that was offered by Chuck Mau, so we are still in order to demand a reconsideration of the main subject matter which is before this Convention.

CHAIRMAN: The Chair feels that he must rule that you are out of order and would be glad to take an appeal if you think the Chair is in error.

SILVA: To expedite matters, I withdraw my motion.

MAU: I was just going to remark - -

CHAIRMAN: To what purpose do you rise, Delegate Mau? The motion has been withdrawn.

MAU: I was about to make a motion to suspend Rule 39 for the purpose of reconsidering this matter. Before I put that motion I was going to remark that Delegate Silva is a gentleman and a scholar and I congratulate him and take my hat off to him to permit the minority to get a chance to say something on this floor. I move for the suspension of Rule 39 in order to consider this subject matter posed by Delegate Kauhane.

KAUHANE: I second the motion.

CHAIRMAN: It has been moved by Delegate Mau and seconded by Delegate Kauhane that we suspend the rules in order to permit reconsideration on this matter. State your point of order.

BRYAN: If we knew the amendment that was going to be proposed on this we might know whether it was pertinent to that which had been reconsidered yesterday or not. We don't know exactly what the amendment is. It may be that it's not pertinent to what was reconsidered yesterday and it would save suspending the rules and reconsidering the vote if we knew that now.

CHAIRMAN: The Chair's understanding is that the purpose of the motion is to suspend the rules to permit reexamination as to the question of the districting of the island of Oahu. Are you ready for the question? All those in favor signify by saying "aye." Contrary. The motion is lost. The Clerk will call the roll.

WIRTZ: I understand the question before the floor now is the adoption of the rest of Section 2. Is that correct?

CHAIRMAN: That is correct. The motion on the adoption of the remaining language in Section 2, the first sentence

having been adopted, is now before the house, the remainder of that section.

WIRTZ: I asked that question because I now would like to have the Clerk read us the rest of that section in the amended form.

CHAIRMAN: To expedite matters, the only amendment has been on districting the island of Hawaii into two districts, one having five senators and the other having two. Does that answer your question, Delegate Wirtz?

WIRTZ: Yes.

MIZUHA: Point of information. What are the geographical divisions of the island of Hawaii that we are voting on at the present time to classify West Hawaii and East Hawaii?

CHAIRMAN: Will you answer that, Delegate Nielsen? You're the author of the motion.

NIELSEN: Well, the geographical division is the North and South Kohala, North and South Kona, Kau, those sections in West Hawaii will be known in the amendment as the second senatorial district. All that blue portion on the map plus all that where the four is, that is West Hawaii.

CHAIRMAN: The Clerk will call the roll. Was a roll call demanded on this?

AKAU: Are we voting then on the statement that appears in the second, third, fourth and fifth senatorial districts as it appears now?

CHAIRMAN: In the committee proposal, as amended by Delegate Nielsen's amendment, dividing the island of Hawaii into two districts of five and two.

KING: It is understood, of course, that the other senatorial districts will be renumbered.

CHAIRMAN: That is correct. All those in favor - -

KAUHANE: As far as voting on the adoption of the proposal as amended, I am going to take a position to vote against the proposal on principle. I feel that the fifth district, having the greatest area and the greatest number of population should not absorb any more additional population by the inclusion of Kailua and Waimanalo into that portion of the fifth district that it today embraces. I feel that the fifth district if it's going to absorb the population of Kailua and Waimanalo as part of the present fifth district setup, then we are entitled to more senators than we are getting today, or which is being attempted, to lay out for the fifth district. I feel that if, as expressed by the members during their deliberation on this matter before the committee, that they were somewhat kanalua about dividing Oahu because those who ran for the office of senator in the last election admitted before the committee which was considering Committee Proposal No. 29 that it took the vote of the fifth district to elect them as senators. That being so, we who run in the fifth district feel that we have sufficient votes in the present fifth district to elect representatives and senators from the present fifth district. But if an attempt here is being made to have the fifth district absorb additional population by the inclusion of Kailua and Waimanalo, then certainly we are entitled not to four or five senators as is being proposed, we should be entitled to at least - - if five, we should be entitled to seven senators. We are justified in requesting the additional senators from that what is proposed by the committee present.

KING: With all due tolerance in the world, I do believe I have to make a point of order. The gentleman is speaking out of order. He may get up and explain his vote and may be against the pending motion, but we are no longer discussing the merits of it.

CHAIRMAN: I agree with you. We have passed the stage of debate, Delegate Kauhane. I think you have adequately explained your position on the vote.

KAUHANE: I don't think I have, but if it is the ruling of the Chair that I should be shut off from further clarification, then I shall abide by the ruling of the Chair.

CHAIRMAN: The Chair will give you another 30 seconds. The Clerk will call the roll.

Ayes, 40. Noes, 23 (Akau, Arashiro, Corbett, Doi, Heen, Ihara, Kam, Kauhane, Kawahara, Kawakami, Kellerman, Lee, Mizuha, Phillips, C. Rice, H. Rice, Roberts, Sakai, Serizawa, A. Trask, Wirtz, Yamamoto, Anthony). Not Voting, 0.

CHAIRMAN: The motion is carried.

LAI: I move for a short recess.

NODA: Second the motion.

CHAIRMAN: If there is no objection, the Chair will declare a short recess.

(RECESS)

C. RICE: Now that we have decided on 25 senators let me point out that it will take 17 senators to over-ride the Governor's veto.

DOWSON: I now move for the adoption of Section 2, as amended of Committee Proposal No. 29 on a permanent basis.

LAI: Second the motion.

CHAIRMAN: It has been moved and seconded that Section 2, as amended, be adopted. Are you ready for the question? All those in favor signify by saying "aye." Contrary. The ayes have it. Carried.

We are now on Section 3.

BRYAN: I move the adoption of Section 3, first paragraph down to the words "follows."

NODA: Second the motion.

CHAIRMAN: It has been moved and seconded that the first paragraph of Section 3, Committee Proposal No. 29, down to the words "shall be as follows" be adopted. Are you ready for the question? Is there any debate on this? Are you ready for the question? All those in favor signify by saying "aye." Contrary. The ayes have it. Carried.

BRYAN: I would like to move the adoption of the remainder of Section 3. Perhaps some of the delegates would like to take up the districts individually, but we'll have a go. I move the adoption of the remainder of Section 3.

NODA: Second the motion.

CHAIRMAN: It has been moved and seconded that the remaining provisions of Section 3 be adopted.

HEEN: In order that the members of the Committee of the Whole may more intelligently consider the contents of Section 3 I would like to read the report of the Committee on Legislative Powers and Functions upon that Section 3:

> Section 3 fixes the number of members of the House of Representatives. It further describes the 18 representative districts from which the members of the House will be elected. As the descriptions of some districts

are necessarily long, they will be included in the schedule of the Constitution, but are nevertheless to be considered as a part thereof. The number of members to which each of these districts will be entitled until reapportionment is based on the number of voters registered in each district in 1950.

From a very early point in your committee's deliberation on the question of apportionment and reapportionment of the House of Representatives, your committee was unanimous in its decision to apportion the members among the several major island divisions on a realistic basis and in accordance with the principle that representation should be as nearly uniform as possible.

One of the reasons why the reapportionment directed by the Organic Act was not carried out was because that act required reapportionment on the basis of citizen population. A breakdown of the population according to this standard has not been locally available. Total population figures for the territory are shown by census tracts which do not necessarily coincide with locally defined areas. As a practical matter, the number of registered voters was found to bear a reliable and fairly uniform relationship to total population, although it favors slightly the neighbor islands where the percentage of persons who have registered to vote is from one to two per cent higher than for Oahu. It was in recognition of the potential difficulty in obtaining figures which would show citizen population, or figures which would show total population by desirable districts, that the basis for reapportionment of the members of the House was chosen as the number of registered voters.

A majority of the members of your committee was of the opinion that the present representation enjoyed by the neighbor islands should not, at least for the present time, be decreased. With a 51 member House apportioned equally among the several major island units, the present representation is maintained, although the representation for the island of Oahu is increased from 12 members to 33 members.

The cost to the state of a legislature, with a 51 member House and a 25 member Senate, was discussed at some length by your committee incident to the question of having biennial or annual sessions of the legislature.

Some of the members of the committee felt that this larger size would, on a cost basis, make it inadvisable to provide for annual sessions; however, the majority of the members of the committee felt that the state could afford to have both a large legislature and annual sessions.

At this point Delegate Bryan, Chief of Staff of the Committee on the Legislature, will take over.

BRYAN: I didn't know that this honor was going to be bestowed upon me. I had intended to merely to act as a flunky in order to point out the districts. I believe that the districts are rather adequately defined in the committee proposal and as shown on the board, and I would ask if there are any questions as to where the division lines come or any questions as to districts, I would be very glad to point them out.

ASHFORD: May I address a question? I would like to ask a question relative to the throwing together of Lanai, Molokai and Lahaina for two. Was that to put them on a parity with Central Maui or East Maui? I had thought that Molokai and Lanai were going to be thrown together and that is why I am interested in Lahaina.

BRYAN: I think the delegate from Maui, Delegate Woolaway, can answer that.

WOOLAWAY: The total registered voters on the island of Molokai is 1,400, Lanai 610, so that if you just combined those two islands you would have a registered total voters of 2,000. Wailuku and East Maui both have a total number of registered voters of 5,600 and 4,200, so throwing Lahaina in with 1,500 additional votes would bring that area up to 3,500 or near comparable to Wailuku or East Maui. Then if I am not mistaken -- What are the least number of registered voters in any one district based on—2,300 or something near that figure?

CHAIRMAN: The Chair will have some one answer that. Will you answer the question, Delegate Bryan?

BRYAN: The idea among other things was to make the districts as nearly equal population—wise as possible and by this means we arrived at the figures of the fifth district: Molokai, Lanai and Lahaina at 3,865; Hana and Makawao, which is the seventh district, 4,706; and the Wailuku area, 5,592; and that division was made in order to make the three districts as nearly equal as possible. Now, there was one other point in doing that, Mr. Chairman, and that was that should the population shift drastically either from or to one island we did not want the district so small that they would not be entitled to at least one representative and so we tried to make the districts large enough so they would be entitled to at least one and preferably two. Does that answer your question?

ASHFORD: It seems to me, we have been given a little the edge. Of course, it makes it a little difficul for campaigning to have to go to Lanai first, and then we have to travel all the way to Lahaina, but I can see that we got a little advantage having it like that.

CHAIRMAN: "We from Molokai," is that it, Delegate Ashford?

ASHFORD: No, we from the extreme rural districts.

HOLROYDE: To further enlighten the delegate from Molokai, 2,445 voters qualify you for one representative, so you would not quite qualify if you took just Molokai and Lanai together.

AKAU: May I ask a question please? I have heard Delegate Heen give an explanation and I read it previously. Now, I would like to ask this, has there been any formula set up, a ratio so that the people between now and ten years hence when we are going to have another meeting of the Constitutional Convention that there will be something to go by, some guide? I notice that the ratio varies as Mr. Bryan has just stated. Is there any particular ratio or formula automatically speaking that will work itself out so that we won't ever have this difficulty again?

BRYAN: Yes, there is. It is not a ratio. If we were to take a ratio of one representative for every 3,000 or 2,500 persons, if the population should double, the size of our House would double. Therefore, we have adopted the formula used by the Congress of the United States which is known as the method of equal proportions. It operates much in the same manner as the method of equal fractions. You take the size of your House and divide it into the total number of registered voters—this is not the process of equal proportion but it is the end that it reaches—and that gives you your ratio. If you have 137,000 voters, I think we used for a base, divide that by 51 and you get 2,400 so actually you come out with one representative for every 2,400 people.

The method of equal proportions goes at it in a little different manner because if you go by major fractions you sometimes would end up with a 52 member House or a 50 member House rather than a 51 member House. The method of equal proportions gives every district one member first and then it sets up a priority list which shows which district would be next entitled to a representative, and as you progress when you get to the 50th number, you have 50 members assigned to different districts. The last district, the one that is most entitled on the basis of their population to another representative, gets the 51st member. It is a mathematical formula, very practical and very usable for this particular purpose. Does that answer your question?

AKAU: It answers my question partly, but - -

CHAIRMAN: Delegate Bryan, the Chair would like to ask you a question. Does this proposal fix the number of delegates for a given area but permit within that number the reapportionment depending on changes in population? Is that what you have done here?

BRYAN: Yes, we have. It goes a little further than that, however, Mr. Chairman. In using the method of equal proportions, it is a two step method. First, it is divided on the basis of equal proportions among the islands so that each island would be assigned so many representatives on the basis of equal proportions. Then again on the basis of equal proportions those representatives are divided among the districts on that island, so that it goes through a process of two steps. As far as automatic reapportionment is concerned, that's covered in Section 4 and it provides that the method of equal proportions shall be used for reapportioning every ten years.

LUIZ: I would like to ask the chairman of the committee a question. I would like to know the reasons why you have the 12 and 13 on Oahu split right through School Street.

HEEN: I think we ought to leave that up to later on, when we get down to the several districts. By reading the report on Section 4 you will see how the method of equal proportions is applied. On page 8:

> Section 4 sets out the method and the procedure for automatic reapportionment, and involves two steps, both of which have been spelled out. Step one is to take the total number of members of the House and to apportion those members among the four major island divisions (which have been defined as "basic areas") on the basis of the number of registered voters in each division. Step two is to take the number of representatives to which each basic area is entitled and to further apportion those members among the several representative districts within each basic area as those districts are defined in Section 3. This second apportionment is also based on the number of registered voters. The result of this procedure is to achieve what is deemed to be the most equitable distribution of members among the several representative districts. The mathematical process, known as the method of equal proportions, is the identical method used in apportioning the members of the United States House of Representatives among the several states (55 Stat. 761-2; 2 U.S.C.A., 2a, 2b) and has been proven by expert mathematicians to result in the least possible discrimination.
>
> The initial apportionment, as set out in Section 3, maintains the present neighbor island representation in the House. However, there is no guarantee that upon reapportionment any area or district will continue to be entitled to elect the same number of representatives. Should the number of registered voters in any district, for example, drop in proportion to the number of registered voters in the State as a whole, the number of representatives to which that district would be entitled would be proportionately less.
>
> It was not deemed advisable by your committee to provide for complete redistricting of the State at the time of each reapportionment. To obviate the necessity for periodic redistricting, representative districts were fixed in such manner that it appears highly improbable that any district in the next few decades will not be entitled, on the basis of registered voters, to elect at least one representative. Should, however, the number of registered voters fall below the number which would logically entitle it to elect a representative, provision is made for the redistricting of the basic area within which such district lies . . .
>
> The duty for effecting reapportionment and such redistricting as might be necessary has been placed on the governor. In order to assure that this duty, which is of a ministerial nature, will actually be carried out, the governor has been made specifically subject to mandamus by the Supreme Court. This is the only way in which a constitution can guarantee reapportionment and is consequently the method considered by this committee to be the most desirable.

I might state that the Committee on the Legislature was unanimous in adopting this principle of apportionment and reapportionment on the basis of the method of equal proportions.

LEE: Will the speaker yield to a question? Will the Delegate state that the committee, however, was not unanimous in the number?

HEEN: That is correct.

CHAIRMAN: Any further questions on the apportionment in the House of Representatives?

SHIMAMURA: If amendments are in order now I would like to make an amendment. On page four, line two, I move, Mr. Chairman, that after the words "upper Nuuanu" insert "and Kapalama," and on the third line after the word "schedule" insert the words - - under the captions "Twelfth representative district" and "Thirteenth representative district," delete the word "three" and insert the word "six" on line three and delete all of the fourth, fifth and sixth lines on that page.

MIZUHA: I second the motion.

BRYAN: I would like to point out to Delegate Shimamura that under the method of equal proportions, as you change the districts you sometimes change the relative priority of the district. By combining those two districts, under the method of equal proportions you would have five representatives instead of six.

SHIMAMURA: I have amended it so that the proportional representation remains the same, Mr. Chairman.

CHAIRMAN: Does the explanation lead you to wish to withdraw your motion, Delegate Shimamura?

SHIMAMURA: No, Mr. Chairman, because I have amended "three" there to read "six" so that the representation remains the same. On all of the districts there, all of the representative districts run from the sea to the mountains or from the mountains to the sea, and it's only in upper Nuuanu and Kapalama that they have been arbitrarily cut

like that. I think it should conform to the rest of it so that the twelfth and thirteenth districts shall be one.

HEEN: If we followed the method of equal proportions, that total number of six may not come out that way; it may come out with five. So we should decide I think at this point whether or not we are going to stick by the method of equal proportions. If we stick by that, then if Delegate Shimamura would like to have those two districts combined into one, they may be combined but let the method of equal proportions determine how many representatives shall represent those two districts combined.

CHAIRMAN: It seems to make sense to the Chair. Did you get what Delegate Heen said, Delegate Shimamura?

SHIMAMURA: No.

MAU: No, I don't, Mr. Chairman. I would like to ask what difference there is in the fifteenth representative district which would go into the fourth and which includes Manoa and Waikiki from the mountain to the sea. How does that differ?

CHAIRMAN: Can you answer that, Delegate Heen or Delegate Bryan?

BRYAN: I think that maybe the basic question here is why in the fifth district do we have smaller districts and in the fourth district, larger districts. Is that correct?

MAU: It's like a crossword puzzle. You have got only one representative district in the fifth that's cut in two. There's no other baby like that on the whole map.

BRYAN: I can give you an explanation for that. This line here dividing the twelve, fourteen and thirteen is the old division of the fourth and fifth districts. In the fifth district, as we know it now, all of the new representative districts were broken into smaller parts. In rural Oahu we have three representative districts with two representatives apiece, and in urban fifth district we had three districts with three apiece. In other words, that was a more or less of a uniform distribution in the old fifth district. The members of the committee from the fourth district said that they thought it was more proper to have larger districts in the fourth district and the fourth district was broken up in that manner. We tried in districting to let the members from the various districts more or less decide what they wanted. For instance, on the island of Kauai, the representatives from the island of Kauai said that they would rather have one district than to have three districts or four districts, so you notice that the island of Kauai is one district. The representatives from the fifth district said that they would like to have districts with approximately two or three, and as nearly uniform as we could make it. We have two for the three districts in rural fifth district and three for each of the three districts in urban fifth district.

CHAIRMAN: As the Chair understands it, all that Delegate Shimamura's motion is is to combine the thirteenth and twelfth representative districts without changing the number of representatives. Am I in error on that?

BRYAN: You are correct. I would like to point out why you sometimes gain or lose by doing that. For instance, let us assume that District 12—to make it simple we will go to the basis of a major fraction—if our denominator is 2,400 voters District 12 may be entitled to two and a little over half, so we give them three; and District 13 may be entitled to two and a little over a half, so we give them three. When you combine them together they just equal to five. It's a case of two and one half we make it three, two and a half and we make it three, put it together and you have five. Does that answer your question?

CHAIRMAN: It doesn't answer mine. Is that a mathematical result of a combination? Would it result in giving the combined area a greater representation?

BRYAN: The combined area gets a lesser representation.

J. TRASK: I would like to ask Delegate Bryan how does that compare with the fifteenth representative district with both the combination of Manoa and Waikiki. Would you be getting more representation if you combine both or less? The fifteenth representative district—by combining both Manoa and Waikiki as one representative district I notice that they have six representatives. How does that compare with the twelfth and the thirteenth?

BRYAN: To answer that question I think we have to do a little research on the method of equal proportions. It is possible that by dividing that you might lessen your representation and it might be that by dividing that you would gain representation. We would have to do some research to find out. I might say that in picking these districts the committee did consider very many possibilities and with the aid of the Reference Bureau got the figures on how many representatives each district would have under certain conditions. It is also true that by cutting this district in half either this way or this way, you may add a representative to this one or you may add a representative to Koolau. You can't tell; you have to look at the whole island as a unit in changing your districts.

J. TRASK: What are the number of registered voters in the fifteenth representative district?

BRYAN: 15,593.

J. TRASK: And what would be the registered voters in the twelfth and thirteenth representative districts?

HOLROYDE: 6,552 plus 6,815.

J. TRASK: What was that figure again?

CHAIRMAN: Approximately 13,000 in the combination.

FUKUSHIMA: It is well and good to speak about equal proportions here, but I believe for those who are not members of the Legislative Committee, we don't have the figures, we don't know why this is split up in this fashion. I would like to find out from the chairman of the committee whether he has a graph or a chart prepared so that the other delegates can study this intelligently. We are just groping in the dark.

HEEN: I think yesterday there was laid on the desk of the Oahu delegates a map showing the division of Oahu into representative districts. I might point out here while we were on the districts number twelve and thirteen that according to Mr. Dodge of the Reference Bureau those two districts were combined and under the method of equal proportions, the number of representatives for those two districts combined would be five and the one that's lost would go over to the Koolau district.

KAUHANE: May I ask a question? Mr. Chairman, may I ask the chairman of the committee a question? The question that I would like to raise is this. Are we following the method of cutting up the district the same as we had in the Constitutional election?

HEEN: I don't quite get the question.

CHAIRMAN: The question is whether or not this is based on the same as the election for this Constitutional Convention?

HEEN: No.

KAUHANE: As far as the fifth and fourth districts are concerned.

HEEN: Only I think in the case of the twelve and thirteen an attempt was made to follow the Constitutional Convention.

J. TRASK: Might I add, Mr. Chairman, I notice that the country districts - -

CHAIRMAN: Just a minute. Delegate Kauhane has the floor. If you want to wait until he is finished.

KAUHANE: Thank you, Mr. Chairman.

CHAIRMAN: Proceed, Delegate Kauhane.

KAUHANE: I am waiting for an answer. I think these people are getting into a huddle there.

HEEN: Mr. Bryan, who is more familiar with the fifth district, tells me that the fifth district was divided that way, the same as was required for the election of the delegates to the Constitutional Convention.

KAUHANE: Now, we go back to the same question that I raised. The fourteenth representative district, what combination of precincts is that with respect to the election held for the Constitutional Convention? What combination would that be?

CHAIRMAN: What was your question again, Delegate Kauhane?

KAUHANE: I would like to know, the fourteenth representative district, what combination would that be if they have followed out the election method where the delegates to this Constitutional Convention were elected?

CHAIRMAN: You mean what combination of the election of the delegates to this convention were elected?

KAUHANE: That is right.

BRYAN: District marked 14 here is not in the fifth district and it didn't follow the districting used for the Constitutional Convention. I think if you want to see how these districts fall together, if you will look on that map before you, it will show you the lines of demarcation used in the Constitutional Convention and the lines of demarcation used under this method here.

KAUHANE: According to this map here, it is not spelled out clearly to clarify the provisions of Committee Proposal No. 29.

CHAIRMAN: I think your point is well taken. The Chair will have that explained. Will you please explain the map on the desk of the Oahu delegates, chairman of the committee or Delegate Bryan?

BRYAN: The heavy dotted lines show the division used for the election in the Constitutional Convention. The letters within the circle are the combination designations. The small numbers within the circles are the precinct numbers and the light dotted lines are the precinct boundaries. The purple lines are the lines drawn to conform with the districting that is described in our appendix as proposed for the island of Oahu.

CHAIRMAN: Is that clear, Delegate Kauhane? Do you have anything further to ask?

KAUHANE: Yes, I cannot tie in the fourteenth representative district with the map here. It says here, "that portion of the island of Oahu known as Pauoa and more particularly described in the schedule, five representatives." According to the map here, we have the setup of the division whereby the delegates to the Constitutional Convention were elected by combinations of precincts. We have purple lines dividing combinations of precincts P, Q and R. Would that mean the fourteenth representative district?

BRYAN: The fourteenth representative district as proposed by the committee, if you will start on your map up there under the O with precinct 27, the fourteenth representative district would include all of precinct 27 of the old fourth district, precinct 26 of the old fourth district, precinct 16, precincts 25, 24, 23, 22, 21, 20, 19, 18, 32, 17, most of 11 and part of 12. If you follow the purple line it should be clear.

KAUHANE: I think we can get along very well. I think I have been helped by the Secretary.

CHAIRMAN: Any further questions?

HOLROYDE: It might be helpful for the delegate also if he follows that with the schedule which is Committee Proposal 30, which gives the definite boundaries of these sections.

CHAIRMAN: The descriptions of the districts are contained in Committee Proposal No. 30, Delegate Kauhane, if you will examine that.

ASHFORD: Is this an appropriate time to offer an amendment to the fifth representative district provision?

CHAIRMAN: If you wish.

ASHFORD: I therefore move, Mr. Chairman, that the third paragraph on page 3 of Committee Proposal No. 29 be amended by substituting therefor two paragraphs to read as follows: - -

CHAIRMAN: The Chair is in error. I believe we still have a matter to decide on, the motion of Delegate Shimamura, unless he has withdrawn that, for a combination of the twelfth and thirteenth representative districts. Do you wish to withdraw?

SHIMAMURA: No, Mr. Chairman.

CHAIRMAN: You wish to vote on that?

SHIMAMURA: Yes.

FUKUSHIMA: I don't think we can vote intelligently on Delegate Shimamura's motion. I would like the committee to point out what the equal proportion is. We have talked about it for half an hour and I still don't know how many representatives we have to how many registered voters.

CHAIRMAN: You want them to go into the arithmetic of how they arrived at this, Delegate Fukushima?

FUKUSHIMA: If we don't do that we can't vote intelligently on anything here when we have any amendments.

HOLROYDE: In setting up these districts, after they were set up under your rule of equal proportions, each district is first assigned one representative. From then on a priority - -

CHAIRMAN: I have been trying to get order. Will the delegates please take their seats?

HOLROYDE: After these districts are established and agreed upon, each district is thereby assigned one representative. Mathematically from then on a priority list is made up, the district with the highest priority getting the next representative for his district, and then it goes right down the line until the full quota of representatives has been exhausted. In this case the island of Oahu, the whole

thirty-three. Now if it would be helpful to the group, we could ask Mr. Dodge to work up that list of priorities on these districts as they stand. However, once you change the boundary of a district and change the number of registered voters, you have to re-figure your priorities to know exactly what it means.

MIZUHA: Before we go into that, as a delegate I would like to know how they arrived at the various districts and the boundaries first, before we go into the question of priorities. Who determined where the lines should be on these various portions of the map of Oahu?

CHAIRMAN: Will you answer that, Delegate Bryan?

BRYAN: I think the only thing to say that could be very truthful was that we were arbitrary. We allowed each member to make his suggestion as to where we should gerrymander, or whatever you want to call it.

FUKUSHIMA: On that hypothetical, arbitrary equal proportion, you have on the island of Kauai 6792 registered voters, and you give Kauai four representatives. Then we come to the districts of Koolauloa and Koolaupoko, there are 6,242 voters - -

MIZUHA: I rise to a point of personal privilege.

CHAIRMAN: The Chair can hear without you raising your voice.

MIZUHA: I beg your pardon, Mr. Chairman. The previous speaker is in error. Kauai has about 8,600 registered voters, not 6,500.

BRYAN: 8620.

CHAIRMAN: Take a note of that, will you, Delegate Fukushima.

FUKUSHIMA: I added up what Kauai has and perhaps I am wrong, but all I see is from this last Constitutional Convention - -

CHAIRMAN: I think you can rely on the Kauai delegation to be accurate on their figures.

FUKUSHIMA: [Part of statement not on tape.] Then in Koolaupoko you have 6,720 registered voters; 6,242 and there they are entitled to only two representatives. How does the equal proportion work there?

BRYAN: Mr. Chairman, may I answer that? There are two reasons for that. One is that we are short of one representative in the House. If we had fifty-two members Koolau would get the fifty-second member. If you take the fifty-first member away, I've forgotten, some district loses one. So that some district or several districts that are just on the edge of getting another one but don't quite get it. Then there is another point which should be remembered. In applying this method in the two-step fashion-which was referred to as the fox trot in the committee—in applying it by islands first, each island gets its basic representation before the districts on that island have been considered at all. In that manner you can see that you can't compare the island of Kauai with the districts on Oahu. If you want to make a comparison let's compare the whole island of Oahu with the whole island of Kauai.

J. TRASK: I move for a short recess, Mr. Chairman.

CHAIRMAN: If there's no objections the Chair will declare a short recess. The clerks have been working pretty long here.

(RECESS)

CHAIRMAN: The committee will please come to order. It is now 4:20 and the Chair would suggest that we might rise at this point, if somebody would make such a motion.

HEEN: I move, Mr. Chairman, that the committee rise, report progress and ask leave to sit again.

J. TRASK: I second the motion.

CHAIRMAN: It has been moved and seconded. All in favor signify by saying "aye." Contrary. The ayes have it.

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CHAIRMAN: The Committee of the Whole will come to order.

ASHFORD: Yesterday I offered an amendment to the fifth representative district. I think there was under discussion at that time some other representative district, but I will ask for the consideration of the Committee of the Whole of this amendment at this time, since one of the Maui delegates is going to have to leave shortly.

CHAIRMAN: Delegate Ashford, will you hold that for just a moment? The chairman of the Legislative Powers Committee wishes to make a brief statement and I will recognize you immediately after that for the purpose of your amendment.

HEEN: As the record will show there was a minority report, the Standing Committee Report 102, that was filed with the Clerk, and attached to that report is an amendment to the Committee Proposal No. 29, insofar as Section 3 is concerned, that being the apportionment of the House of Representatives. I did not call the attention of the Committee of the Whole to that matter yesterday as I thought that we would go through the preliminary study of the method of apportionment and reapportionment. However, Mr. Chairman, I would like to have it understood that whatever is done in connection with the majority report, that that will not eliminate consideration of the minority report. That has been the procedure so far.

CHAIRMAN: That is the understanding of the Chair, unless there is some objection.

PORTEUS: I hope we don't get into one of these round the robin propositions as we did yesterday because of misunderstanding as to exactly what we have done.

CHAIRMAN: I don't think there will be any misunderstanding. When we vote on something it will be not tentative and will require reconsideration. What Delegate Heen is asking is leave to present the majority proposal and at a later date, without foreclosing a consideration of his minority report. Otherwise he will have to introduce an amendment right now.

PORTEUS: That is the point I wish to make, Mr. Chairman, was that yesterday there was a motion made to accept the first sentence and that passed, and we don't want to introduce any greater element of confusion. Now that was not on a tentative basis as I understand it. It was proposed and it was passed. Now I don't wish to foreclose the chairman of the committee from being able to present his ideas—if he does wish to present them that is fine—but I think after the lesson we had on Section 2, the motion on the first sentence of Section 3 was for a flat adoption. So I want to keep the record straight now, rather than waiting and arguing about

this later. Then if the chairman wants to introduce this other proposition, why we can reconsider our action and decide whether to go into this question of 41 or 43 or whatever else it is.

HEEN: I would like to have this situation cleared and clarified. My position is this, whatever action is taken on the majority report even to the extent of approving the committee proposal in regards to Section 3, that that will not foreclose the consideration of the minority report. Otherwise, I would have to present that now, upon receiving recognition from the Chair, as an amendment to the provisions of Section 3 as contained in the majority report.

FONG: I hope we will not get into the same mess we got in the other day. If we are going to consider the majority report with the understanding that the minority report will be reconsidered later on, we are really voting on nothing. Now, I think the better thing to do is to let the chairman present his minority report and then it is up to this assembly to adopt the minority report or the majority report. There is no use just in discussing the majority report and we vote on that and then say, "Well, that doesn't mean anything, now we can vote on the minority report," and vote all over the same question. Now it seems to me that if there is a minority report, the minority report should be presented at this time.

CHAIRMAN: May I ask the speaker, it is feasible to have both reports before the body at the same time?

FONG: And then we can discuss it. If amendments are to be made to one report or the other, well let's make the amendment and vote on it.

LEE: I would like to state that as to other majority reports and minority reports, if I recall, we considered the majority report first—and I have a distinct recollection as to the Committee on Initiative, Referendum and Recall—so that all the action taken in respect to the majority proposal was taken tentatively. But since it was adopted in the sense that the minority proposal, when it was presented, was voted down, you still achieve what you sought to do in the first place. If we are to consider both of them at the same time now, we would be reversing our procedure heretofore established. I have no objection personally either way, but we should have an understanding as to what we are doing.

CHAIRMAN: The Chair recalls that Delegate Nielsen had an amendment in regard to Initiative and Referendum when we first dealt with the question of the majority report and he was not foreclosed. Now, whatever way the body wants to handle it, is of course agreeable to the Chair.

KING: Yesterday we passed the first paragraph of Section 3. That states that the number of representatives of the House of Representatives shall be 51 members. The minority report starts right off by fixing the number at 41. If we are to wade through the rest of Section 3, and argue about the reapportionment of those 51 members between the islands and between the smaller representative districts, and then go back and consider the minority report, we would have wasted the whole forenoon or afternoon. It seems to me that if Delegate Heen wishes to bring up his minority report now, he should bring up the first paragraph of the minority report as an amendment to the first paragraph of the majority report.

CROSSLEY: I don't think there is any question as to the procedure. I think that if the minority has a different idea than the majority, that it would be handled in the same way that we have handled all the others in the Committee of the Whole. I am thinking now particularly of the Judiciary where the minority, without even having filed a report, made their position known on the elective judges versus the appointed judges, and as each of these sections come up, where the minority is in opposition of course to the majority, they make their amendments at that time. So that the actions that we take are in themselves final. That is the only way we are ever going to get through this report.

HEEN: Well, if that is the case then I'll offer the amendment that is contained, or rather that is attached to the Standing Committee Report 102 as an amendment to Section 3 as proposed by the majority report and then we can go along from that point on. Then I would ask for reconsideration of that paragraph one for that purpose. I am sure that the majority does not want to foreclose the minority from debating the problem.

KING: As one who has voted on the affirmative on the first paragraph of Section 3, I will make the motion to reconsider the action taken in approving the first paragraph of Section 3.

CROSSLEY: I'll second that motion.

CHAIRMAN: It has been moved and seconded that we reconsider the action taken yesterday on the first paragraph of Section 3. All in favor signify by saying "aye." Contrary.

HEEN: In order that the debate may be carried on intelligently, I think it is appropriate at this time that we have an explanation made as to that method of equal proportion by Mr. Dodge of the Legislative Reference Bureau. After we get that cleared in our minds, then I think that we can proceed much more rapidly, if that is agreeable to the members of the committee.

WIRTZ: I might point out to the committee, if I may, that there is no disagreement in the committee. There was no disagreement at all as to the method of reapportionment. The only disagreement is as to the number, so I concur with the chairman's suggestion that we have this preliminary explanation of the principle of equal proportion so that the Committee of the Whole can understand all amendments that might be offered.

HEEN: That is correct. Now, Mr. Chairman, there is on the desk of every delegate a statement entitled: "Apportionment and Reapportionment by the Method of Equal Proportions." This statement was prepared by Mr. Dodge of the Legislative Reference Bureau and, in order to appreciate the explanation made by Mr. Dodge, every delegate should have that statement before him or before her and in that way probably follow a little more easily the explanation that is to be made by Mr. Dodge. I now move, Mr. Chairman, that Mr. Dodge be allowed to speak to the members of this Committee of the Whole and to explain this statement which he has prepared.

CHAIRMAN: I was wondering if you would hold that. I understand Delegate Ashford has a fairly short matter, and some of the Maui delegation want to leave, and she'd like to get that before the body. If you'd hold your motion.

ASHFORD: In the minority report there is provision for the separate representation for Molokai and Lanai. In the majority report we are thrown in with Lahaina and given two representatives. I therefore wish to present an amendment to that, the sixth, seventh and eighth paragraphs of Section 3 of Committee Proposal No. 29, to read as follows, and the amendment is on the desks of the delegates. I will move for the adoption of that amendment.

Substitute for the 6th, 7th and 8th paragraphs, of Section 3 the following:

"Fifth representative district: the islands of Molokai and Lanai, one representative;

Sixth representative district: the islands of Maui and Kahoolawe, five representatives."

Renumber the subsequent representative districts to conform."

ST. SURE: I second the motion.

ASHFORD: May the amendment be taken up paragraph by paragraph?

KING: I really don't see how we can possibly undertake the consideration of this amendment. We moved for reconsideration of our action on the first paragraph of Section 3. This amendment goes to the latter part of Section 3 and, as pointed out by Delegate Ashford, would not be applicable if the minority report is accepted in place of the majority report of Section 3. So, with all due respect to the lady delegate, I feel that the motion to amend a section that is not before the delegation is not in order.

CHAIRMAN: The Chair was just trying to facilitate the convenience of the delegate from Molokai.

WIRTZ: Might I add this thought, as expressed by the movant, that regardless of what, whether we accept the majority or the minority report, this amendment will fit in. The majority report divides Maui into three districts as shown on the map. The minority report divides Maui into two districts in accordance with this amendment, and this amendment is being made to the majority proposal. So that if the Convention later adopts the minority proposal, this will fit right in.

CHAIRMAN: Did you hear the explanation, Delegate King? Are you agreed with that explanation?

KING: I don't know whether it is possible to take up an amendment to a matter that is not before the Committee of the Whole.

HEEN: As I understand it, the idea was to have this amendment placed in the record without acting on it now, because one of the members of the Maui delegation is leaving before we perhaps reach that point. In other words we can defer action or defer consideration of this proposed amendment until it comes up in regular sequence.

CHAIRMAN: I will entertain a motion to defer Delegate Ashford's amendment.

NIELSEN: As I understand, it doesn't make any difference whether we take the amendment to the whole article in Section 2 [sic] or the minority report. Maui still gets six representatives, so it's just a question of who and where they are placed, so it shouldn't make any difference. If Maui wants it, why we ought to give it to them.

ROBERTS: I have one or two alternative suggestions to make. I have opposed the use of the motion to table, but a motion to table is perfectly proper to put on the table until we want to consider it. It would, therefore, be in order to table Mr. Heen's motion and take up the suggestion made by the delegate from Molokai or, on the alternative, to move to defer Mr. Heen's action until such time. I would therefore move, Mr. Chairman, to defer - -

CHAIRMAN: Delegate Roberts, the Chair will advise you there is only one motion before the body, namely, the motion of Delegate Ashford, and the question is whether or not we are going to act on that.

PORTEUS: Mr. Chairman, the difficulty in this situation, I believe from the point of view of those who are not on Maui, is that if we have a House of 51, we know that Maui is entitled to six. We know under the scheme as presented by the Committee that two go to a certain area, two to another and the balance to the remainder of Maui. The difficulty is, however, that we don't know whether the number, as recommended by the minority report, may be a House of 41. If it is a House of 41, Maui will not get six votes. Now if Maui does not get six votes then your distribution is going to be different, and those are at a disadvantage, it seems to me, who wish to support the majority report. It's all right from the point of view of the minority who say, give one representative to Molokai and Lanai and let all the rest run at large. That's fine, it's clear cut, but it puts those at a disadvantage who wish to preserve the districts because they don't know how many people are going into a district and they can't make the proper argument until they know what the number in the House is going to be.

CHAIRMAN: Is it your position that this motion is out of order at this time, Delegate Porteus?

PORTEUS: It seems to me that the motion is out of order and that there is no disposition I'm sure to prevent anyone from Maui from having a vote, and we can vote on this at the very end after we have dealt with all the rest of the districts in this section.

HEEN: I now move that consideration of the amendment proposed by Delegate Ashford be deferred until later.

HOLROYDE: I'll second the motion.

CHAIRMAN: It has been moved and seconded that consideration of Delegate Ashford's motion, relating to the districting of Maui, be deferred until a later date. All in favor signify by saying "aye." Contrary. It is carried.

SILVA: I just want to get this straight. Was it deferred to a later date or a later hour? You said "later date." Now, "later date" means after today.

CHAIRMAN: Later time.

HEEN: I renew my motion that Mr. Dodge be allowed to explain the statement that was prepared by him.

CHAIRMAN: Mr. Dodge, will you proceed with the explanation.

BRYAN: I would like to preface his remarks by saying that I think it is very much in order that we hear from him. It took the committee at least three hours to understand it themselves.

HEEN: I'd like to amend that, it took about ten days.

MAU: If the standard that is being used, known as the equal proportions, is so difficult to understand, why adopt such a standard? Why don't we use some other standard?

CHAIRMAN: It is a statutory standard contained in the United States Code and maybe the witness will enlighten the body. That is why he is called here, Delegate Mau.

Will you proceed, Mr. Dodge.

DODGE: I'd like to point out to the body that I don't think it is going to take hours to explain this. It took me about eight hours to understand it. Delegate Bryan said that the committee understood it in three. I hope it is boiled down now so that the delegates can understand it in 15 minutes.

As the chairman of the committee pointed out, there is on the desk of each of you an explanation, not only of the method of equal proportions, but the reason why that method was chosen.

Now, it starts with an objective that you try to reach when you make an apportionment of any body. That objective is to have each member of that body representing as nearly as possible the same number either of voters or of people or whatever standard you are using. Now if we start out with a House of 51 members, theoretically each member of the House would represent 2,445 registered voters because the total number of registered voters divided by the total number of members of the House results in a quotient of 2,445. Now there wouldn't be any problem at all if each district that was to elect a member had a population of registered voters that was always an exact multiple of your quotient, and there are figures that illustrate that in the second section of the explanation under the heading "The Problem." There I have given as a total population of registered voters for the four islands certain figures. I worked those backwards so that they had to come out in exact multiples, but if the County of Hawaii was always at a fixed population of registered voters of 19,560, and similarly if the total registered voters of the territory was always 124,677, you would never have any difficulty because 2,445 would go into those numbers equally, with no remainder. Neither would you have any problem if the total membership of the body of the House was exactly equal to the number of districts from which you were going to elect the members, and each district would be entitled to one member. You have no problem of apportionment then, because each district is entitled to but one member and you don't have any left over.

The problem does arise when you add to the total membership of the body an additional member which is over and above the number of districts or counties in the territory or the new state. Then if your House has a total of four members, then Hawaii, Maui, Kauai and Oahu is entitled to one member, then you wouldn't have any problem of apportionment. The problem arises when you have a House of one more, or a House of five. To which basic area, or to which county, should that one additional representative be allocated? Progressively on up the scale from five members to six, on up to 51. In each instance, when you add an additional member to the total membership of the House, you have the problem of which district is most equitably entitled to have that representative from that district.

Now getting on to page 2 of the report. The problem exists in using simple methods because they don't always work out. I have illustrated that by showing that when you divide the actual number of registered voters in each of the basic areas by the quotient of 2,445, the quotient that you then get, the number of representatives, are fractional representatives. For Hawaii it is 8.37 representatives, for Maui it is 5.79 and so on. Now it is merely coincidence that with a House of 51 and the present population of registered voters, the distribution among the four basic islands comes out to the same as the committee proposal under the method of equal proportions. It is also only coincidental that the total membership of the House after you add up the individuals comes to 51.

I point out in here that a single positive example of a method does not mean that that method will in all cases be valid. But a single negative example will prove its failure and I prove the failure of the simple method of doing this by assuming slightly different figures for total registered votes. On Hawaii, I have assumed that instead of 20,468 which they actually have, that that island have 20,780. Your quotient that then results is 8.499, not quite 8.5, not quite a major fraction; so you can't round it to nine members, you have to leave it at eight, then you drop 4.99 -- or .499 members. Similarly with Maui. Assume a slightly different registered vote, and again 5.499 is the answer. You can't round it to six it must stay at five. The same situation with Kauai and Oahu. Now you round those to the nearest whole number and you come out not with eight, six, four and 33, but you come out with eight, five, three and 33 and you add those up and you get a total membership of 49. You wanted to get 51, so you're immediately faced with a problem that must be settled rather arbitrarily. You have two extra members of the House to apportion. Which of those four counties is going to be entitled to it? They all have precisely the same remainder and so the allocation of one of the two members to any one district must necessarily be arbitrary.

By the same token if you take straight percentage, of course you arrive at the same figure that is shown here by the ratio because the ratio is actually an expression in a different way of a percentage. So you get the same result there, and if you use a straight percentage figure there will be times when you will round to the next higher number in all cases and come out with the House totaling 52 or 53. Then you have to decide where you should put -- from which district you should take away a member. You might come out with 49 and then you have to decide which district gets an additional member.

It is for this reason that these simple methods will not always give you the answer you want, will not always solve the problem. Expert mathematicians have come up with these series or a number of different methods of apportionment. Now all of these methods, and the method of equal proportions is one of them, is a method that permits you, in all cases, no matter what the figures, to come out with the answer that you want to get, in all cases with the House of 51 or in all cases with the House of 49. You have no fractions left over. You are not faced with the arbitrary decision of to which district should an additional member go.

Now to restate the problem -- we're on page 3 now. Under what conditions would it be fairer to assign an additional representative to basic area A, for example Hawaii, in preference to assigning an additional representative to basic area B, or Oahu. Similarly when you get down into representative districts, under what conditions would it be fairer to assign a member to—well, the committee yesterday was discussing the twelfth district—under what conditions would it be fairer to assign members to the twelfth instead of an additional member to the eighth district over in the Koolau area. Now that is the thing that the method of equal proportions and the method of major fractions and several others, each of which uses a priority list of numbers, that is the solution offered by those methods.

Now it gets a little involved from here on in. Whenever there is a difference, and of course you're going to have a difference between the various districts as it was pointed out in the first pages of the report, all your districts are not going to be of equal multiples of your basic quotient. There's going to be differences; you're going to have fractions, fractional parts, less than half a ratio, more than half a ratio left over, so whenever there is a difference—and you are always going to have them—that difference is the least when it is measured in terms of its relation to the

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Note: On the following six pages is a facsimile reproduction of the explanation of the equal proportions method of apportionment and reapportionment which was given to the delegates and explained by Mr. Dodge.

APPORTIONMENT AND REAPPORTIONMENT

BY THE METHOD OF EQUAL PROPORTIONS

AN EXPLANATION

THE OBJECTIVE: To apportion the total membership of the house of representatives so that each member will represent as nearly as is possible the same number of registered voters.[1]

For a house of 51 members the objective would then be:

$$\frac{124{,}677 \quad \text{(total number of registered voters, 1950 Constitutional final election)}}{51 \quad \text{(total number of members of house)}} = 2445$$

or: each member representing 2445 registered voters.

THE PROBLEM: There would be no problem if the total membership of the house was set at 4 and each county was entitled to 1 member.

The problem arises when the house is increased in membership from 4 to 5, and, progressively, from 5 to 51.

Stated simply, the problem is: which county is most entitled to each of the additional members of the house?

Even then there would be no problem if each county had and would continue to have a population of registered voters which was an exact multiple of 2445. Thus, if the population of registered voters in each county were:

Hawaii	19,560
Maui	14,670
Kauai	9,780
Oahu	80,685

then the number of members each county would be entitled to elect could easily be determined by simple division:

$$\text{Hawaii} \quad \frac{19{,}560}{2445} = 8.0$$

$$\text{Maui} \quad \frac{14{,}670}{2445} = 6.0$$

$$\text{Kauai} \quad \frac{9{,}780}{2445} = 4.0$$

$$\text{Oahu} \quad \frac{80{,}685}{2445} = 33.0$$

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[1] Registered voters happens to be the basis for apportionment decided upon by the Committee. The explanation throughout would, however, be equally applicable if the basis were to be total population, citizen population or number of votes cast in any given election.

Similarly, there would be no problem in determining the number of members the respective representative districts would be entitled to elect if, within each county, the number of registered voters in each district were and would continue to be equal to exact multiples of 2445. Simple division would achieve the result desired.

But, the problem exists because the membership of the house is to be larger than 4, and each county does not have a population of registered voters in an exact multiple of 2445, nor do the several representative districts within each county.

To illustrate:

Hawaii $\frac{20,468}{2445}$ (registered voters) = 8.37

Maui $\frac{14,163}{2445} = 5.79$

Kauai $\frac{8,620}{2445} = 3.525$

Oahu $\frac{81,426}{2445} = 33.30$

When the results are rounded to the nearest whole number, the number of members for each island, coincidentally, is 8-6-4 and 33, and the total membership is equal to 51.

A single positive example does not establish the validity of a method, but a single negative example, either actual or hypothetical, will suffice to demonstrate its failure. By merely assuming slightly different numbers of registered voters, the failure of the above simple method is immediately apparent.

Assume:

Hawaii $\frac{20,780}{2445}$ (registered voters) = 8.499

Maui $\frac{13,445}{2445} = 5.499$

Kauai $\frac{8,555}{2445} = 3.499$

Oahu $\frac{81,905}{2445} = 33.499$

Rounded to the nearest whole number, the result is 8-5-3 and 33, and the total membership is equal to only 49.

Two members must be added somewhere to bring the total to 51. But which district is most entitled to an additional member? Each has precisely the same fractional remainder.

A straight percentage will give a similar result, and will not always yield the desired answer.

Consequently, the solution of the problem necessitates some method the use of which will assure that the total number of members will be apportioned among the several areas so that, at no point, nor under any assumed set of figures, will the assignment of members depend on arbitrary action, but will in each instance result from the application of a predetermined, unchanging standard.

THE SOLUTION--THE METHOD OF EQUAL PROPORTIONS:[2]

The problem restated: Under what conditions would it be fairer to assign an additional representative to basic area A in preference to basic area B? Similarly, under what conditions would it be fairer to assign an additional representative to district 8 in preference to district 12?

Whenever there is a difference between the population of registered voters in any two areas, or between the number of voters that the members elected from those areas represent, that difference is the least when measured in terms of its relation to the smaller of the two numbers.

In mathematics, the relative difference between two numbers is measured by their geometric mean.

Hence, the method of equal proportions uses the following processes of computation:

> Area A deserves an additional representative when its population of registered voters, divided by the geometric mean of its present assignment of representatives and of its next higher assignment of representatives, is greater than the population of registered voters of any other area divided by the geometric mean of the present assignment to such other area and its next higher assignment.

In order to compute the relative claims of each area, or representative district, a priority list is prepared. The figures for the priority list are obtained by dividing the number of registered voters of the area by the geometric means of successive numbers of representatives.

The geometric mean of two numbers if equal to the square root of their product, thus, for area A's 2nd representative, the computation is:

$$\text{Priority No.} = \frac{\text{No. of registered voters}}{\sqrt{2\,(2\text{-}1)}}$$

[2] Actually, any one of several methods which make use of a priority list will solve the problem. The method of equal proportions has been chosen because it is the one which gives the most equitable distribution of members among the districts, and because it is the method used in Congressional apportionment.

and for its 3rd representative:

$$\text{Priority No.} = \frac{\text{No. of registered voters}}{\sqrt{3\,(3-1)}}$$

Applied to the county of Hawaii:

$$\text{Priority No. for Hawaii's 2nd representative} = \frac{20{,}468}{\sqrt{2\,(2-1)}}\text{, or}$$

$$p^2 = \frac{20{,}468}{1.414{,}213{,}6}$$

$$p^2 = 1447$$

for its 3rd member:

$$p^3 = \frac{20{,}468}{\sqrt{3\,(3-1)}}$$

$$p^3 = 835$$

and for its 4th member:

$$p^4 = 590.$$

Applied to the county of Maui:

$$p^2 = \frac{14{,}163}{\sqrt{2\,(2-1)}}$$

$$p^2 = 1001$$

and $p^3 = 578.$

Listing the priority numbers in sequence to determine, as between Hawaii and Maui which is most entitled to its second and its third representative:

Priority No.	County	Number of Members
1447	Hawaii	Its 2nd
1001	Maui	Its 2nd
835	Hawaii	Its 3rd
590	Hawaii	Its 4th
578	Maui	Its 3rd.

Following is a listing of the priority numbers for each of the four basic areas. Because each basic area is initially entitled to 1 member, the size of the house begins at 4, and it is the assignment of the 5th and subsequent members that is determined by the priority list.

PRIORITY LIST -- FIRST STEP -- BASIC AREAS

Total No. of Members in House	Priority No.	Basic Area	Cumulative Total for Each Area
5	5757	Oahu	2
6	3324	Oahu	3
7	2350	Oahu	4
8	1820	Oahu	5
9	1486	Oahu	6
10	1447	Hawaii	2
11	1256	Oahu	7
12	1088	Oahu	8
13	1001	Maui	2
14	959	Oahu	9
15	858	Oahu	10
16	835	Hawaii	3
17	776	Oahu	11
18	708	Oahu	12
19	651	Oahu	13
20	609	Kauai	2
21	603	Oahu	14
22	590	Hawaii	4
23	578	Maui	3
24	561	Oahu	15
25	525	Oahu	16
26	493	Oahu	17
27	465	Oahu	18
28	457	Hawaii	5
29	439	Oahu	19
30	417	Oahu	20
31	408	Maui	4
32	397	Oahu	21
33	378	Oahu	22
34	373	Hawaii	6
35	361	Oahu	23
36	351	Kauai	3
37	346	Oahu	24
38	332	Oahu	25
39	319	Oahu	26
40	316	Maui	5
41	315	Hawaii	7
42	307	Oahu	27
43	296	Oahu	28
44	285	Oahu	29
45	276	Oahu	30
46	273	Hawaii	8
47	267	Oahu	31
48	258.57	Maui	6
49	258.52	Oahu	32
50	250	Oahu	33
51	248	Kauai	4
52	243	Oahu	34
53	241	Hawaii	9
54	236	Oahu	35
55	229	Oahu	36

As shown by the above list, Hawaii becomes entitled to its 8th member when the house is increased from 45 to 46; Maui its 6th when the house is increased from 47 to 48; and Kauai to its 4th at 51.

A similarly computed priority list is shown for the apportionment of Oahu's 33 members among the several districts on Oahu. For the purpose of illustrating why a change in district boundaries effects a change in the apportionment, the districting agreed upon by the Committee on Legislative Powers and Functions is shown at the left, and that suggested by Delegate Shimamura is shown at the right.

Total	Priority	District	Cumulative Total
11	1102	Manoa	2
12	910	Pauoa	2
13	671	Kaimuki	2
14	636	Manoa	3
15	529	Kalihi	2
16	525	Pauoa	3
17	481	Kapalama	2
18	463	Nuuanu	2
19	450	Manoa	4
20	444	W. Rise	2
21	441	Koolau	2
22	417	Ewa	2
23	387	Kaimuki	3
24	371	Pauoa	4
25	348	Manoa	5
26	305	Kalihi	3
27	295	Wahiawa	2
28	287	Pauoa	5
29	284	Manoa	6
30	278	Kapalama	3
31	274	Kaimuki	4
32	267	Nuuanu	3
33	256	W. Rise	3
34	254	Koolau	3
35	241	Ewa	3

Total	Priority	District	Cumulative Total
10	1102	Manoa	2
11	945	Nuuanu	2
12	910	Pauoa	2
13	671	Kaimuki	2
14	636	Manoa	3
15	545	Nuuanu	3
16	529	Kalihi	2
17	525	Pauoa	3
18	450	Manoa	4
19	444	W. Rise	2
20	441	Koolau	2
21	417	Ewa	2
22	387	Kaimuki	3
23	385	Nuuanu	4
24	371	Pauoa	4
25	348	Manoa	5
26	305	Kalihi	3
27	298	Nuuanu	5
28	295	Wahiawa	2
29	287	Pauoa	5
30	284	Manoa	6
31	274	Kaimuki	4
32	256	W. Rise	3
33	254	Koolau	3
34	244	Nuuanu	6
35	241	Ewa	3

CONCLUSION: The objective was to have each member of the house represent as nearly as possible the same number of registered voters, namely, 2445. The result, under the method of equal proportions is as follows:

Hawaii 1-2559	Maui 1-2361	Oahu 1-2467	Kauai 1-2305
1st 1-2355	5th 1-1933	8th 1-3121	18th 1-2305
2nd 1-2650	6th 1-2797	9th 1-2086	
3rd 1-2348	7th 1-2352	10th 1-2953	
4th 1-2584		11th 1-2497	
		12th 1-2164	
		13th 1-2271	
		14th 1-2574	
		15th 1-2599	
		16th 1-2374	
		17th 1-2095	

Legislative Reference Bureau
University of Hawaii
June 30, 1950

smaller number. That is the relative difference as distinguished from an absolute difference. Now in mathematics the relative difference between two numbers is the least when measured by their geometric mean. If you want to get the least absolute difference, you use the arithmetic mean, but the least relative difference is the one that gives you the most equitable proportion. The method of equal proportions is based on the geometric mean which gives you that least relative difference, and it is for those reasons that the method of equal proportions uses the following computation.

Now in all cases this is the process of computation that is gone through. Area A deserves an additional representative—that's an additional one to what it now has, if it now has four, it deserves a fifth, if it now has three, it deserves fourth, and so on—when its population of registered voters divided by the geometric mean of its present assignment, for example, four, and of its next higher assignment, for example, five, is greater than the population of registered voters of any other area divided by the geometric mean of that area's present assignment of representatives and the next higher assignment to that area. In other words, assume you have two members from each island, now when is Island One going to be entitled to its third member before Island Two is going to be entitled to its fifth or sixth member? The priority list determines that procedure.

Now, in order to compute the relative claims of each of these basic areas you use a priority list, and the priority list is determined by dividing the number of registered voters of each basic area in the initial step of the apportionment or by the number of registered voters in the district in the second step of apportionment, by the geometric mean of successive numbers of representatives, that means by the geometric mean of two and three, of the geometric mean of three and four, of the geometric mean of five and six, and on up to Oahu 32 and 33. Now the geometric mean of two numbers is equal to the square root of their product. Thus for example, in Area A's representation the computation is that the priority number is equal to the total number of registered voters in that area, divided by the geometric mean which is expressed at the bottom of page 3 by the square root of -- the product of two successive numbers and for -- There is an error.

HEEN: That word "if" --

DODGE: Should read "is."

HEEN: -- should read "is."

DODGE: "Geometric mean of two numbers is." There's a typographical error there. Well, for the priority list for a third representative for any given district then, you take the total population of registered voters and you divide that by the square root of the next highest sequence of numbers, the product, the geometric mean.

Now, let's apply that to the island of Hawaii, for a specific example. The island of Hawaii becomes entitled to its second representative -- Well, I'll put it this way, the priority number that determines when Hawaii is entitled to a second representative is arrived at by dividing the total registered vote on Hawaii, 20,468, by the geometric mean of the product of two times two minus one or its increase from one member to two members. That priority number is 1447. Now for its third member, the same computation is gone through except that you use the geometric mean for the next higher successive number and the geometric mean --, I mean priority number for Hawaii's third member is 835; for its fourth, it is 590. Now, applied to the county of Maui, for its second member its priority is 1,001; for its third member it's 587.

Now when you get these individual priority numbers for your various districts, all you do is merely list them in sequence; that is illustrated by this little part set off in brackets here. To determine just as between Hawaii and Maui, which is first entitled to its second, and which is first entitled to its third and so on, you list the priority numbers without regard to county, but with regard only to relative sequence; in order, listing down 1447, 1001, 835, 590, and 578. And Hawaii, therefore, has the highest priority number for being entitled to its second representative so it first becomes entitled to that. The priority number for Maui for its second is higher than the priority number for Hawaii for Hawaii's third member, so Maui gets its second member before Hawaii gets a third. Hawaii has a higher priority number for both its third member and for its fourth member than Maui does for its third, so they get the next two representatives and the following one goes to Maui.

There is on page 5 the tabulation of the priority list made up for the territory as a whole based on 1950 registered vote of the Constitutional [Convention] final election, assuming four basic areas, each county as one area and, of course, each county being basically entitled to one member. So your problem is when you increase the membership from four to five which island, which basic area, is entitled to that fifth member. The priority list determines that, and if you notice that by adding the fifth, sixth, seventh, eighth and ninth members to the House, Oahu, because it in each case has the highest priority number, becomes entitled to its second, third, fourth, fifth and sixth members. When you get down to the total size House that you want to get, 51 members, down near the bottom of the page, the last county that became entitled to a member, or the county that became entitled to the fifty-first member that is added, is Kauai, and that becomes Kauai's fourth member. As shown, you can pick out the figures for the other islands. Hawaii becomes entitled to its eighth member when the House is increased from 45 to 46, Maui to its sixth when the House is increased from 47 to 48, Oahu its thirty-third when the House is increased from 49 to 50.

Well, that is the system for the initial apportionment of the number of representatives of the House among the several basic island units. Once that is done and once you get the answer of eight for Hawaii, six for Maui, 33 from Oahu, and four to Kauai, you repeat the process by apportioning those members for each island among whatever representative districts you have established on that island, and you do it in precisely the same mathematical manner. You take the total population of registered voters of each district, divide it by the geometric mean of the next higher successive numbers and you get a priority number. You do that for each district and you list those priority numbers in sequence and that determines which district is most entitled to that additional member.

On the left, on page 6, which isn't numbered, on the last page of the report, on the left side of the page is a table which shows the apportionment of members on Oahu in accordance with the representative districts that were agreed upon by the committee. You notice that that starts at the eleventh member because there are ten representative districts under that scheme. Delegate Shimamura's suggestion yesterday to consolidate two districts means that you have not ten representative districts among which to apportion the members but nine, and so your problem comes down a little sooner as to who gets the tenth member, not who gets the eleventh but who gets the tenth one, and therefore you have one more member to apportion between the represen-

tative districts. Now those two tables, the one on the left being the apportionment among the districts as determined by the committee, the one on the right being in accordance with the proposal made yesterday, are shown. Now under that system the apportionment that was suggested in the committee proposal is arrived at. Two for Koolau, two for Wahiawa and Waialua and so on.

Under the proposal suggested by Delegate Shimamura, consolidating the two districts changes the sequence in which the priority - - well it changes the priority number for that district and it changes the sequence in which that priority number will fall in the priority list. That is the reason why it drops from a divided representation of three for each district - - or six, to combined representation of five and why that other member, that sixth one, goes all the way over the ridge to Koolau because Koolau becomes, under this method, more entitled to that additional member than does the Nuuanu area. Now if you'll also notice that if Oahu would be entitled to thirty-four members, Delegate Shimamura's suggestion would achieve six for that district; whereas if the committee proposal is taken and the House is increased for Oahu to thirty-four, then the Koolau area becomes entitled to it.

Well, that is the method of equal proportions. It is the method used by Congress, as the chairman of the Committee of the Whole has pointed out. It was chosen together with another method which measured the difference in absolute terms instead of relative terms. But in 1941, Congress amended that and now only the method of equal proportions is used.

Now in getting back to the conclusion here, the objectives that we were trying to achieve in the method of apportionment was that each member of the House represent as nearly as possible the same number of registered voters. There is a tabulation at the bottom of the page which shows how close we came to the objective. I might say this is as close as is possible to come to the objective under any system of apportionment that has ever been devised. For the state as a whole it's 1 for 2445; for the island of Hawaii as a whole it's 1 to 2559; for Maui, 1 to 2361; for Oahu, 1 to 2467; for Kauai, 2305. Now within each of those islands the representation is as shown below and they are pretty uniform. You will notice under Oahu, the eighth district, which is the Koolau area, is under-represented. It has one representative representing 3100 voters. But that's because it would be the district next entitled to have one member. Similarly you find those that are quite high on the priority list for the last representative they got being slightly over-represented, such as the Waialua-Wahiawa areas which is the ninth district, whose representatives will represent only 2000 voters. But, nevertheless, the method gets as nearly as it is possible to get the most equitable distribution when it's measured in terms of the number of people that a representative is representing. I'd be glad to answer any questions that the delegates have on this matter. It is complicated.

LOPER: May I ask a question about paragraph 3 on page 3, where I read that the difference is the least when measured in terms of its relation to the smaller of two numbers. I don't understand that because the difference between 80 and 100 is 20 and if you compare that with 80 it is 25 per cent and if you compare that with a larger number 100, it's 20 per cent.

DODGE: I knew I'd have to call for help. This that I am going to quote from is a book on Congressional reapportionment which was published by the Brookings Institute in collaboration with a number of the other expert mathematicians who know far more about relative and absolute differences than I.

C. RICE: Is that on the census?

DODGE: The Congressional apportionment happens to be on census, that's true.

C. RICE: Then I am going to bring up a point a little later. Mr. Chairman, I want to bring up this point right now. Why didn't they take the votes cast instead of the registered votes at the last election? You know the registered votes. The clerk needn't take off the absentees, the dead men or anything. You take just one district, the island of Hawaii. East Hawaii had 15,301 registered voters, only 10,901 voted. West Hawaii had 5,167 and 4,606 voted. I want to have it on the men who go to vote, the people who go to vote. You can see - - I know that they can - - if a county clerk wants to leave all the dead men on, they can leave them on the registered list, we'll have a padded list. Congress bases it on the - -

PHILLIPS: Point of information. I can just barely hear the delegate. I wonder if he could speak closer to his microphone.

C. RICE: I thought I was speaking too loud. Can you hear that? I'd be very glad because I think Mr. Phillips has something along this line. According to this vote and according to the committee report, East Hawaii would have for 10,901 voters, they'd have seven representatives. West Hawaii for 4,606 voters that voted, they would have two, isn't it? You take Maui. Maui 14,163 registered voters, 11,393 voted. What do they get—six? Yet they had more voters voting than East Hawaii. You take your fourth district, you have 44,247 registered voters but 3,512 were all that voted.

BRYAN: Mr. Chairman.

C. RICE: 34,000. I'm taking this from this - -

BRYAN: Is that from the constitutional election?

C. RICE: Yes.

BRYAN: I think the question can be - -

CHAIRMAN: Delegate Bryan, can you answer that problem?

BRYAN: There were two questions posed. The last question was as regards the figures on those voting and those registering. In the Constitutional election, several delegates were elected outright which meant those voting in the general election - - in some precincts, nobody voted at the general election.

C. RICE: That is only on Kauai.

BRYAN: I think we have cases on Oahu where people were elected outright. They were - -

C. RICE: No.

BRYAN: - - and people didn't come to the polls because - -

CHAIRMAN: Delegate King was elected outright; the Secretary was elected outright.

C. RICE: Yes, but there were other voters in those districts, they are all registered voters, and goes on the general election in the last election.

BRYAN: I wanted to - -

C. RICE: Same proportion.

BRYAN: I wanted to get to the - -

C. RICE: Same proportion.

CHAIRMAN: Will you please address the Chair and discontinue this conversation back and forth.

C. RICE: I want to show, then in the fifth district there were 37,179 voters—that's including Waimanalo, Kailua and Lanikai—had 20,102. I want to say that if you take the basis of registered votes it might be a fictitious number. Why should we apportion for the fellows that are on the list? Why shouldn't we reapportion to those people that vote, they're the ones that are entitled to reapportionment. People that don't exercise their privilege of voting shouldn't be counted.

HEEN: I think the using the basis of votes cast is not a reliable one because there are a lot of factors involved there. In one area they may not show up on account of rain and probably that's what happened over in Hawaii. Over in West Hawaii, where they have a dry climate, they all turned out; and over in East Hawaii, it must have rained pretty bad and a lot of them didn't turn up. Therefore, it is not a reliable standard to go by. There are a lot of other factors to be thought of and -- I'm addressing the Chair, but looking at the delegate from Kauai. There's only one place in the Union where they use the votes cast as a standard in determining the number of representatives and that's Arizona, votes cast for governor at the last preceding general election. No other state uses that measure. In Massachusetts it's based on the number of legal voters, which means the same thing as registered voters, both for the Senate and the House. And in Rhode Island, qualified voters, that method is used for the apportionment of the members of the Senate; in Tennessee they use qualified voters, both for the Senate and the House; and in Texas, qualified electors for the Senate.

I might add that we had to resort to some official figures in order to use as a basis for apportionment and reapportionment, and the only official figures that we can rely on is the registration of voters as kept by the various clerks of the various counties. We cannot use population because there's no method under which we can use the federal census to show how many people live in these ten districts, say, on the island of Oahu. You can't tell how many of those are citizen voters in these various districts. Therefore, we have to resort to some method where you could get official figures.

C. RICE: I still say that the people that vote are the ones that ought to be counted.

CHAIRMAN: I think you've made your point, Delegate Rice.

C. RICE: I don't want to take you any longer. I haven't spoken very much on this floor and I resent you calling me down and trying to shut me off.

CHAIRMAN: I didn't intend to call -- I'm quite sure the delegate didn't mean that. I'm just saying that you've made your point clear. You made it clear to the chairman.

NIELSEN: I wanted to take exception to the fact that the weather was the reason for the voting in West Hawaii. It is the Americanism that we practice and preach over there.

LARSEN: I would like to urgently ask the delegates if they would give up some of the bickering about one or two and think about 51. It seems to me this committee deserves a tremendous lot of credit. They have gone through a tremendous job; they went for weeks and weeks; they have done a good job; it's a mathematical job. We can't suddenly throw it out of kilter here and it seems to me we ought to give them full credit for it and I would like to make the motion that we accept this method of equal proportions as worked out by the committee, and if we do that it seems to me we won't be bickering about a little here and a little there.

HEEN: I second that motion.

CHAIRMAN: It has been moved and seconded that we adopt the method of -- accept the method of equal proportions as proposed and recommended by the committee.

MAU: I want to ask whether there is any difference between the Congressional method and this method. I understand that this method is provided for in the Constitution of the United States.

CHAIRMAN: No, by statute, Delegate Mau.

MAU: By statute? What is the difference between that used by Congress and that used by the committee?

DODGE: No difference.

CHAIRMAN: The answer is no difference.

MAU: I understand that there is an essential difference, that Congress uses population as a basis, and they're using here, registered voters. I am wondering whether or not that does make a difference in the working of this complicated method.

CHAIRMAN: We would like to have an answer from somebody who has those facts.

ROBERTS: The report prepared by the committee indicates in a footnote that "Registered voters happens to be the basis for apportionment decided upon by the committee. The explanation throughout would, however, be equally applicable if the basis were to be total population, citizen population or number of votes cast in any given election." I would like, Mr. Chairman, to speak in favor of the motion for the use of --

MAU: Mr. Chairman, I believe I still have the floor.

CHAIRMAN: I believe not, you asked the question.

MAU: And it was not answered to me until just now. Delegate Roberts was the one who answered the question. I accept that answer. But I --

CHAIRMAN: You rose to ask a question and your question has been answered, Delegate Mau. In the meantime the Chair has recognized another delegate.

ROBERTS: Mr. Chairman, I will yield to the delegate from --

CHAIRMAN: Very well, Delegate Mau.

MAU: I wonder if the gentleman who has been explaining this complicated method this morning would explain how Wahiawa, Ewa and Waialua have been arranged under this method. I don't have it in the sheet that was passed around to the delegates. This here ends with combination X under the Constitutional method of selection of delegates.

PORTEUS: Point of order. I understood the motion to be the question of equal proportions, which was the subject matter to which I thought Delegate Roberts was prepared to address himself.

CHAIRMAN: The point is well taken. Will you address yourself to the motion, Delegate Mau?

MAU: I think it is directly on the point. If I don't understand how they have arranged it and it is arranged under this method, how it works in various precincts, I would not know how to vote.

CHAIRMAN: The vote can be made on the method of adoption without reference to any map. The Chair will now recognize Delegate Roberts.

ROBERTS: The procedure suggested of equal proportions is a perfectly rational and easy method of application. The problem which some of the delegates are facing however seems to tie on to other problems, the problem as to where the lines are drawn in each of the districts and the question as to whether or not it ought to be on the basis of total population or on the total number of votes cast. I think this procedure used by the committee is a fair one and can be applied, and I therefore urge that it be adopted. I would indicate, however, that even though we adopt the equal proportions method I would feel free to discuss the question as to whether it should be on the matter of registered voters, votes cast or on a basis of population.

C. RICE: I hate to speak too often - -

CHAIRMAN: You're one that has not offended in that respect, Delegate Rice.

C. RICE: On page 5, this proportion would not have to be changed at all. You turn to page 5, where you say on the fourth line "voters registered," you say "voters voting at the last," instead of "registered." Then you come down to - - in the next paragraph, everytime it says "voters registered" you say "voters voting at the last general election." This would be an incentive to get your voters out, too. I know that there's a record of all these votes just the same as they are registered and you wouldn't have dead men and absentees counted. I know a lot of these Republicans are always trying to get a big vote for the delegates so as to have so many delegates in the convention, and so forth, and that is one incentive they have to get the vote out even when there is very little other interest. But this would be a fair way. This wouldn't complicate. I think Mr. Dodge's thing can be worked out just the same, you go on your proportions. I am just trying to have it so that there won't be any dispute in the future, so that there is one county leaving the dead men on the list and so forth; I know it will lead to abuse.

HOLROYDE: I would like to clarify, for the moment, that in voting to adopt this principle, that we are not setting the lines or the boundaries. We are not deciding whether the dead men are going to be counted or not. All we are deciding is whether we are going to use this method, this formula to determine the assignment of representatives to an individual district. The decision on the boundaries, the decision on the dead men, will come later.

CHAIRMAN: Any further discussion on the motion? Are you ready for the question?

MIZUHA: I rise to a point of information. The vote on this method of division will not preclude further decision on whether it will be based on votes cast or votes tallied?

CHAIRMAN: That is the Chair's understanding. All in favor signify by saying "aye." Contrary. The ayes have it. It's carried.

BRYAN: I'd like to move that the method of equal proportions be based upon the registered voters. If I could have a second, I would like to - -

LARSEN: I would like to second that and in seconding it I would like to say this. It seems to me we ought to give credit to those voters who go and register. And if they register and happen to be sick, if you have an epidemic, why should they, if they are all in bed, why should they be punished. It seems to me if a man has enough citizenship to go and register, that gives him a reason for being counted.

MAU: I rise to a point of order.

CHAIRMAN: State your point of order.

MAU: The last motion which was passed and this motion which is now before the house concerns Section 4, which deals with the method and also deals, I think, with how that method will be used, whether by population basis, registered voters or votes cast. I thought that we were dealing with Section 3.

HEEN: In determining the number of representatives from these four basic areas and the number of representatives from the various representative districts, that determination was made on the basis of registered voters, although it doesn't say so in Section 3; but that was the actual basis upon which the apportionment was made, that is the initial apportionment as set forth in Section 3.

FUKUSHIMA: I would like to ask the chairman of the Legislative Committee how many states based their representatives on the population basis?

HEEN: That is found on page 31 of the Manual. I haven't counted the number; there are quite a number of them based on population.

AKAU: For Mr. Fukushima, as far as I can figure out, the only states that don't base their voting - - their reapportionment on population are the states of Texas and Tennessee. They are the only ones who don't.

BRYAN: I would like to answer that question. If I am allowed without being out of order to speak on the motion, I think I can clear the point up that was raised by Delegate Fukushima. The problem as stated in the report and as stated by the committee chairman this morning of using population in these districts is that it is next to impossible to obtain accurate population figures for the districts that we want to use or even for the old precincts or for any districts, unless you should take your representative districts to be the same districts that are used by the Census Bureau. Now it is quite possible that by the next census we could convince the Census Bureau that they should break their areas up into the areas that we may decide upon for representatives.

I would like to say a few words further on that. That in checking this over in the committee we found that there was actually percentage wise or using the method of equal proportions or anything else, very little difference whether we used registered voters, votes cast or population. I believe Mr. Dodge can tell us how much the difference was and in favor of what islands or counties and so forth, but the difference was very small.

I would like to say further on the using of registered voters that if you count and include the dead persons and so forth and so on, you only do it once, but the error is very small, percentage-wise it is just nil and I don't think it will ever make a difference in the apportionment. The reapportioning section, in the committee proposal, says that the reapportionment shall be based on the last general election prior to reapportionment. If in that general election we had some sort of disaster in one county, that county might lose half of its representation. Or in any one district on one island, if they had a large storm or something like that or epidemic and large numbers of people couldn't get to the polls, that district would lose a large share of their representation and I don't think that it is fair. The registered voters can only be in error if half the people die off between elections and that is not too likely.

ASHFORD: I think the theory of Delegate Bryan is correct, but my experience is that it is not the fact. I have been carrying on a war for four years to have dead men and felons dropped from the voting list and what do the election officials do every time when they sit down, they run a pencil and check mark through the people they know are dead or in jail and they continue right on the rolls as registered voters.

CHAIRMAN: You can take an appeal you know, Delegate Ashford.

ASHFORD: I wish to retain you as my attorney.

FUKUSHIMA: Delegate Bryan made a statement that even if we were to use the population as a basis, under this method that we have just adopted it wouldn't make much difference with the registered voters, but I can't see how he can make that statement when he's already stated that there is no accurate method of determing the population.

CHAIRMAN: I think Delegate Bryan should answer that.

BRYAN: I believe that what my intention was in making that statement is that we do have the population by islands and - -

CHAIRMAN: Will you please explain the difficulty of applying the federal census. I think that is the root of the problem.

BRYAN: I thought I had explained that.

CHAIRMAN: I thought you had too, but apparently Delegate Fukushima didn't hear it.

BRYAN: His point was that my statement was unfounded because I said it wouldn't make any difference if you did use it, and that before that I said that you couldn't use it. My point is this, you can use it in determining the number of representatives for each island because we do have population figures for each island, and on comparing that with the registered vote on each island the difference was very small. I think that should answer the question.

ROBERTS: I would like to speak in opposition to the motion that we use registered voters as the basis for the application of equal proportions. There is a great deal of logic in the use of registered voters. It is something which is tangible, you can see it; it is something which does indicate that people have had the opportunity to go down and register, and they have indicated their interest in voting. There is just as much logic for the total votes cast. As a matter of fact a little more logic because these people actually went to the trouble of going down and casting their ballots. Now in a democracy you ought to pin a bouquet on people when they cast their ballots. I think it is a responsibility which they have, but you want to say in this thing, apparently, that you are favoring such a proposal.

I believe, however, that the proper basis for determination and distribution of the representatives should be on the basis of population. When a person comes into the House of Representatives, he isn't there to represent the people who cast their votes, he isn't there to represent the people who register, he is there to represent all of the people in that particular area, the total population, the children who have not yet voted, the individuals, the youngsters who need taking care of, and those people who do not have the opportunity to or are too old to go to vote. The representative's job is to represent the entire population of the area. It seems to me, therefore, that population makes much more sense in terms of representative government.

There is a problem and I recognize the problem with regard to the census. That problem, however, is not an insurmountable problem. That problem can be resolved the way other states have resolved it. You reapportion your House and your Senate presumably every ten years. We said we are not going to reapportion our Senate. You reapportion the House every ten years on the basis of population. Now where do the other states get their figures? They have hundreds of districts the way we would have. All you've got to do, when the census people prepare their tabulation, is to let them know that you want them to tabulate the areas on the basis of population on the basis of the districts that you have. It is not an impossible problem, it is a very simple problem, and they will tabulate it for you on the basis of population, on the basis of the districts that you want, and the problem can be resolved very easily. I, therefore, vote against the proposal to use either the method of registration or votes cast.

CHAIRMAN: I think the Chair will declare a short recess. The clerks have been pretty well engaged. A few minutes recess.

(RECESS)

CHAIRMAN: Will the delegates please take their seats. The pending motion before the body is whether or not the method of equal proportion by registered voters be adopted. The Chair is of the view that that should more properly be brought up under the discussion of Section 4 rather than the present section, and, therefore, requests the movant to defer that motion or withdraw it so we can proceed. I might state we've had a good deal of debate on this legislative article and of course it goes to the heart of our government, the legislative process, but we do have to proceed and the Chair would appreciate it if we would proceed a little more expeditiously.

BRYAN: In withdrawing my motion with regards to the basis of whether it shall be registered voters, population, and so forth, I'd like it clearly understood that that doesn't affect the first motion that was already passed, that it should be on the basis of equal proportion.

CHAIRMAN: That is the Chair's understanding, that was the method that was adopted in the initial apportionment. What should be done in the future is the present motion which you are now withdrawing.

BRYAN: I think we have a misunderstanding.

CHAIRMAN: Please state your position.

BRYAN: My motion was that the method of equal proportion shall be used on the basis of registered voters and whether that is applied to the present apportionment or future reapportionment was not intended either one way or the other. I might also state that I had no objection to using some other figures for reapportionment, but for the initial apportionment I have requested that we use the registered voters because those were the figures that were most nearly applicable and could be obtained. Now if the motion is put that way, is it still out of order in your opinion?

CHAIRMAN: No, not at a later date, but at this time the Chair understands you are withdrawing your motion and we are now voting on Section 3.

BRYAN: Okay.

ASHFORD: Is my motion for the fifth representative district in order now?

CHAIRMAN: I think not, Delegate Ashford.

FONG: I move that we adopt the first sentence of Section 3 reading as follows:

> House of Representatives; representative districts; number of members; apportionment. The House of Representatives shall be composed of fifty-one members, who shall be elected by the qualified voters of the respective representative districts.

CHAIRMAN: Is there a second?

BRYAN: I second that motion.

CHAIRMAN: It has been moved and seconded that the first sentence of Section 3 be adopted. Any discussion?

HEEN: I move an amendment to that first sentence.

CHAIRMAN: What is your amendment? Has it been printed and attached to your report, minority report?

HEEN: That is correct, in connection with Committee Report No. 102 I move that that sentence be amended to read as follows:

> SECTION 3. House of Representatives; representative districts; number of members; apportionment. The House of Representatives shall be composed of forty-one members, who shall be elected by the qualified voters of the respective representative districts. The representative districts, and, until the next decennial reapportionment, the number of representatives to be elected from each, shall be as follows:

WIRTZ: I second the motion.

CHAIRMAN: It has been moved and seconded that the first sentence of Section 3 of Committee Proposal 29 be amended by incorporating the first sentence of Section 3 of the proposal attached to the minority report of the committee. Is there any discussion on the amendment?

WIRTZ: I would like to make one last plea to this Convention for a smaller legislature. This Convention has already gone on record as adopting the 25 Senate and probably that connotes, as the discussion indicated yesterday, a 51 House. I am making my plea not only on the ground of economy. I think it is quite apparent that if we have this large legislature, the first immediate problem that faces the State of Hawaii is a new building.

Now it was booted around the floor under cover that the legislature had already appropriated money for a new building. I have been unable to find any such appropriation. There is an appropriation of $100,000 for preliminary plans. There is also some indication that it might be contained in the $70,000,000 bond issue program. However, those bonds have not been issued as yet and it would still be an obligation that the people of Hawaii would have to face. With the large legislature, a larger legislature, the new building is a must; but with a small legislature, a smaller legislature, perhaps Iolani Palace—although it is somewhat outmoded—would suffice, if the legislature at that time felt that the economy of the State would not permit capital expenditures.

But not only is the question of capital expenditures involved. We have operating costs to meet. Now there has been much talk; four or five more senators, ten or eleven more representatives, and the matter of salaries; but please do not forget that under the territorial system we do not pay any salaries. It's going to be a question of meeting all these salaries. True that is a small item and it is the smallest, as far as operating costs are concerned. Then we have the other costs that go with it, and regardless of all the arguments here about per capita cost and so on, the figures are astronomical. You only have to examine the sheet that was placed on the desk of each delegate.

My second reason against a large legislature is that it is cumbersome. In a large House, it will be impossible for some of the representatives to keep track of the bills in the legislature and especially is this true since the committee has gone on record favoring a limited session.

Now what is more important in my mind is the jeopardy that is placed upon what I consider very necessary reforms to our legislative structure. You delegates will reflect in examining the various articles of this Constitution dealing with the coordinate branches of government, the legislative branch is the least affected by form -- by reform. It is still, even as reported out of committee, very archaic in structure. These reforms that I am referring to that were able to be presented in the committee report, and they are minimum reforms, are annual sessions, a budget session in one year and a general session in another, the question of the legislative council. These, as I say, were minimum, and there were many others probably that should be done, but that is the best that could be done by the committee at this time.

Now the jeopardy of those necessary reforms heightens the necessity or the public demand or clamor for some voice, some means of reforming the legislature through initiative, referendum and recall. I would like to place that definitely in the record. The Committee on Initiative, Referendum and Recall considered these matters, and one of the witnesses who advocated them was asked whether those expensive measures, if the money that was expended for those could be utilized in reforming the legislature, wouldn't we have a better form of government, and the answer was "yes." But what are we doing. We are taking the money that we saved from the initiative, referendum and recall and we are increasing the legislature, not reforming it, because I am very fearful that when these other questions of the reform come up they will be answered immediately by the fact that we do not have money to put them in because our legislature is so large. It will be very interesting to hear that debate when we hit the other points. To me it is unfortunate that we dealt with this problem first rather than the rest of the articles originally suggested by the chairman of the Legislative Committee. Now we have agreed on the method of reapportionment. Just what difference is there between a 51 House and a 41 House. In a 51 House, Oahu will have 33 representatives and the outside islands will have the same 18 they have now. That gives Oahu a 15 vote margin. In a 41 House as proposed in this amendment that is now before the floor, Oahu will have 26 and the outside islands 15, or an 11 vote margin control. To me the difference in four votes, insofar as Oahu is concerned, is immaterial. So I ask once again that this body stop, look and listen before we go on and bind our future legislature to all the expense of running this cumbersome Frankenstein.

KELLERMAN: May I add one more point in addition to Mr. Wirtz' and in corroboration of his point of view. In the committee the original discussion hovered around a 41 or 43 House. I think I am being fair to all members of the committee when I say that the one argument which boosted that number from 41 to 51 was so that, under the same principle of equal proportions which we adopted unanimously, the three outside counties or islands could retain the number of representatives they have now. There was no question that 41 would not be capable of doing as good a job, if not better; there was no question of the need for a 51 House. It was purely the political fact of the discussion of

representation, that for the outside islands to retain their eight, six and four, it would be necessary to increase the House to 51 to do it. Therefore, increase the House to 51 to do it. It means for the addition of three members, one from Hawaii, one from Maui and one from Kauai, we are saddled with seven additional members from the island of Oahu which frankly we do not need. To be able to obtain three more from the other islands, we have the expense all down the line of seven more from this island, which is totally unnecessary. And it seems to me having voted upon a 21 [sic] Senate or even if in any circumstances we should reconsider and get back to a 21 Senate, the three outside islands would still be getting additional representatives at least as great as the one each they would lose under a 41 House in the House of Representatives. If you adopt a 51 House, you have eight from Hawaii; you have seven senators from Hawaii in a 25 Senate. You have six representatives from Maui; you have five senators from Maui. You have four representatives from Kauai, and you have three senators from Kauai. Now in either a 21 or 25 Senate, each of the other islands gets more representation or at least as much as it has on the eight, six and four basis now. True it may be in one house rather in the other, but a house which has stood for greater prestige and which has more power in that it has the power of approving appointments or removals from office. So as I see it, the outside islands are in fact losing nothing in going to seven, five and three representatives, as against their present eight, six and four. And the cost of those extra three representatives of those islands is seven additional representatives from the island of Oahu which are totally unneeded.

Those reasons I think, with respect to everything that Mr. Wirtz has said, is equally as applicable in the discussion of cumbersomeness, economy and all other factors, and I wanted to bring up that point. That's how we happened to hit upon 51.

SMITH: I would like to ask the previous speaker, does that mean that her intentions are that the House should be 41 and that the Senate would be kept at 25?

KELLERMAN: My intentions, if I had my way, have been made quite clear. I was in favor of a 21 Senate and a 41 House, but even on a 21 Senate as an increase over the present 15, each of the outside islands would get an additional senator, which in my opinion would be worth more to them than one representative in each house, which they would lose on a 41 House.

FONG: Mr. Chairman, may I ask the speaker a question? The fact that we have already passed on the number of senators, that is 25, does that mean that she will still persist that the Senate be cut to 21 should her amendment pass?

CHAIRMAN: I think the position of the delegate is perfectly clear. She is in favor of this number in the House, and if that would prevail, then she feels that this body would reconsider its action on the Senate. I think that is the position of the delegate.

PORTEUS: I wonder if the various members would be kind enough to turn to the apportionment and reapportionment circular that was distributed this morning. I think we can make the point very simply here. If you will turn please to that table and turn to page 5 of the table.

CHAIRMAN: The table prepared by Mr. Dodge of the Legislative Reference Bureau, is that what you have reference to?

PORTEUS: Yes, Mr. Chairman. If you will turn to page 5, on the left hand column is the total number of members in the House. As so well explained by Mr. Dodge, if you took the number in the left hand column, by looking across you can find out what the House would be as divided between Oahu and the outside islands.

Now as a matter of interest, we've been talking about 51 and 41, there is nothing magic in the numbers. Let's just for fun take a look at these numbers, let's take a look at a 30 House. Oahu would have 20, that means the outside islands would have 10, that's a two to one margin. Now we move up next to where Oahu might next like to go because it demonstrates the point of where you pick the number, what happens? If you pick a House of 39, if you will look across please, you will find that in a House of 39, Oahu would have 26, that would obviously leave the outside islands a total of 13. Again a two to one. Both Maui and Hawaii should in a discussion on a House of 39 immediately point out to the rest of the body that on the fortieth member, Maui is entitled to that member, and on the forty-first member, Hawaii is entitled to it. Therefore, they should advocate that instead of taking a House of 39, we ought to take 41 which would then give the split of 26 to 15. Now there is nothing magic about this split of 26 to 15; that's only what the division is, if you will assume that you will take 41. Now as soon as you go to 41, if you will look at the table, it is to Oahu's interest to ask that the House not be set at 41 but rather for $4,000 a year, which would be the cost at a thousand dollars a year, we move the House up to 45. By moving it to 45 you then find that Oahu is entitled to 30. The outside islands, however, have not come in on any of those four - -

CHAIRMAN: Pardon me, Delegate Porteus, I didn't quite follow that, if you move it up to 42 - -

PORTEUS: Up to 45, jump from 41 to 45. If you move to 42, Oahu has 27; at 43 we have 28; at 44 we have 29; at 45 we get 30 of the House of 45. I am pointing out the difference between moving from 41 to 45. At 41 we have 26 to 15; at 45 we have 30 to 15, what we'd have had at 39 and at 30.

So, there is reason to support the recommendation of the committee that the only figure that they could come together on was a House of 51; there is reason to support it. Maybe I like 45, maybe someone likes 39. Kauai, Hawaii, Maui would have other numbers because if they just get in under the line it is to their advantage to draw the line in the number of the House where they last come in under the line.

By the time you got to 45 the difference in cost between 41 and 51 – if the committee's recommendation is carried out, which is apparently a $1000 per budgetary session and $1500 for another – it means $10,000 a year in a budgetary session for salaries and $15,000 a year in another session. Now as far as this tremendous cost of $10,000 and $15,000, this cumbersome "Frankenstein" that is labeled at 51 becomes a very desirable body apparently at 41. As a matter of fact if that is all they call the legislature, the legislators will be very lucky. But at 51 you'll find that Kauai, the last outside island, comes in for its last representative. That gives to each of the outside islands their present 18. It is true there is nothing magic about 51, there is nothing magic about 41; 30 is too tight, it should be increased.

Now if we wish to let those who desired to preserve the same number of representatives in their islands to go back to their islands and ask their people to vote for the Constitution, I see no great difference in cost a year. Ten thousand dollars is a lot of money to me, but I don't think $10,000 spent in salaries in a particular year is that much difference as far as cost is concerned. It is true they can argue that there are going to be a lot more clerks, but as I understood

the argument that has been made earlier, the legislature is operating on too expensive a basis and you ought to operate on a more efficient one. If that is true it shouldn't cost any more money.

The 18 committees of the House I think can just about adequately take care of the work of a House, whether there are 30 members or whether there are 41 or even 51 members. I don't believe that the item of cost is such a major one, but the table does show the difficulty of arriving at any particular figure for the size of the House. As you look at it everybody is for a different number, and every time you pick a different number it affects some people in some districts, in the rural districts, or in other districts, as how many people they will be entitled to elect to the legislature. And it seems to me, therefore, that the recommendation of the committee to be a reasonable one, not necessarily one I would have chosen had I had the right to choose, but we've got to make a selection along the line, and I think their recommendation to be a fair one.

CHAIRMAN: The Chair will ask Delegate Heen to close the debate on this.

LAI: Only three states out of 48 states - -

KING: Close the debate, why should we close the debate? There are a lot of us who want to speak on this.

LAI: I was speaking against the amendment. Only three states out of the 48 states have a House of less than 50 members, and only three states out of the 48 states have a House less than two times that of the Senate. In other words we have decided on a 25 member Senate. Now we should have a - - 51 would be a proper size House to go with a 25 member Senate. Now our population of the territory has increased tremendously the last 20 years and I think the increase in the membership in the House is very well justified. That would give a better representation of the increased population.

KING: First let me say that I am very anxious to expedite matters, but we didn't take a great deal of time in discussing the theory of equal proportions. Once we've adopted the principle of equal proportions, you inevitably come to a House of a membership of 51 members because that gives the other islands the same eight, six, four they now have and then gives Oahu the additional members to complete the number, as was well pointed out by Delegate Porteus.

Now this discussion of the additional cost to me seems all out of order. I have had some figures prepared here—of course we can always get many figures—but in 1919 from the memorandum that was circulated yesterday, the cost of the legislature was $60,000. The expenditures of the legislature was $5,080,000. That made a ratio of legislative cost of total appropriation, 1.07 per cent. In 1929 the legislative cost was $100,000, the total appropriation was $8,633,000 [which] made the ration 1.16 per cent of legislative costs to the total budget, which was slightly higher. In 1939 the legislative cost was $160,000 and the total budget was $14,500,000; the ratio was 1.10 per cent, a decrease from the preceding decade. In 1949 the legislative cost was $500,000 and it has been assumed that it would keep going up and up in that percentage which is not an assumption that is justified. The total budget was $72,000,000 and the ratio was 0.69 of 1 per cent, almost half of what it was in 1919. So this question of cost has been greatly exaggerated.

We are getting into the larger monies because of increased population, the lower buying power of the dollar and the larger services required. It is true that the per capita cost has gone up because the people of Hawaii have demanded more services from the government. In 1929, with a population of 255,000 in 1920, the per capita cost was $1.98; and in 1930 it went up to $2.34; in 1940 to $3.45; in 1950 to $14.60. Why? Because we demand more of government; we demanded the government shall do things for us that were not done in 1919 and in 1929 and so forth.

Now, this question of a new capitol. Frankly Iolani Palace is no longer very adequate as a capitol at this moment, and this increase to 41 representatives will make it less appropriate for a capitol. I don't know what the future is going to do, but we'll cross that bridge when we come to it, and whether we erect a new capitol or not will not depend upon the size of the legislature but upon the finances of the Territory at the time.

Now if we want a good democracy we want better representation of all sections of the State of Hawaii. We want representation based on a reasonable percentage of people that have voted, and we get that by increasing the size of the legislature. I recited the other day the number of states that have comparable size of legislature as we have. Colorado, for instance, to mention a new one that I did not mention yesterday, has 35 senators and 65 representatives. It has a population of about a million people, about twice as many people as we have, but there is no comparison in population when you get up to a higher figure. Wyoming, however, with a population less than ours, has 27 senators and 56 representatives. They do not find that unwieldy. They do not find it overly expensive. As a matter of fact, Wyoming is a poorer state in money spent than this Territory of Hawaii, this future State of Hawaii.

So it seems to me that the cost angle doesn't come into the picture at all. It is what will provide the State of Hawaii with a fairly distributed number of representatives for its population and its vote, and you inevitably come to the figure 51 as the only one that suits the needs of the other islands and of Oahu. A lower figure would be taken out of the other islands before it is taken out of Oahu. So I feel that the amendment should not carry, that we should continue to maintain the 51 House membership and the 25 membership in the Senate.

MIZUHA: I am in favor of the amendment, and in favor of a smaller state legislature for Hawaii. It will be covering the same ground as I covered with reference to my remarks on the size of our Senate when I speak for a smaller House of Representatives for the State assembly. It isn't so much a question as to the cost of our State legislature; the amount of moneys that could be used for the salaries of clerks, for representatives and senators and holdover committees and so forth. What I am principally concerned with is, by a larger body in the House of Representatives the total budget of the Territory, whether it be on an annual basis or a biennial basis, will increase proportionately with the number of representatives and senators in the State legislature.

I wish to point out at this time that in establishing the House of Representatives here in the Constitution we are departing from an established principle of representation that Hawaii has enjoyed since the Organic Act. We have elected representatives on a large basis, large geographical basis. On Kauai, on Hawaii, on Maui and on Oahu, we have had only six representative districts. Now we are establishing 18. From some of these representative districts we are electing six, as the fifteenth district on Oahu, some five, as the fourteenth district. And every representative that comes to the State legislature will come first and foremost with the interest of his constituents in mind and there will be competition in the State legislature for improvements in the various representative districts. And undoubtedly when you

have 51 legislators in the House of Representatives each one of these boys must go back home and tell their fellow voters that, "I got you this new library, this new swimming pool, this new school," and when the "pork barrel" bill comes up for capital expenditures everyone can not be satisfied. So they will be confronted with Delegate White's "debt limitations" and the answer will be, "Well, you can't increase the bonded debt of the Territory. You have already raised enough money and under the constitutional limitations you're stymied."

So these boys in the legislature will get together, as they have gotten together here in this Constitutional Convention, and say, "Sure, we'll get Delegate Silva's proposal in 1949 with reference to income tax and we'll put it through, and when we put such an income tax bill through, we'll have enough money to take care of this new school, and this new gymnasium and new swimming pools." And that is what is going to happen because legislators are human. They must go back to their constituents and tell them, "We got something worthwhile for you when we went down to Oahu in that beautiful Iolani Palace and we brought back a new gymnasium for you, a new beautiful public school like the Castle school down at Kaneohe." Why, the boys up there in upper Nuuanu, in the twelfth representative district, and maybe it might be Delegate Trude Akau, says, "I gave Puunui the best looking public school in the Territory and I am going to fight for it." And the end result with a large body like this will be a State budget not $100,000,000, it will be $250,000,000, and they will have to raise the money from income taxes or gross income taxes, and we will find the State confronted with a tax structure that will make our present tax structure silly.

It is my opinion that a small legislative body—maybe a few more representatives and a few more senators than we have at the present time—will be the kind of body that will work for the interest of the State of Hawaii and will not bring politics into the deliberations to the extent that it will be when you have a larger body. Delegate Heen, the chairman of the Legislative Committee, read from the Federalists Papers I believe, upon the recommendation of the distinguished political scientist, what a large body will do and what a small body will do. And then if we have this large State legislature, I am certain, and I will sound a warning again, that our legislative appropriations on an annual basis, on a biennial basis, will be far above what the Territory has ever experienced and it will mean taxation on a basis which was unheard of under the Territorial status. I am in favor of this amendment for a smaller House of Representatives.

ARASHIRO: I was told it would be better to keep quiet than try to speak to a group that's not going to listen, but I am not going to say anything, but I have a question to ask. My question is - -

CHAIRMAN: The Chair didn't mean you to keep quiet but wanted to remind you that a few souls are saved after the first hour. I have a great deal of sympathy with the last speaker, but I recognize what the feeling of the body is.

ARASHIRO: My question is, is the present legislature a body too small that is not carrying out the wishes of the people, and if it need be increased, should it be increased to 25 senators and 51 representatives which will then, to this assembly, be reasonable and will be sufficient to represent the different population - - I mean different people of the Territory adequately?

SILVA: I would like to state that I heartily disagree with the delegate from Kauai. Truly in a form of government as ours, that it would be proper if we could break it down into smaller units, if it would be possible for us to do that, and if we could afford that, for the people of this Territory then, surely, then we would have a truly representative form of government. We are trying to stay within the economy and at the same time give the people, the truly representative of the people, a voice in the legislature, and it is because of that that the figure of 51 has been chosen. I say that if the delegate from Kauai is correct, then maybe he is of the opinion that it would be better to do without a legislature so that none of the members of the House nor the Senate could go back to the people - -

CHAIRMAN: I don't think his argument went to that extent, Delegate Silva.

SILVA: Well, he was saying for a smaller house, now how small is the question. How small is the question. If the argument is that 51 is too large, that is not truly representative of the people, then - -

MIZUHA: I rise to a point of personal privilege.

CHAIRMAN: State your point.

MIZUHA: In my previous argument, Mr. Chairman - -

CHAIRMAN: The Chair recognized your argument. The remarks were facetious on the part of Delegate Silva and everybody recognizes it as such.

MIZUHA: Thank you, your honor.

SILVA: He never gave us any figure of what the exact number should be. I just want to get this question straightened out, Mr. Chairman. That his argument, in my opinion—I believe the majority of delegates here—was that 51 was too large. He didn't say how small it should be. Now, I just want to say that in my opinion, maybe, if we could afford, if this Territory could afford a 150 House of Representatives and if it could do the work at the least expense to the public, then I'd be for a 150 House of Representatives. I do not think that the members of the House who will be representatives of the legislature are just running back to every constituent and yell to the top of their lungs of how much they got for Milolii and how much they got for Hookena or whatever it may be; that is not true. If I have had experience in the legislature, the people of this Territory are not as dumb as some of us assume them to be and they know wherefore they vote. And let me tell you, gentlemen of this body here, that I hope - - I am only hoping that when we get through with this Convention that those of you who were never in the legislature try and become representatives of the people and you'll find out. And I hope that the speaker himself from Kauai will seek an office and maybe he will be one of the first ones to holler how much he got for Nawiliwili.

KAGE: I too, like the other delegate from Maui, would like to put in a last plea for a small legislature. Reference has been made to the Manual issued to the State Constitutional Convention. We noticed that quite a number of people point at the states of comparable size to Hawaii and say they have a big legislature, a big Senate and a big House of Representatives - -

CHAIRMAN: Delegate Kage, will you speak just a trifle closer to the microphone? I think you will be heard better.

KAGE: One thing I would like to have the people understand here, the delegates, excuse me, to understand here is that the majority of the constitutions for the states were written 50, 60, 70, 100 years ago when they had very poor means of transportation. They had no radio, their communication was terrible. It was much harder for them to travel

from Albany to New York than it is to travel from San Francisco to Hawaii. I am a firm believer of a representative form of government, but with the advance of transportation and the advance of communication, the ability to represent a certain group of people that has lessened. That is, a person today can represent a 100 people whereby a 100 years ago one representative was able to represent only 10. Now the trend at the present time is, I think, whether it is to the good or to the bad, is more towards centralization than decentralization. New Jersey, just recently, about three years ago, had a constitutional convention. They had a Senate of 21. They had the opportunity to enlarge their Senate. They have a population of eight million. But why didn't they do it? Because they also agreed that we should keep up with the times. Fifty years ago, when the Organic Act was written, they said that we should have a Senate of 15 and a House of Representatives of 30. Why sure, but at that time they had no radio, and that is why I believe that the ability to represent has grown here in Hawaii and all over the world. For that reason I believe that we should keep our legislature small.

SMITH: In the beginning of this Convention, we had a slight argument as to electing judges and other officers. I was whole heartedly opposed to that because I believed in representative government. I also was in favor of keeping the Senate at 15 and with adding on to the House of Representatives slightly more to Oahu only. But when it came down to decide what could be done since the 15-30 was ineffective I tried to ask myself, in the idea of representation, what could be the nearest we could reach in numbers which would be appropriate and equal to all concerned. I couldn't help but realize that if we went to a 21 Senate and a 43 [House] it would be an addition, but also it would be taking away representatives from the House and giving to the Senate, say for the island of Maui. At the same time realizing that we were for the idea that the outer islands should have a 60-40 ratio, we would not be getting that on a 21. Now with the 20 and one it came up, and giving a 60-40 ratio, but I was wholeheartedly against that because of the fact that the executive would be the arbitrator of the legislative branch. Now if the opponents of the 25-51 can go ahead and say that we don't want the representation changed at all in percentage, geographically and by population and so forth, what figure are we going to honestly arrive at? Now the only figure that I can so far see is that 25-51. Sure it is an expense, but our democratic government is very expensive and I don't feel that by that addition it will be so great that the economy, such as the administration, patronage and handling expenses, can't easily be cut down otherwise. I am looking at [it in] this light, we have to have representation of the people and with a 25-51 you gain that. It spreads it out more. I feel also that with the spreading out, there is a lesser chance of pressure groups or parties or anything to have such a die-hard control in the matters of the people.

BRYAN: I would like to inquire, there has been only two speakers from the outside islands in favor of a House the size of 51; perhaps we on Oahu have made a mistake. We should ask for 45. Don't the outside island representatives want to retain their present representation? Mrs. Kellerman said, and truthfully so, that the reason that the committee went to 51 was so that the neighbor islands could retain their present representation and I see very many neighbor islands delegates getting up and saying, "We want a 41 House."

CHAIRMAN: The Chair understood the heart of President King's argument was that this figure of 51 preserved intact the present representation.

BRYAN: That is correct.

CHAIRMAN: So if the outside islands really want a lower House they can go down to any figure that would be satisfactory to the island of Oahu. Is that a correct statement, President King?

KING: Delegate Bryan was developing the point that those who spoke who are delegates from the other islands, why should they set on 41. Oahu might set at 45, and as Delegate Porteus pointed out Oahu would have 30 to 15. In other words, if they are willing to go down to 15 from 18, let's make it 45, not 41. However, the argument is 41 or 51.

SILVA: Mr. Chairman?

CHAIRMAN: Delegate Bryan has the floor.

BRYAN: I would like to be a little bit more facetious on a further point too. I think maybe the committee made a mistake in not asking for a 75 member House and then we could have settled at 65 instead of 51.

CHAIRMAN: The Chair will recognize Delegate Silva.

SILVA: I move we take a recess for lunch and be back at 1:30.

SAKAKIHARA: Mr. Chairman, I second the motion to recess.

CHAIRMAN: The Chair feels that we ought to proceed to a vote on this.

SILVA: Let's vote.

HEEN: I would like to speak upon this matter.

SILVA: You want to speak on the matter to recess?

CHAIRMAN: There is a motion to recess. I was going to ask you to close the debate on your amendment. If the motion to recess is withdrawn you may proceed, otherwise we will have to vote on the motion. You withdraw your motion, Delegate Silva?

SILVA: The motion should be put to save time and if it doesn't carry he is in order, otherwise - -

CHAIRMAN: All in favor of recessing until 1:30 signify by saying "aye." Contrary. The motion is lost. Proceed, Delegate Heen.

HEEN: Mr. Chairman, this minority report was submitted in good faith and with the interests of the people of the State in mind:

> The majority of your committee members propose a fifty-one member House in order that the present membership from the neighbor islands will not be reduced. This is a concession to a fifty-year period of legislative inaction that we believed this convention is unjustified in making.
>
> All evidence points to the fact that the initial apportionment of the House, both under the 1894 Constitution of the Republic of Hawaii and under the Organic Act, was on the basis of population. The Organic Act further provided for periodic reapportionment on the basis of citizen population.
>
> With a House of fifty-one members apportioned among the major island divisions, in accordance with 1950 United States Census Population Statistics, the present neighbor island representation is reduced by three, one member from each neighbor island group. For a House of forty-one members, that representation is further reduced by four members, one from Hawaii, one from Maui, and two

from Kauai. Thus, if the directive of the Organic Act were to be carried out today on the basis of total population (instead of citizen population), the apportionment would be as follows:

Apportionment of the House of Representatives on the basis of 1950 Population Statistics

County	1950 Population	Per cent of Total	Number of Members: 51 Member House	Number of Members: 41 Member House
Hawaii	67,683	13.7	7	6
Maui	48,387	9.8	5	4
Honolulu	347,440	70.4	36	29
Kauai	29,838	6.1	3	2

By this Convention adopting, as we hereby recommend, a House of forty-one members, apportioned among the several island units on the basis of registered voters, the neighbor islands will have the same representation as they would be entitled to receive if the membership were increased by ten and set at fifty-one and the apportionment based upon total population.

The neighbor islands would receive only three of those ten added members, seven would go to Oahu. We believe the additional cost to the Territory, by reason of having those three members, unsupportable by reason.

The proposal submitted for the legislative article by your committee establishes a salary of $2500 for members of the legislature for a biennium. By statute, there is now a provision authorizing the payment of $15 per day for neighbor island members and $5 per day for Oahu members for each day of a legislative session. During the 1949 regular session, this amounted to $1100 for each neighbor island member and $370 for each Oahu member or a total for the session of $24,420. Taking into consideration only salaries and per diem expenses, the cost to the state, by reason of having those three additional neighbor island members, would amount to over $34,000 per biennium -- over $11,000 per member. The total legislative employee cost for the 1949 session of the House amounted to $5514, computed as an average cost per member. When this amount is added for each of the additional members necessary to retain present neighbor island membership, an additional $55,000 for a general session and perhaps $20,000 for a budget session would be required. Total additional cost, therefore, would approximate $110,000 per biennium. Surely, a great price to pay for adding three additional neighbor island members to the House of Representatives.

We appreciate the need for a somewhat larger membership in the House of Representatives. We do not believe it necessary to go beyond a forty-one member House to achieve this end.

Your committee has unanimously agreed that the distribution of representatives among the major island divisions shall be on a realistic and equitable basis. We do not depart from that principle in advocating a membership of forty-one in the House of Representatives.

The representative districts for the forty-one member House remain the same as in Committee Proposal No. 29 with two exceptions. Lanai and Molokai would constitute one district and the islands of Maui and Kahoolawe would likewise constitute one district within that basic area, from which there would be elected one representative and four representatives, respectively.

The rural districts of Wahiawa and Waialua and of Ewa and Waianae, on the island of Oahu, have been combined and will be entitled to elect three representatives.

The total number of representative districts in the state are thus reduced from eighteen to sixteen.

Now, Mr. Chairman, there is no question but what political considerations were involved in determing this membership at 51. The idea was to have the outside islands maintain the same representation that they have now under the Organic Act of the last 50 years. In, however, giving up one representative from each of these outlaying island, they are gaining, so far as Hawaii is concerned, three senators, losing one representative; and Maui gains two senators and losing only one representative; and Kauai loses one representative but gains one senator. So there the whole situation is leveled off, so that each island major division is not losing any representation in the legislature. So I submit on the basis of the statement made by those who advocate this amendment that a 41 membership is the proper representation in the House of Representatives.

CHAIRMAN: The Chair is going to put the question. What's your question, Delegate Smith?

SMITH: I would like to ask the previous speaker, is he saying to keep the Senate at 25 and the legislature -- House would be at 41?

CHAIRMAN: The Chair didn't so understand it.

HEEN: Mr. Chairman, I can answer that. So far as the 21-25 Senate is concerned, that's a closed issue. The Convention had decided upon a 25 membership Senate.

HOLROYDE: Mr. Chairman, as the --

CHAIRMAN: For what purpose is the speaker rising?

HOLROYDE: As the vice chairman, I would like to -- and as the head of the majority membership of the committee, I would like to have something to say on this subject.

CHAIRMAN: I thought we were giving Delegate Heen the opportunity to close the debate, but proceed.

HOLROYDE: Your committee in considering this issue felt that the representation of the outside islands was very important in the House as well as the Senate, probably more important as far as number was concerned than representation from Honolulu. With Honolulu's large population, they were bound to be taken care of. Now in deliberating between 41 or 51, you find that by eliminating one representative from Kauai, you cut down their representation in the House by 25 per cent. By cutting one representative from Maui you cut down their representation by 17 per cent, but when you cut one from Oahu you cut down their representation by three per cent. Now the committee is trying to be fair on this matter and for that reason decided to stick to the 51 House, the size at 51. I am beginning to feel a little bit like the delegate at my right. Most of the speakers from the other islands so far have been fighting for a lower House. Now, if that is the consensus of opinion, should we from Oahu continue to hold on to a 51 House for their benefit? For that reason, Mr. Chairman, before we vote on this I would like to move for a recess till 1:30.

CHAIRMAN: The Chair has heard no second.

FONG: I move the previous question.

CHAIRMAN: That motion is not entertained in the Committee of the Whole as I understand it.

CASTRO: Well let's have a vote then, Mr. Chairman, it's getting late.

CHAIRMAN: Is a roll call demanded? There will be a vote on the question on the amendment of Judge Heen -- Delegate Heen, which will amend Section 3, first sentence, to change the representation in the House of Representatives from 51 to 41. Will the Clerk please call the roll?

HEEN: Mr. Chairman, may I state this. That if the amendment to that sentence is defeated, that defeats the entire amendment as presented in the proposal attached to Standing Committee Report No. 102.

CHAIRMAN: That is the Chair's understanding. The way would still be open to amend the section for some other figure, however.

HEEN: That is correct.

CHAIRMAN: That is the Chair's understanding.

Ayes, 21. Noes, 35 (Akau, Apoliona, Bryan, Castro, Cockett, Dowson, Fong, Fukushima, Gilliland, Hayes, Holroyde, Kido, King, Kometani, Lai, Larsen, Loper, Luiz, Lyman, Nielsen, Ohrt, Porteus, Richards, Sakai, Sakakihara, Shimamura, Silva, Smith, St. Sure, Tavares, White, Wist, Woolaway, Yamamoto, Yamauchi.) Not voting, 7 (Crossley, Kam, Lee, Phillips, H. Rice, Okino, Kawakami.)

CHAIRMAN: The amendment is lost.

FONG: May we have the vote on the original motion?

C. RICE: I move that the committee -- the majority committee report be adopted on that.

CHAIRMAN: What is your motion again—the report or the section? Isn't that Section 3?

SILVA: That motion is out of order, that motion has been made long ago.

HEEN: Mr. Chairman, if I may, we were voting on whether to adopt the first sentence of Section 3.

CHAIRMAN: That is correct.

KING: The amendment to the first section was defeated. It is now in order to move the adoption of the first sentence of Section 3.

CHAIRMAN: But he didn't make the motion.

FONG: May I ask the Chair to put the question on the first motion?

CHAIRMAN: What is the first motion that you refer to?

FONG: It is before the house. It is to pass the sentence as written by the majority of the committee.

SAKAKIHARA: I second that motion.

CHAIRMAN: You heard the question.

SHIMAMURA: Point of information, please. Is that the first sentence of Section 3 only?

CHAIRMAN: That is correct, the first sentence of Section 3. That constitutes a House of Representatives of 51 members. All those in favor signify by saying "aye." Contrary. The ayes have it.

SILVA: I renew my motion for a recess, Mr. Chairman.

DOWSON: I second the motion to recess until 2 o'clock.

CHAIRMAN: It has been moved and seconded to recess until 2 o'clock. All in favor signify by saying "aye."

Afternoon Session

KING: In order to make plans for the program for tomorrow and for Monday, it is necessary to know whether it is the intention of the Convention to meet Saturday forenoon and on Monday, and I wanted to ask the Chair, while we're in the Committee of the Whole, merely to ask some expression of sentiment. I feel that we should meet Saturday forenoon and Monday. Some of the delegates from the other islands are asking permission to be excused from Saturday afternoon until Wednesday morning. We would not take up any matter on Monday that would require their presence as long as we had a quorum, but I don't think we ought to let Monday go without a meeting. There will be Committee of the Whole reports to take up and other matters that would help expedite the business, so I do ask the Chair to request the Committee of the Whole's sentiment on the question of meeting tomorrow and Monday.

CHAIRMAN: You have heard the request of the President that we meet Saturday and Monday in order to wind up our work. We are getting pretty far behind here.

ASHFORD: I heard the President's remarks with the greatest concern. I think we should meet not only on Saturday and on Monday but on Tuesday and carry on the most vital work of the Convention and get it cleaned up.

CHAIRMAN: Including the Fourth of July?

ASHFORD: Including the Fourth of July. What better dedication could we make to the country than to work on the Fourth of July on the Constitution of the new State.

SMITH: Second it.

CHAIRMAN: The Chair is in entire agreement with the speaker.

KING: I am a little in doubt whether Act 334 allows us to meet on Sundays and legal holidays. My recollection is that we are not allowed to meet on Sundays and legal holidays. If some one has a copy of Act 334 handy, they might check that.

CHAIRMAN: The Chair offhand would say there would be no obstacle to that. Delegate Tavares, do you have any views on that?

HEEN: We must not forget that we are working only in committees and therefore there is nothing final that is done by the committee. It is only when the recommendations are presented to the Convention sitting in regular session that the acts then become final. As far as the work of the committee is concerned, it can be done on Sundays, Saturday, holidays and even at night.

CHAIRMAN: That is the Chair's understanding.

TAVARES: I am not arguing necessarily that we work on the holidays, although I expect to anyhow, but I do think that there is no prohibition against working on holidays. The only prohibition I know of is the prohibition against labor on Sundays, and as Delegate Heen has said we could always ratify what we have done by working on the next regular day and saying we approved it, so that whatever we did informally could be ratified later.

HEEN: The Sunday law was repealed by the legislature.

KING: It has been suggested that on Monday morning at 9:15 we stand in informal recess and have a Liberty Bell Ceremony that would take fifteen minutes to half an hour.

This is at the suggestion of the Honolulu Chamber of Commerce, that we ring the bell forty-nine times, play "Hawaii Ponoi" and the "Star-Spangled Banner" and Colonel Unmacht, who has charge of that patriotic observance, would ask permission to talk to the Convention in a ten minute speech. He tells me eight minutes and I told him I'd rely on ten. So, without going back into Convention I wanted to get the opinion of the delegates whether we should hold that patriotic observance on Monday morning.

CHAIRMAN: Do you request that it be put to a vote, Delegate King, or do you think that the sentiment expressed is sufficient at this point?

KING: Just a sentiment expressed. We are in the Committee of the Whole now. I just wanted to know what the delegates wished to do.

C. RICE: Can we pair off like we do in the Senate of the United States? I would like to pair off with Monty Richards. I think he is going away.

CHAIRMAN: That pair is out of order, I am afraid.

SHIMAMURA: Mr. Chairman, I was about to suggest that perhaps our deliberations here would not be considered labor in any event.

CHAIRMAN: Let's proceed with the business at hand. I think the President has gotten the sense of the body that we are going to work and try to get this work done. I suggest we try to complete this legislative article this afternoon.

HEEN: Mr. Chairman, I think you are over optimistic. We are only on Section 3, and there are nineteen other sections we will have to go through before we finish with this article. I now move that we adopt the balance of Section 3.

SMITH: Second the motion.

CHAIRMAN: It has been moved and seconded that the remainder of Section 3 be adopted.

ASHFORD: My long delayed amendment, I think, is now in order. I move the adoption of the amendment that is on all the delegates' desks, the substitution for the sixth, seventh and eighth paragraphs of Section 3, two paragraphs and renumbering.

ST. SURE: I second it.

CHAIRMAN: It has been moved and seconded that Committee Proposal No. 29 be amended as to the sixth, seventh and eighth paragraphs to insert the following:

> Fifth representative district: the islands of Molokai and Lanai, one representative;
> Sixth representative district: the islands of Maui and Kahoolawe, five representatives.

ASHFORD: The reason for it I think is obvious to any one who knows these three islands concerned. We on Molokai can't even go to the headquarters of the county without going to some other island first. For campaigning purposes, if we have to go to Lahaina as well as Lanai it means we have to go all around Robin Hood's barn. Lahaina is the nearest geographically and just about the furtherest from point of convenience and travel, and also from the viewpoint of contacts and community of interests. Lanai and Molokai have great community of interest. We associate together in many public matters.

CHAIRMAN: Delegate Ashford, is the Maui delegation unanimous in this regard? Can you advise the Chair?

ASHFORD: I think they are not unanimous, Mr. Chairman. If Molokai, Lanai and Lahaina are joined the result will be that Lahaina will elect two representatives all the time. I request the support of the Convention to my amendment and I ask for the consideration of one paragraph at a time.

KIDO: I would like to speak against that amendment. First, I feel that Lahaina will not get any representation if you include Lahaina with Maui. I believe that the fundamental of districting is to give the various districts representation, and for this reason I cannot see that Lahaina be included with the rest of the Maui districts. Since the delegate said that if Molokai, Lanai and Lahaina were joined together in one district that Lahaina would elect the two representatives, this I disagree. Figures will show that Molokai has 1,400 votes, Lanai 700 votes and Lahaina 1,500 votes, in which case it would take a combination of two islands at least to elect their representative. Secondly, I believe that the basis of apportionment will be thrown off as used by the committee if you include Lahaina with the rest of the Maui districts. I cannot see any reason why those three districts right now as shown on the map cannot be included as one district. By doing so we will be assured of at least of two representatives from district five as shown on the map. Wailuku, that's district six, will have their two and district seven on the other side. Therefore I appeal to all the delegates to bear in mind that what we want is a wider distribution and representation. I believe that was the foundation of this districting.

DOWSON: I would like to ask two questions. The first is, besides sheep what other living things are on Kahoolawe?

CHAIRMAN: The Chair was wondering about that too.

WOOLAWAY: Goats.

DOWSON: No voters. If they expect to have voters on Kahoolawe, why don't they include Molokini?

WIRTZ: We have great expectations for Kahoolawe but we have given up insofar as Molokini is concerned.

ST. SURE: I would like to call to the attention of the delegates here that the delegate from Molokai's amendment is a confirmation of what is being done in the County of Maui now. In the past it has always been a gentleman's agreement that one member to the House has always been elected from Molokai and the other five from Maui. I think this is more or less assuring Molokai and Lanai that they will always have one member in the House.

For the rest of Maui I want you to realize this, the face of Maui right now is being changed. By that - - if you look over the map it shows district six; within the next two or three years there is going to be a shift in the population and about 30,000 and 35,000 people will be moving. The reason why is that the industries are breaking down the plantation camps and they are building a dream city. I don't think it would be fair right now to split it two, two, two, because of the possibility that all six can come from the island of Maui and I don't think it will be fair to Molokai.

CHAIRMAN: The Chair would like to hear from the chairman of the committee on this. Has this problem been examined by the Legislative Committee?

HEEN: That is correct.

CHAIRMAN: What are the results of your deliberations?

HEEN: The result was that Molokai and Lanai was to be tied up to Lahaina, those areas to have two delegates with a total population of registered voters numbering 3,865; and

representative district six, as shown on the map of Maui, with a total population of registered voters numbering 5,594; and the rest of Maui, district seven, has a population of 4,704 registered voters. I think there was no dissention there as far as the committee was concerned as to the division of Maui, Molokai, Lanai and Kahoolawe in that manner.

CHAIRMAN: What the Chair wants to know, was the specific problem that is now posed by Delegate Ashford's amendment before your committee?

HEEN: That was discussed from time to time.

WIRTZ: I might say that the Legislative Committee acted in the manner it did on the basis of the Maui representatives in the committee. At that time it was the understanding that that was the best way to do it. However, it has been discovered for reasons that have now been brought forward that that is not the unanimous opinion of the Maui delegation. Now, I think on the figures, and I think Mr. Dodge will bear me out, that as far as this question of dividing the House of fifty-one on equal proportions, it will make no difference to the representation of Maui's total number of six if we follow the amendment, namely, of combining Molokai and Lanai into one and five for the rest. Is that not correct, may I ask Mr. Dodge the question? He has answered in the affirmative, so this does not affect the problem of equal proportions in any way.

HOLROYDE: One of the problems in this division is what happens to Lahaina in a deal like that. Where Lahaina was thrown over with Molokai and Lanai, they were then given a fair chance of electing one as were Lahaina and Molokai. If we throw Lahaina back with Maui as a whole, I figure that they have very little chance of electing a representative because they have only 1,700 or 1,800 votes. That was another reason for supporting this division as it is.

CHAIRMAN: The Chair is ready to put the question.

WOOLAWAY: As in the past we all know that the representatives from the County of Maui have been elected at large. I am against this particular amendment but I am not against it because I am trying to keep something away from Molokai. I think that Molokai will benefit as it now stands. As far as the difficulty in candidates getting around from Molokai and covering those three spots, it certainly is not any more difficult than it has been in the past covering the rest of Maui, way out as far as Kaupo.

It has also been brought up, with 1,400 votes on Molokai and 600 on Lanai, I don't care what anybody says, whether they say Lanai is in agreement or not, still Lanai would certainly be at a two to one disadvantage in trying to get representation themselves. Whereas combining it with Lahaina, Lanai's a point of stabilization there—1,400 Molokai and 1,500 Lahaina—then your 600 votes on Lanai can be played either way to get their election over for the benefit of all.

Now again, Molokai and Lanai are part of the County of Maui and if you are going to elect one representative out of fifty-one, the choice of Molokai with their majority vote, you are alienating the island of Molokai in consideration with the other five representatives on the main island.

Also the point brought up by the colleague sitting back of me about the trend of population over the one point in the next two or three years on the island of Maui is something to behold. I know very well that the plan calls for a period of twenty-five years. We are not building that many houses in that area in a period of three years. It is going to take a period of twenty-five. In the meantime the people moving into this new housing area, the Kahului Development Company, are moving from plantation houses within the same area so that there is no change in the population from that standpoint.

Another point brought up by the same gentleman was that there has always been a gentlemen's agreement that we have elected one individual from Molokai. There has been no such gentlemen's agreement. You don't find that in the political scheme of affairs. But Molokai has always had representation in the House of Representatives although they only have 1,400 votes. They've had representation in the last two or three years and also in the Senate. For a good many years they were represented by Senator Cooke.

I think it will be a disadvantage for Molokai to alienate itself from the rest of Maui and in voting against this amendment together with five other delegates from Maui, which constitutes the majority, who are against the amendment, I am doing it so because I think it will be beneficial for Maui to vote this way.

APOLIONA: About two or three months ago Lanai came down here with an appeal for recognition. She appealed to your Committee on Local Government to grant self-government to Lanai. Your committee, even though it felt that it could not give self-government to Lanai, was very sympathetic to the appeals of the people. In the committee's report that Lahaina, Molokai and Lanai be combined as one representative district and be allowed to elect two representatives to the House of Representatives is a good idea because eventually I think Molokai will have a representative and Lanai will have a representative and everybody will be happy. Then there will be four representatives from Maui.

CHAIRMAN: Are you in favor of the amendment?

APOLIONA: I am not in favor of the amendment.

ASHFORD: Mr. Chairman, if everyone else has spoken, may I speak again?

CHAIRMAN: I am going to find out. I think we ought to bring this to a vote. Anyone else care to speak on this?

ROBERTS: I would like to get a few figures on the population of Molokai, Lanai and Lahaina, if I may.

CHAIRMAN: Will the chairman of the Legislative Powers Committee give us those figures?

HEEN: I will give them in terms of registered voters: Molokai has 1,449, Lanai 701, Lahaina 1,715, or a total of 3,865.

KING: I just wanted to point out that the committee adopted as a general principle that no representative district would have less than two representatives. We discussed the subdivision of Hawaii into smaller units and it was turned down.

CHAIRMAN: You mean the Committee on Legislative Powers and Functions?

KING: Yes. If I am in error I would be glad to yield for correction.

WIRTZ: I believe that West Hawaii was divided up one and one. I am trying to be correct in my statements, but there are two districts on the island of Hawaii that have one representative. The original thought of the committee was, as Delegate King stated, to try to get each district to have a minimum of two so that in all likelihood no district would ever get below the proportion of representation to warrant at least one representative.

KING: I am glad to be corrected, but I sat in on a meeting where it had been tentatively decided that no representative district would have less than two. But in the amendment offered by Delegate Ashford, Molokai and Lanai would be set aside with one and that destroys the balance of the rest of Maui. The Chair has noted that two spokesmen from that island spoke in opposition to the amendment. Now I would like to suggest to the delegate from Molokai that in a representative district consisting of Molokai, Lanai and Lahaina, and with a vote of nearly 1,500 on Molokai, Molokai is almost sure to get one of the two allocated to that representative district.

CHAIRMAN: Delegate Ashford will close the debate.

ASHFORD: There are just two points I want to make. One is the reference to the counties. That matter of counties has been left wide open for the legislature and we feel that our legitimate aspirations will very soon be recognized. The second point is as to the control of the election. It is true that we have from time to time a representative from Molokai but almost never a representative who gets the highest vote on Molokai of those running from that island. In other words the representative from Molokai is chosen by Maui. Now if it comes to an election of those three segments, the two islands and Lahaina, that is exactly the situation that will exist. Lahaina, Lanai and one precinct of Molokai will probably join together and either elect two men who are from Lahaina or some one from Molokai who is not satisfactory to the voters of Molokai.

HEEN: I might point out this, that if the three areas are combined into one representative district – Molokai, Lanai and Lahaina – that does not mean that Molokai will always be assured of one representative. It will depend how smart they can horse trade with Lahaina. Now, if Lanai does the horse trading with Lahaina, throw all her votes with Lahaina, provided Lahaina helps Lanai, they can elect one representative from Lahaina and one from Lanai and leave Molokai out in the cold. It is all a matter of horse trading.

KAUHANE: This morning prior to the session getting into order a representative or a voter from the island of Molokai came to this floor and visited some of his former colleagues who served with him in the House of Representatives. He sat with me and told me that as far as he is concerned and the people of Molokai are concerned that they believe that the amendment as offered by Delegate Ashford is a proper amendment which meets with the approval of the people of Molokai. He left me with this impression, that if Lahaina, Lanai and Molokai were combined as proposed by the committee proposal that Lanai would be the pendulum upon which the election of a candidate from Molokai would be successful. He felt that presently with the votes that Lahaina has combined with Lanai, Molokai would be left out as suggested by Delegate Heen. So in fairness to the people of Molokai, he feels that Lanai and Molokai should be combined together, and they together elect their representive representing the islands both of Molokai and Lanai.

This request for representation for Molokai was made to the legislature, as I remember, for two sessions. Molokai has come to the legislature requesting representation on the board of supervisors. Molokai feels that they should have such representation on the board of supervisors of the County of Maui. The House of Representatives passed such a request from the people of Molokai that they should be represented on the board of supervisors for the County of Maui. It went to the Senate and the Senate pigeon-holed the bill. They again come to this Convention in the form of their elected delegate and request that they be given some consideration by this august body, and I am sure that the amendment as proposed by the delegate representing the people of Molokai and Lanai should be given great consideration by this delegation and should be voted upon as being the accepted amendment in behalf of the people of Molokai.

KIDO: What the previous speaker said is equally true with Lahaina. For instance, if Molokai and Lanai got together, we would be left in the cold also. So it is a question of politics, I think.

WOOLAWAY: The chairman of this committee mentioned horse trading. The chairman of the Legislative Committee mentioned the chances of Lahaina and Lanai horse trading. That is true, but at least they have a chance of horse trading. If you are going to set up Molokai and Lanai as a separate district, as Delegate Apoliona said, Lanai would never elect anybody. Don't forget Molokai has 1,400 votes, Lanai 700. We ought to be fair to all concerned. As I am saying right now, Lanai would be a point of stabilization there between both other districts, and also we would not be alienating Molokai and Lanai from the rest of the County of Maui where they now belong. I do hope that some day they will be given separate status as a county of Molokai by itself, but until then I think we would be making a very grave mistake for the people of Molokai by making them a separate representative district.

MIZUHA: I speak in favor of the amendment as a former Maui boy. I have lived there most of my lifetime, so I know what the result of this division shall be. Under Delegate Ashford's amendment, we will give Molokai and Lanai one representative for 2,150 registered voters. Under the original proposal of the committee, we would give Lanai, Molokai and Lahaina two representatives for 3,865 registered voters. Dividing that up it would give one representative for 1,900, but in the deal that has come out now they have given Wailuku, representative district number six where I come from originally, two representatives for a total number of 5,594 registered votes, and then went over to representative district number seven and gave them two representatives for only 4,704 votes. In the event Molokai and Lanai are constituted as a single representative district and given one representative, and Lahaina combined with representative districts numbers six and seven, then the five remaining representatives would be alloted to the island of Maui on a fairer percentage of registered voters. If Lahaina seeks consolidation with Wailuku and have Lahaina included in representative district number six, then you would have Wailuku getting a fairer representation or percentage of representatives to the registered vote and I believe the amendment should be adopted.

HOLROYDE: Actually, we are dealing with representatives now, and if that is carried out as Delegate Mizuha suggests, what will be the end result is that Wailuku, as the center of population, will have the representation and Lahaina will be left out in the cold. That was one of the reasons why the committee tried to divide up the island so that we would have representation throughout the island.

AKAU: Mr. Chairman, just before we vote. I think if there had been representation from Molokai in the last legislative session, that the money which had been set aside for those frightful washboard roads in Molokai would be fixed. It stands to reason that if there is representation directly from Molokai, Molokai will see to it that they get the money which is set aside for them, and Maui will not be taking the money away.

WOOLAWAY: Point of information. Did I understand that Delegate Akau said that Molokai was without representation in the legislature?

CHAIRMAN: That was not the Chair's understanding.

AKAU: May I answer that? They were without direct representation. He was not elected from the island of Molokai directly.

CHAIRMAN: If there is no further debate, the Chair will ask Delegate Ashford if she cares to close the debate on this. It is her amendment.

COCKETT: I am not in favor, inasmuch as I am one of the old timers of Maui, having been county treasurer for over twenty-five years. Molokai has been well taken care of. As one of the delegates said, through some gentlemen's agreement we had senators from Molokai, even though Molokai did not have enough votes, and they had representatives and even members of the board of supervisors. So with this amendment Molokai will be assured but poor Lanai will never have a chance. So I am in favor of the committee's proposal making Molokai, Lanai and Lahaina as one district, and either Lanai [sic] will have one as a sure thing, and also, Lahaina will always have one, and I think Lanai in time will have a representative in the House. So I am in favor of the proposal by the committee.

CHAIRMAN: The Chair feels that Delegate Ashford, the proponent of the amendment, should close the debate if she cares to.

ASHFORD: I have no further arguments to make, but I would like to ask for a roll call.

CHAIRMAN: The question is on the amendment.

KING: Point of information. Are we voting on the first sentence, "Fifth representative district: the islands of Molokai and Lanai, one representative."

CHAIRMAN: I was just going to ask the delegate from Molokai that question. The amendment was for the entire amendment of the fifth representative district, and yet in all arguments she requested that we vote on it, sentence by sentence. Now, what is your wish, Delegate Ashford?

ASHFORD: I would rather have it voted on sentence by sentence, but it is one amendment.

CHAIRMAN: Wouldn't a vote on the entire amendment satisfy you?

KING: It makes quite a lot of difference. If Molokai and Lanai were created one representative district, then the question rises whether the remaining five should run at large over the whole of Maui, or whether there will be a further division of the island of Maui. There are representatives of the island of Maui who would like an opportunity to be heard on the second sentence of the proposed amendment.

CHAIRMAN: Will Delegate Ashford then amend her motion to read that we vote on the first sentence of this amendment?

ASHFORD: Yes, I would be glad to do that, Mr. Chairman.

CHAIRMAN: Are you ready for the question? All those in favor of the first sentence of Delegate Ashford's amendment, reading as follows:

> Fifth representative district: the islands of Molokai and Lanai, one representative;

signify by saying "aye." Contrary. The ayes have it.

ST. SURE: Point of order. Delegate Ashford asked for a roll call in the beginning. The Chair did not ask if the floor wanted roll call.

CHAIRMAN: The Chair did not hear any request for a roll call, and did not see a sufficient number of hands for a roll call. If the Chair is wrong about the decision, we will have a roll call.

CROSSLEY: I think the point of order was not well taken because it is the floor that has to ask for the roll call, not the Chair. The Chair asks for the ayes and noes which the Chair did properly. If the floor asks for it, they have to show a sufficient strength.

J. TRASK: Point of order. The Chair just ruled that the ayes have it, so the first sentence is adopted. Is that correct?

CHAIRMAN: Well, there is a question as to the ruling.

SILVA: Point of order. The only way is to take a roll call. The Chair may take a roll call in any way he sees fit. He can have a roll call by ayes and noes, by hands, or by a standing vote, but if the Convention feels that that vote is incorrect, then they may ask for a roll call or any other form they so desire. That is the situation. If the members of this Convention would like to have a roll call, then they should so state. Otherwise the ruling of the Chair is correct.

CHAIRMAN: If the body wants a roll call, the Chair will have a roll call. Apparently there is a sufficient number to require a roll call.

ROBERTS: On a point of order. I think the vote was taken and the vote was carried in the affirmative. If they want to reconsider the question, they know how to reconsider it. It would seem to me that after a vote is taken, you don't ask for a roll call vote. You ask for it before the vote is taken.

SILVA: I rise to a point of order, Mr. Chairman. There is no definite determination of an aye vote on the floor, so any delegate may ask for a roll call as its final determination or a standing vote to be counted. If that vote is not challenged, then it is a different question, but the moment that vote is challenged, you must put either a rising vote or ayes and noes.

CHAIRMAN: The Chair will recognize Delegate Porteus to get us out of this dilemma.

PORTEUS: I was under the impression that the delegate from Molokai had risen and said that she had nothing further to add on the subject other than to ask for a roll call vote, and I wish we could ascertain from the delegate whether or not she had requested a roll call vote. If she had, the question should then have been put to the floor as to whether or not there should be a roll call vote in which case it would take - -

CHAIRMAN: The Chair did not understand that.

PORTEUS: May I ascertain from the delegate whether that is so?

CHAIRMAN: Will you please address the Chair, Delegate Porteus?

PORTEUS: Will the Chair please address the question to the delegate from Molokai?

CHAIRMAN: Is that correct, Delegate Ashford?

ASHFORD: Yes.

KAUHANE: I think your ruling is binding upon this Convention. Although the roll call vote was requested, you

abided by such a request for a roll call vote and demanded the roll call vote to be taken in the fashion that you so put. The rules say that the Chair has the right after a voice roll call vote is taken to decide the issue and you have decided the issue that the amendment carried, so there is no confusion in your mind as to the vote taken and I believe your decision is final.

KING: There are two points involved. In the first place, Delegate Ashford did request a roll call and the Chair did not ask if the Convention wanted a roll call. That is one of them. The other one, the Chair was in little doubt on the voice vote but finally decided that the affirmative had it and there was immediately a call from the floor for a roll call, so it seems to me there is no further argument. A roll call is demanded.

CHAIRMAN: I think that is clear enough. The Chair will so rule. We can reconsider the action. The voice vote was erroneously heard by the Chair. The Clerk will please call the roll on the amendment of Delegate Ashford.

MAU: I appeal for the ruling of the Chair, Mr. Chairman.

CHAIRMAN: Before we call the roll, we'll recognize Delegate Mau.

MAU: I was one of those who voted for the amendment. I now move that we reconsider our action on the amendment to give the other side a chance.

SILVA: Mr. Chairman, you don't have to reconsider your action.

CHAIRMAN: The Chair has ruled that that is not necessary, Delegate Mau. The Clerk will please proceed to call the roll.

Ayes, 36. Noes, 19 (Apoliona, Bryan, Cockett, Dowson, Fong, Fukushima, Holroyde, Kage, Kanemaru, Kido, King, Kometani, Lai, Larsen, Ohrt, Porteus, Smith, Woolaway, Anthony). Not Voting, 8 (Gilliland, Kawakami, Lee, Nielsen, Okino, Phillips, H. Rice, Richards).

CHAIRMAN: The motion is carried. We'll now proceed with the second sentence. Is that in order, Delegate Ashford, at this time? You offer that?

ASHFORD: I move the adoption of the second sentence.

WIRTZ: Second the motion.

CHAIRMAN: It has been moved and seconded that the second sentence of Delegate Ashford's amendment to Proposal No. 29 relating to the sixth representative district, reading as follows: " The islands of Maui and Kahoolawe, five representatives."

WOOLAWAY: I want to amend that amendment. Make Lahaina one separate district, and the others remain as they are.

KIDO: Second the motion.

CHAIRMAN: The Chair does not understand your amendment. Where would you insert those words?

WOOLAWAY: You would have to give Lahaina a separate representative district number there, making it a separate district, and six and seven remaining as they are. All you've done is take Molokai and Lanai away from Lahaina.

CHAIRMAN: The Chair is trying to understand your amendment, it confesses it doesn't understand it.

WOOLAWAY: Sixth district, Lahaina; seventh district, Wailuku; eighth district, East Maui.

WIRTZ: I was just waiting to be in order. I would like to ask now from the expert attached to the Legislative Committee whether Lahaina has sufficient votes to warrant a separate representation.

CHAIRMAN: Can you answer that, Delegate Heen?

HEEN: Mr. Dodge says yes. You will remember the ratio was 2,445, and this is over one-half of that ratio.

KING: Speaking in favor of the amendment, what the previous action has done is to create a separate representative district out of the islands of Molokai and Lanai. What the second sentence of this proposed amendment, the one introduced by Delegate Ashford, would [do is] throw Lahaina into the rest of Maui and break up the present two representative districts there and make the whole island of Maui and its pertinent island of Kahoolawe, for whom the Maui people have great hopes in the future, make it all one district, electing five. In other words, we have already destroyed the integrity of two, two, two, and now they are going to further destroy it by having five. So the amendment proposes to create Lahaina as a separate district, electing one representative with something like 1700 odd registered votes and then leave the other two districts as they are, the Wailuku District with two and the Makawao District with two. The amendment was not phrased in the exact correct terminology, but that is the intent of it and I think we could vote on that with the understanding that the Style Committee or the Committee on Legislative Powers will re-write it and then re-number the districts thereafter. The purpose is to give Lahaina representation which, under the amendment proposed by Delegate Ashford, will not exist because it will be thrown in with the centers of population and never have any representation directly from Lahaina.

WIRTZ: I'd just like to point out that even on the two, two, two plan, Wailuku district number six, Central Maui, has the greatest number of votes proportionately to that two, so they were to that extent under-represented; whereas, five and seven were over-represented. Now, if we give Lahaina alone with 1,700 votes one representative, we throw that balance even further out of kilter.

MAU: I believe the amendment is rather indefinite, but we ought to give the movant of the amendment an opportunity later if his amendment carries to give a more specific delineation. I think that ought to be the understanding.

CHAIRMAN: Delegate Mau, the Chair was going to ask Delegate Woolaway, if he can get the delegate's attention, the Chair still doesn't quite understand that amendment. Delegate Ashford's amendment, as the Chair understands it, would put the islands of Lanai and Molokai in one representative district and the rest of the County of Maui in another. Is that correct? And yours would do what?

WOOLAWAY: I would leave Maui with three representative districts, Lahaina being one with one representative, and six and seven to remain as they are now shown in the committee report.

CROSSLEY: I move for a five minute recess to have the amendment prepared.

DELEGATE: Mr. Chairman, I don't believe that -- Mr. Chairman.

DELEGATE: Second the motion.

CHAIRMAN: It has been moved and seconded that we take a five minute recess. I think that's a good idea, then Delegate Woolaway can get his -- . The Chair will declare a five minute recess.

(RECESS)

CHAIRMAN: The Chair will recognize Delegate Woolaway.

WOOLAWAY: Thank you, Mr. Chairman. At this time, I'd like to withdraw my amendment.

CHAIRMAN: Motion to amend is withdrawn.

SMITH: I have an amendment which I'd like to have distributed.

CHAIRMAN: State your amendment. Clerk will distribute it later.

SMITH: Substitute for the sixth, seventh and eighth paragraphs of Section 3 the following: "Fifth representative district: The islands of Molokai, Lanai, Kahoolawe and Maui, six representatives."

CHAIRMAN: Is there a second to that?

COCKETT: Second it.

CHAIRMAN: It has been moved and seconded that the present County of Maui, as I understand the motion, will be one representative district from which there will be six representatives chosen. Is that the effect of your amendment?

SMITH: Yes, it is, sir, and I'd like to talk on it. What's being passed around is - -

CHAIRMAN: Will the delegates give Delegate Smith their attention, please.

SMITH: I have - - there's an error. It says fifth senatorial district. It's supposed to be fifth representative district. Now, if you look at the map, Maui, central Maui which is numbered six, is your biggest population area, your concentration. We in that area were for the good of representation, spreading it around as far as we could, felt for the good of all that we would condescend to only having two, so that Lanai, Molokai and Lahaina would be given at least a chance. We felt that Lanai needed representation, that if they didn't have that - - if they were unable to have that representation, at least they could have a little behind them to urge Molokai or Lahaina to kokua. This way, it's left it out entirely. If you go ahead and have Molokai and Lanai in one, and the rest of Maui in another, it means that Lanai and Lahaina of approximately 2,300 registered voters, they would just be out on a limb. So, since this amendment for just Molokai alone, Molokai and Lanai, with Lanai not having a chance, I feel that it's only fair to all and that is especially the district of - -

WOOLAWAY: Point of order. I hate to do this because I'm in favor of the amendment as proposed by Delegate Smith, but I think the amendment by Delegate Ashford is passed and we'd have to move for reconsideration before we take up this new amendment. Am I right?

CHAIRMAN: The Chair doesn't understand it.

WOOLAWAY: The first sentence has already been carried, making Molokai and Lanai one representative district. The new amendment would bring Molokai, Lanai and Maui into one representative district. We've already made one decision there. I think we'd have to move for a reconsideration. Therefore, I so move.

C. RICE: Point of order. The gentleman who just moved, he's voted in the minority. He can't make that motion. Mr. Chairman, just for harmony's sake, I move we reconsider.

SAKAKIHARA: I second the motion.

CHAIRMAN: It has been moved and seconded that we reconsider our action on the adoption of the first sentence of Delegate Ashford's amendment. All in favor signify by saying "aye." Contrary. The ayes have it. Delegate Smith.

SMITH: I now move this amendment: "Fifth representative district: The islands of Molokai, Lanai, Kahoolawe and Maui, six representatives."

CHAIRMAN: Is there a second?

COCKETT: I second that motion.

CHAIRMAN: Moved and seconded - -

SMITH: I would like to go a little further. If you notice that this throws it wide open as it was before, and if Molokai feels that they'll be left out the window, why even though a man from Molokai is elected, say by the rest of the islands, he still comes from Molokai and he still has a chance of doing as much as he possibly can for Molokai. And another thing is that Molokai has intentions of becoming a county of its own. That is a problem which will be taken up later, but for harmony's sake, we agreed for this redistricting for the common good of the representation being spread as evenly as possible all around.

CHAIRMAN: The Chair understood the purpose of Delegate Ashford's amendment was so that the island of Molokai would get some representation. Your amendment wouldn't do that at all.

SMITH: That's right, but there's quite a few number of persons - - there's quite a few number of other registered voters that would be affected. As far as Molokai is concerned, I believe it's 1,400 or 1,500. There's 2,300 registered voters that will be affected and left out entirely, and they should all be given a chance. I was absolutely in favor to condescend to agree as the proposal was submitted by the committee, but since that is broken up, my coming from Wailuku and Puunene, the biggest population, I don't think it's fair to that area nor any other area.

ASHFORD: Some condescending remarks were made about harmony. This isn't producing harmony.

CHAIRMAN: The Chair is ready to put the question. Is there a roll call demanded? Sufficient for a roll call. The Clerk will please call the roll. The Chair will put the question on Delegate Smith's amendment which in substance will place the County of Maui in one district with six representatives, no division.

Ayes, 22. Noes, 32 (Akau, Arashiro, Ashford, Corbett, Doi, Dowson, Hayes, Heen, Ihara, Kanemaru, Kauhane, Kawahara, Kellerman, Lee, Loper, Luiz, Lyman, Mau, Mizuha, Noda, Roberts, Sakai, Serizawa, Shimamura, Silva, St. Sure, A. Trask, J. Trask, Wirtz, Wist, Yamamoto, Yamauchi). Not voting, 9 (Gilliland, Kam, Kawakami, Nielsen, Okino, Phillips, H. Rice, Richards, White).

CHAIRMAN: The motion is lost.

ASHFORD: I move for the adoption of my entire amendment.

ST. SURE: I second that motion.

TAVARES: As one of those who originally voted with the group on Molokai, I'd like to state that I have changed my mind. I've seen the result of trying to destroy a plan which I believe has been carefully worked out by a committee that worked very hard to get some order out of chaos, and after this last demonstration of what destroying a carefully worked out plan does in one particular, and seeing what it may lead

to in practically every other precinct being re-hashed, I believe that we should stick to the committee's recommendation. I don't believe that enough reasons -- enough information can be given us in the time we have available to enable us to vote any more intelligently than the committee after its hard work has done, and from now on, I think I will stick to the committee's recommendations. I hope the rest of the Convention does because this is what happens when we don't.

LOPER: I would like to second that motion. I feel exactly the same way.

CHAIRMAN: That was not a motion, Delegate Loper. It was an expression of sentiment.

LOPER: Didn't you make a motion for reconsideration?

CHAIRMAN: No motion is before the house other than a motion to adopt Delegate Ashford's amendment.

TAVARES: I was simply arguing against the motion, and arguing that we should not vote for it, but try to stick to the original plan.

CHAIRMAN: Any further discussion on the question of Delegate Ashford's amendment? All those in favor, signify by saying "aye." Roll call? The Clerk will call the roll.

WIRTZ: This is on the amendment in its entirety.

CHAIRMAN: On the amendment in its entirety.

Ayes, 34. Noes, 20 (Apoliona, Bryan, Cockett, Crossley, Dowson, Fong, Fukushima, Holroyde, Kanemaru, Kellerman, Kido, King, Kometani, Lai, Larsen, Loper, Ohrt, Porteus, Smith, Tavares). Not voting, 9 (Gilliland, Kam, Kawakami, Nielsen, Okino, Phillips, H. Rice, Richards, White).

CHAIRMAN: The ayes have it. The amendment is adopted.

HEEN: It seems to me that we should take up the first representative district which comprises the district of Puna in the island of Hawaii, plus the portion of Keaukaha, as Keaukaha is described in the schedule, as that area has one representative district.

CHAIRMAN: Delegate Heen, may the Chair make an inquiry? If there's no substantial dispute among the Hawaii delegation, would it not save time to take up the entire representative districts from the Island of Hawaii?

HEEN: That's correct. If there is no dispute among that delegation, why we can dispose of that.

SAKAKIHARA: I would like to have Delegate Heen bring that up.

CHAIRMAN: We'd like to know whether that is the feeling of the Hawaii delegation before we --

SAKAKIHARA: I think an amendment is in order as to the first representative district by deleting Keaukaha. Amend Section 3, first representative district to read as follows: "that portion of the island of Hawaii known as the district of Puna, one representative," and deleting "and Keaukaha, the latter being more particularly described in the schedule."

HEEN: That amendment, has that been seconded?

CHAIRMAN: Not yet.

SILVA: I'll second for the --

HEEN: That amendment means this, that that portion of the island known as Puna, that's the way it's described in the Organic Act—Puna is known as the District of Puna but described in the Organic Act as Puna—to be one representative district with one representative. Now in order to find out whether Puna alone with the number of registered voters is entitled to one representative, I don't know. I understand the number of registered voters in the District of Puna is 1,819, so that under the method of equal proportions it would be entitled to one representative.

CHAIRMAN: May the Chair ask the chairman of the Legislative Powers Committee, was the Hawaii delegation in favor of the committee proposal as it was brought to the floor?

HEEN: Yes. At one time the island of Hawaii was to be divided into two district, East Hawaii, one district and West Hawaii, one district. Then later on, the delegation in that committee from Hawaii decided to divide East Hawaii into three districts, one to consist of Puna and a part of Keaukaha, another to consist of Hamakua and North Hilo as one district, and the rest of East Hawaii to constitute one district.

BRYAN: I might explain why this combination was made in the first instance by the committee. We tried, as we explained concerning the districts of Maui, to make the districts large enough so that the figures would approach the common denominator of 2,445. Puna when combined with Keaukaha came to 2,355, which was a good approximation. Now, we wanted to do that to give them leeway so that they would always be, or at least for the foreseeable future, a district entitled to one representative. In the reapportionment section, I think it's set up so that when any district does not have registered voters equal to one-half of our common denominator of 2,445, it should be combined with some other district.

Now we've broken the precedent on that in changing the districts on Maui and we have one district with -- that's not really breaking the precedent, but it's reducing the size of the district the committee recommended, so actually this change is not too far out of order. The only danger is that they would only have to drop about six hundred votes in that area, or the rest of the territory to increase proportionately in their representation in their number of votes, so that district would not be entitled to any representation. In other words, if they dropped down to 1,200, they would have to be redistricted and combined with some other district, and we tried to arrange the districts so that the number was approximately 2,400 wherever possible. Now having gone off that standard in some respect, I don't know that there's tremendous argument for keeping it the way it is, in my own mind, but that is my personal opinion.

CHAIRMAN: It would appear to the Chair that it would be of interest to the Hawaii delegation to keep it as the committee proposed it. Delegate Sakakihara, have you heard that explanation?

SAKAKIHARA: I have heard that explanation. When we incorporated precinct nine, which is known as Keaukaha, with Puna we tried to maintain the common denominator of 2,445. In view of the fact that Lanai and Molokai have deviated from that denominator, it is not necessary for Hawaii to maintain that common denominator of 2,445, and I therefore make the amendment to delete Keaukaha and establish a single representative district for the district of Puna with one representative.

HEEN: I think it might be in order for me to ask the last speaker this question. Then what would become of that portion of Keaukaha that was intended to be joined up with Puna?

SAKAKIHARA: Keaukaha would be incorporated into the South Hilo.

HEEN: South Hilo alone, without Hamakua and North Hilo, is that correct?

SAKAKIHARA: Correct.

HEEN: There's another question. I was wondering whether that by adding Keaukaha or that portion of Keaukaha that was intended to be joined up with Puna, by adding that to South Hilo, would South Hilo receive additional representative?

SAKAKIHARA: No.

HEEN: It would not.

CHAIRMAN: Delegate Sakakihara's motion simply is for the deletion, as the Chair understands it, of the words "and Keaukaha." Is that correct, Delegate Sakakihara?

SAKAKIHARA: Yes, Mr. Chairman.

CHAIRMAN: In the first representative district, "that portion of the island of Hawaii known as Puna and the latter being more particularly described in the schedule, one representative"?

KING: The language to be cut out is "and Keaukaha, the latter being more particularly described in the schedule." That goes out also because that description was only to Keaukaha.

CHAIRMAN: Oh, that description relates only to Keaukaha, is that right?

KING: Puna is already described as a geographic division in the Organic Act.

CHAIRMAN: Then the amendment would read: "That portion of the island of Hawaii known as Puna, one representative." Is that correct?

SAKAKIHARA: Correct.

CHAIRMAN: Are you ready for the question?

HEEN: For the purpose of helping the clerks in this matter, the amendment should be this: That after the word "Puna" insert a comma in the second line of that particular paragraph, and delete the words "and Keaukaha, the latter being more particularly described in the schedule," delete all those words. Then the clerk can figure that out. It'll be easier for the clerk to figure that out.

KING: I'd like to confirm what Delegate Tavares said a moment ago when Delegate Ashford's amendment carried. It upset the schedule, the program set up by the majority of the committee, and opened the gate to a great many more amendments which I think the delegates are not too familiar with at the moment. Also, I have already granted leave to be absent to six and seven members of this delegation, some who are not going to be back until Monday. So I now move that the committee rise, report progress and ask leave to sit again.

C. RICE: Second the motion.

CHAIRMAN: You heard the motion that we rise and report progress. All in favor signify by saying "aye." Contrary. Carried.

JULY 1, 1950 • Morning Session

CHAIRMAN: The Committee of the Whole please come to order.

SAKAKIHARA: Yesterday afternoon when this Committee of the Whole rose to report progress and asked to sit again, we were deliberating on the amendment I offered to amend Section 3 relating to reapportionment, namely, first representative district; to define the boundaries of the representative district for the first representative district so that the first representative district would read as follows: "That portion of the island of Hawaii, known as Puna, one representative."

CHAIRMAN: You make such a motion, Delegate - -

SAKAKIHARA: I do, Mr. Chairman.

CHAIRMAN: And is it seconded?

YAMAUCHI: I second the motion.

CHAIRMAN: The Chair is ready to put the question on this and the understanding of the Chair is this is a non-controversial amendment. We will take a vote on it.

DOI: I can't say I am for the amendment nor can I say I am against it. I believe this is a question which relates directly with the problem of Hawaii and it should concern every delegate from Hawaii. I noticed there are quite a few absent this morning and I believe it is the feeling of this Convention this morning not to concern itself with Section 3, the apportionment problem. Why can't we leave this thing on the table for awhile till the rest of the delegation comes back to the Convention and handle this like we do the others.

CHAIRMAN: Well, we could either do that, Delegate Doi, or move for - - put the question, and you can vote with the majority; then when the rest of your group comes back on Monday or Tuesday, it could be reconsidered when we deal with this section. I think that would be more expeditious.

SMITH: I'd like to ask the chairman of the committee, as far as the report is concerned, what effect will that make?

HEEN: Do I understand if this amendment were to be adopted, what effect would it have on the report? The effect would be that other amendments will have to be made in the latter part of that section to conform to this amendment.

SMITH: I don't believe that we can, at this time - - we don't have enough members from Hawaii and I don't think that it should be voted on until all of them are here. I don't think it's fair to anyone.

CROSSLEY: It seems to me that if all we're going to do is go through the form of voting today, with the idea that it can be reconsidered on Monday, with the idea that that's going to change it, then we're just wasting time. Let's go on to something that we think we can pass that will stay passed.

CHAIRMAN: In view of the statements made on the floor, the Chair is of that view, Delegate Sakakihara. Your motion to amend this section should go over until the Hawaii delegation is here and have some debate on it. Will you - -

SAKAKIHARA: We have the Hawaii delegation here, Mr. Chairman.

CHAIRMAN: Delegate Nielsen isn't here, is he?

SAKAKIHARA: He's the West Hawaii delegate. This reapportionment is East Hawaii.

DOI: Delegate Okino and Delegate Luiz are not here from East Hawaii.

YAMAMOTO: Mr. Chairman, for your point of inforation, I would like to say that since I sent a message back to Hilo, I had a phone call last night to hold this matter up until Wednesday. Will it be possible?

CHAIRMAN: The Chair will entertain a motion to defer this.

KING: If objections are raised from some of the East Hawaii delegation, I think it should be deferred. We thought at the beginning it was a minor matter. Originally Keaukaha was added to Puna merely to increase the voting strength of that particular representative district, and the separation of Keaukaha, placing it back with Hilo to which it belongs geographically and as a part of the urban area of Hilo city, would be the logical thing to do. But if there are objections I would suggest that Delegate Sakakihara withdraw his amendment at this time so that we can go on with other provisions of the proposal.

CHAIRMAN: I suggested that too, but apparently the delegate is unwilling, therefore the Chair will entertain - -

SAKAKIHARA: I withdraw my amendment.

FONG: I move that we defer consideration of Sections 3 and 4 until all the delegates get back here.

APOLIONA: I second Delegate Fong's motion.

CHAIRMAN: It has been moved and seconded that all action on Sections 3 and 4 be deferred.

TAVARES: I think there should be a definite date of deferment. All of the delegates might not get back for a long time. I think we can then - -

CHAIRMAN: That's why the Chair didn't put the question in the form of a statement as stated by Delegate Fong.

FONG: Until Wednesday, Mr. Chairman.

HEEN: A motion was made yesterday along the line stated by Delegate Sakakihara this morning. The record will show that an action upon that motion was deferred until a later time, so I think the record should be kept that way. When we reconvene say on Wednesday then that same motion can be brought up; otherwise the record will be somewhat confused.

CHAIRMAN: Are you ready for the question?

SAKAKIHARA: I have a motion to offer.

CHAIRMAN: There is a motion pending before the house, Delegate Sakakihara.

SAKAKIHARA: Will the Chair kindly restate the motion?

CHAIRMAN: Can't hear you.

SAKAKIHARA: What is the motion pending before the house?

CHAIRMAN: The motion is that action on Sections 3 and 4 be deferred.

SAKAKIHARA: May I amend that motion? I desire to amend that motion upon the grounds that there are a great many delegates who are not present this morning.

CHAIRMAN: The Chair did not understand that statement, Delegate Sakakihara. You move to amend it?

SAKAKIHARA: Amend it upon the grounds that there are a great many delegates who are not present here. Proposal 29 is a very important proposal. I move at this time that action on Committee Proposal No. 29 be deferred till Wednesday when all the delegates are here.

HAYES: Second that motion.

CHAIRMAN: That's not an amendment to Delegate Fong's motion. The Chair will so rule.

TAVARES: I think the words "when all the delegates are here" ought to be left out of the motion. That is our hope that they will be here but if by any chance they don't all get here on Wednesday, it seems to me we shouldn't add that as a condition. If we want to defer until Wednesday and then there are some people that we feel we should defer further for, we can decide at that time. I think the motion ought to be to defer to a definite period. Then let the Convention act at that date.

SILVA: At this time I move we rise, report progress, and beg leave to sit again.

SAKAKIHARA: I second it.

CHAIRMAN: That motion is in order.

KING: I don't know whether that motion is debatable or not but when we went into the Committee of the Whole this morning it was with the understanding, that had not been generally agreed upon of course but a few of us discussed it, that we could go ahead with Section 1 and then skip to Section 5 of Proposal No. 29. Those are non-controversial features of the Committee Proposal No. 29, and if we could dispose of that much ground, then on Wednesday we will be prepared to take up the controversial features of Sections 3 and 4. I hope that the motion to rise and report progress will not carry for that reason, unless there is serious objection and unless there is some feeling that Sections 5, 6, 7 and so forth are controversial, and if they are, then the best thing to do is for the committee to rise.

CHAIRMAN: Are you ready for the question? The question is on the motion to rise and report progress. All in favor signify by saying "aye." Contrary. Motion is lost.

The Chair will now put the question on Delegate Fong's motion that action on Sections 3 and 4 be deferred.

ROBERTS: I'd like to speak in favor of postponing action on Section 3 but on Section 4, regardless of the districts we adopt under 3, the problem is a general one and I personally believe that we can handle it this morning. If the movant would accept an amendment so that only Section 3 would be deferred and we could take up Section 4, I would like to so move.

FONG: I think that if we find enough time, I think we can reconsider that motion. There'll be a lot of questions here on Sections 5, 6 and 7, and it will take time.

CHAIRMAN: That appears feasible. Is that satisfactory to you, Delegate Roberts?

ROBERTS: After we try five, come back to four?

CHAIRMAN: No, the delegate's suggestion is that there is ample material that will consume the rest of the morning and if we have any time left over we can reconsider our action, and proceed to five.

ROBERTS: All right.

TAVARES: I should like to move to amend the previous motion so that there will be attached to it the following condition: That whatever action we take at this time, in view of the smallness of the delegation here, shall be subject to a motion to reconsider by any person, whether he votes in the affirmation or the negative, next week.

CHAIRMAN: The Chair will rule that motion out of order. We have rules governing this body.

CROSSLEY: Point of information, will you state the motion, please?

CHAIRMAN: The motion is that we defer action on Sections 3 and 4.

CROSSLEY: Until when?

HEEN: Until Wednesday, as I understand the motion.

CHAIRMAN: Until Wednesday.

CROSSLEY: Until Wednesday.

WOOLAWAY: I'll second the motion.

CHAIRMAN: It has been moved and seconded. All in favor signify by saying "aye." Contrary. The ayes have it.

ARASHIRO: I now move for the tentative adoption of Section 5.

CHAIRMAN: Is there a second?

HEEN: May I suggest that we start with Section 1?

CHAIRMAN: I think that'll be more in order.

HEEN: That will be in proper order. I move the adoption of Section 1.

SAKAKIHARA: Second that.

CHAIRMAN: It's been moved and seconded that Section 1 be adopted. Any discussion?

SAKAKIHARA: Question.

CHAIRMAN: All those in favor signify by saying "aye." Contrary. Unanimous.

HEEN: I move the adoption then of Section 2 -- no, no, not Section 2.

WOOLAWAY: Section 5.

CHAIRMAN: Section 5.

CROSSLEY: I check, I second his motion. I second Section 2.

SAKAKIHARA: Second Section 5.

HEEN: That's right, Section 5. May I ask the -- perhaps this should be in a form of a motion to amend. The word "elections" in the second line -- "election" in the second line just before the period should be in the plural instead of singular. I move that amendment.

ROBERTS: Second that.

CHAIRMAN: It has been moved and seconded that the word "election" appearing in the second line of Section 5 be changed by adding an "s" before the period to read "elections."

SAKAKIHARA: So that it will read "general elections"?

HEEN: That's correct.

CHAIRMAN: The plural instead of the singular. Is there any discussion? All those in favor signify by saying "aye." Contrary. Carried.

PORTEUS: Mr. Chairman, what is the vote on?

HEEN: That's the adoption of Section 5, or the amendment?

PORTEUS: Oh, the amendment, all right.

CHAIRMAN: Section 5 has now been amended, the first sentence by adding an "s" to the word "election."

CROSSLEY: I now move for the adoption of Section 5, as amended.

TAVARES: I have a further amendment to propose.

CHAIRMAN: Wait till we get the section before the house.

TAVARES: Well, has that not been adopted?

CHAIRMAN: No, it has not. Is there a second to Delegate Crossley's motion?

SERIZAWA: I second that motion.

CHAIRMAN: It has been moved and seconded that Section 5 be adopted.

TAVARES: I move that in the third line of Section 5, after the first word "the" we insert the words "term of" and then in that line and next line delete the words "for a term of" so that that second sentence will read: "The term of office of members of the House of Representatives shall be"

CHAIRMAN: Just a little slower, will you please, Delegate Tavares.

TAVARES: Insert after the word "the," the first "the" in the third line of Section 5, the words "term of," and then delete in the same and the next line the words "for a term of," so that --

HEEN: I don't just get that.

TAVARES: Well, I will read it with the amendment.

HEEN: May I ask the speaker if he is referring to the mimeographed copy of the proposal?

TAVARES: Yes, Mr. Chairman, on page 6, the third line starts out with the words "the office of," and I suggest that it read "The term of office of members of the House of Representatives shall be," then delete the words "for a term of." I think it reads better that way, it will --

CHAIRMAN: Couldn't the Style Committee change that, Delegate Tavares. Isn't that just a matter of style?

MAU: That's correct.

CHAIRMAN: I think so.

TAVARES: Well, we've made some other changes too. "Elections" is a matter of style.

CHAIRMAN: I agree.

ARASHIRO: I second that motion.

HAYES: I second that motion.

CHAIRMAN: What motion do you second?

ARASHIRO: I second Delegate Tavares' motion.

HAYES: I second Delegate Tavares' motion.

CHAIRMAN: Will the delegates who are not addressing the Chair please take their seats so the Chair will know who wants to be recognized.

FUKUSHIMA: I think that the last amendment is purely a matter of style, nothing else.

CHAIRMAN: Two delegates felt otherwise and want to put it to a vote. The Chair agrees with you, Delegate Fukushima.

TAVARES: With that understanding, I withdraw my motion.

CHAIRMAN: It is withdrawn.

TAVARES: However, I have a question to ask and that is, we are going to have, I hope, a legislative council. It seems to me that this is awkward, to have the term of

office commence with the date of general election, because our sessions do not start on that date. And when you have a legislative council, which is in effect a holdover committee, you always have a hiatus for the two-year term members of the House. I think it's proper to have your term expire on the date of the next general election -- I mean expire at the beginning of the next general session of the legislature so that your holdovers will surely be in office during that period. That is the policy followed in Congress. You do have a "lame duck" session, but you very seldom have a special session called.

CHAIRMAN: Do you have an amendment, Delegate Tavares?

TAVARES: Well, then, I move that the --

CROSSLEY: Mr. Chairman, will he yield for a question?

CHAIRMAN: Will the speaker yield?

CROSSLEY: Will the speaker yield?

TAVARES: Yes.

CROSSLEY: Don't you think we should provide in there, Mr. Chairman, also in the event of a special session being called from the time of the election until the regular or the general session is called? Because a special session could be called in that interim period and the people have been elected to office. Therefore, the term should begin, it would seem to me, on the date of being sworn in at the first general or any special session called between the time of their election and the first general session.

CHAIRMAN: Will the gentleman answer that question?

TAVARES: Well, of course that gives us a somewhat indefinite time, but I imagine that could be worked out. It would take a little more intricate wording to provide for that. I wonder if the chairman of the committee would comment on that suggestion.

HEEN: The provision here with reference to the House you will find in the Organic Act. It would seem to me that insofar as the legislative council is concerned, if it's going to be created under the Constitution and implemented by legislation, the members of that council, even though they may be members of the legislature at the time they were appointed, could hold over beyond their term. It's a body created by the Constitution and legislation implementing the Constitution.

TAVARES: If that is taken care of in the legislative council section, I will withdraw any proposed amendment.

HEEN: I might add that the point raised by the last speaker would apply if it were a legislative committee where all the members must be members of the legislature.

TAVARES: I'm satisfied, Mr. Chairman.

CHAIRMAN: The Chair will now put the question. It's on the adoption of Section 5, as amended, with the "s" on "election." All in favor signify by saying "aye." Contrary. It's carried.

HEEN: I now move for the adoption of Section 6.

SAKAKIHARA: I rise to a point of information. Will the chairman of the Committee on Legislative Powers and Functions explain to the Committee of the Whole as to how this election will operate in the event this Constitution is ratified by the people and approved by the President and the Congress of the United States, and in the meantime, the Congress will take a recess, say till November of this year, rather than adjourning, and the Enabling Act is passed by the Congress of the United States? In the meantime the territorial delegate -- senators would have been elected.

CHAIRMAN: Will you answer that, Delegate Heen.

HEEN: The Committee considered that problem and it'll have to be taken care of in the schedule.

CHAIRMAN: In other words, there could be an ordinance to that effect, Delegate Sakakihara, that would take care of it.

SAKAKIHARA: There are quite a few members of the Committee of the Whole who are not members of the committee and who are not familiar with that very question and they are rather confused about it.

HEEN: H. R. 49 requires a special election after the Constitution is approved by the Congress and the President, so that that matter will have to be taken care of in the schedule and not in the ordinance as someone stated because the amendment to H. R. 49 as passed out of the Senate committee has eliminated all references to ordinances. I think that was checked yesterday.

SHIMAMURA: May I say in reply to the question raised as to special elections that there is an ordinance already provided for and the only amendment necessary will be that the word "ordinance" be deleted, and also that, "upon the approval of the Congress of the United States," instead of "the President."

AKAU: I'd like to ask the delegate from the fourth district, the chairman, a question. If you have in Section 6, that we've been discussing, "as prescribed by law" -- we're discussing 6, are we not? If you have "as prescribed by law," do you need the rest of that -- those next two lines, and if no provision is made, will it not be prescribed by law?

CHAIRMAN: Delegate Akau, that is essential. There either has to be a provision by law or you've got to take care of it some way. This gives the governor the power if the legislature doesn't act.

AKAU: Well, aren't we assuming then the legislature won't act.

CHAIRMAN: That's correct. This fills in the hole in case the legislature doesn't act.

AKAU: Well, my question is, we're assuming the legislature doesn't act, but it usually does, so I still don't see why we need it and why we shouldn't delete it.

CHAIRMAN: This is just an abundance of caution. No doubt they will act, but this will just fill in the hole in case they don't.

ASHFORD: I thought we were asking questions about Section 5 still, and may I ask one question in regard to that, not attacking the fact that it has been adopted. Would it not be proper to put into the schedule a provision for short term senators in the first election? Otherwise they will come up at every election, all of them.

HEEN: That's correct. That problem has been considered and a provision will be made in the schedule to take care of that situation. It's quite a complex matter.

LEE: I believe -- I am not sure, has there been a second to your motion, Delegate Heen?

CHAIRMAN: It has been moved and seconded that Section 6 be adopted, Delegate Lee.

LEE: I was just going to second the motion.

CHAIRMAN: Are you ready for the question? All in favor signify by saying "aye." Contrary. It's carried.

HEEN: I now move the adoption of Section 7.

CHAIRMAN: Is there a second?

WIRTZ: I second that motion.

CHAIRMAN: It has been moved and seconded that Section 7 be adopted, any discussion? If not, all in favor signify by saying "aye." Contrary. It's carried.

HEEN: I now move the adoption of Section 8.

BRYAN: I second that motion.

CHAIRMAN: It's moved and seconded that Section 8 be adopted. Any discussion? All those in favor - -

WIRTZ: I didn't notice this till now, but isn't there a little confusion there? "No person while holding any public office, position or employment." Is it perfectly clear that that refers entirely to public state offices, state and county offices and employment?

CHAIRMAN: What was your question? The Chair didn't hear you, Delegate Wirtz?

WIRTZ: My question is whether there might be some confusion when you get down to the question of employment?

CHAIRMAN: Delegate Heen, will you please answer that?

HEEN: This language was chosen deliberately to apply to all territorial officers, employees and all officers and employees of any political subdivision and if you will look on page 11, of the committee report, you will find concise explanation for the form of that Section 8. If I may read it:

> Section 8, which is derived from but somewhat broader than Section 17 of the Organic Act, disqualifies any person while holding any public office, position or employment from being elected to or from taking or holding a seat in the legislature.

That is where there might be an appointment in case of a vacancy.

> The difference being that the proposed section applies to persons holding public positions or employment as well as public offices. It is not to be construed, however, to prevent a member of the legislature from being re-elected or to prevent a member of either house from being elected to the other.

WIRTZ: Well, my - - perhaps I didn't state my - - Mr. Chairman?

CHAIRMAN: Delegate - - I'm sorry, Delegate Wirtz.

WIRTZ: Maybe I didn't state my question very clearly. Is this intended to preclude any one who is holding a position on a - -

CHAIRMAN: An advisory council or something like that?

WIRTZ: Advisory council, juvenile council.

CHAIRMAN: The Chair had that in mind too, Delegate Heen. Could a member of the legislature sit on an advisory council created under the act of the State?

HEEN: Oh, I think if the Constitution itself provides that there may be a legislative council and that the members can sit on that council - -

CHAIRMAN: No, that wasn't the question. Suppose the Welfare Department has an advisory council, could a member of the legislature sit on such a council, such a board?

LEE: Mr. Chairman, may I interrupt for a moment. Perhaps I might suggest to the chairman of the committee, as was done in the judiciary article, that the words "of profit" be inserted after the word "employment." I believe Delegate Wirtz has a very good point, even though your majority report covers it as to what it means generally, but it would seem to me the words "of profit" would take care of the problem raised by Delegate Wirtz.

HEEN: That's in Section 10, with reference to positions of profit, but this is a disqualification on the part of a person who seeks election or seeks appointment to the legislature so that—may I continue —so that if anyone holding public office or position of any kind desires to run for election to the legislature, he must resign from that office or position.

WIRTZ: I think that answers my question. I was concerned about whether a person on an advisory committee, who wanted to run for office, had to first resign and I think that's been answered.

SHIMAMURA: The chairman of the Committee on Legislative Powers and Functions mentioned territorial and city and county officers and employees. I take it that Section 8 will certainly disqualify federal officers and also federal employees.

HEEN: That's correct.

CHAIRMAN: Are you ready for - -

ASHFORD: I would like to ask if the committee makes any distinction between the words "position" or "employment" and "office." Does "position" add anything at all to that?

CHAIRMAN: Delegate Heen.

ASHFORD: In other words I want to know whether it's style or substance?

HEEN: Perhaps those two words are synonymous, and the Style Committee can give it some study and delete one or the other.

APOLIONA: I would like to ask the chairman of this committee a question.

CHAIRMAN: Proceed.

APOLIONA: Delegate Heen, will you clarify the status of the police reserves in Honolulu Police Department in this section here?

HEEN: If they are holding an office of any kind or a position of any kind that particular person would be disqualified from seeking election to the legislature. It may be that if there is any question about it, he can resign.

CHAIRMAN: Delegate Heen, would this apply to the National Guard as well if they seek election to the legislature?

HEEN: If they are employees. If they are public employees, it would bar.

A. TRASK: The chairman has explained to Judge Wirtz' inquiry that "eligible to election to" would prevent a person being eligible to be a candidate for office if he holds a position. Now, if that is the meaning of that Section 8, is it necessary to have the additional words "or to a seat in"? Because if the person is ineligible to become a candidate for office, obviously he cannot have a - - be entitled to a seat to that position.

HEEN: You will note that the language states "shall not be eligible to election to." That's one problem. The other

one is where a vacancy occurs and a successor is appointed, might be appointed by the governor.

TAVARES: I personally believe that this provision is too tight, and for the purpose of enabling me to speak in order, I move an amendment by inserting after the word -- between the words, "any" and "public," in the second line, the word "salaried."

DOI: Second the motion.

TAVARES: Now in support of that motion --

CHAIRMAN: Just a minute, wait until we get the amendment.

TAVARES: Insert between the words "any" and "public" in the second line, the word "salaried." Mr. Chairman, my reason for this—that may not be the right word—but my reason for suggesting any amendment is this. At the present time a legislator can't even hold the office of notary public. Such a provision is too tight. He may have a per diem job that occupies him two or three days a year and he's got to resign that in order to run for legislative office. I don't believe that a legislator needs to be insulated that much against competition by public officers and employees. It seems to me a little bit -- sort of trying to protect the position of those who are in the legislature from competition. Now, I am in favor of not having salaried officers and employees run, and if it's improper to have others run the Civil Service laws can take care of that. It's a legislative matter, Mr. Chairman, after you get past the stage of salaried officers or employees, and it seems to me that not even allowing a legislator to be a National Guardsman—of course he's an employee if he's a National Guardsman—not even allowing him to be a police reserve, not even allowing him to be a notary public, perhaps not even allowing him to be a master.

CHAIRMAN: A what!

TAVARES: A master.

CHAIRMAN: Oh.

TAVARES: Those are public officers.

CROSSLEY: I would also like to speak to the point that Delegate Tavares has raised, and I hope I'm not misunderstood. I think that the point Delegate Tavares raised was raised also in the committee. There was considerable discussion. At the time I had thought we were going to insert the words "of profit" in there, which has been suggested by two other delegates today, the same provision that we have in the judiciary. I would like to ask the last speaker if after "employment," the insertion of the words "of profit" in the third line would do the same thing as "salaried" after "any," or perhaps "salaried" would take care of profit and wouldn't make an exception of notary publics whereas maybe "salaried" would. If that is the intent, why then all right. Otherwise, I think "of profit" is a more inclusive term and would meet the needs.

CHAIRMAN: Notary public does not get any salaries from the state.

A. TRASK: Following the expressions of Delegate Tavares, which I agree, I think the public want to decide whether a candidate is going to be elected, whether he holds a public office or not. I think it's a little too stringent. I think there ought to be a reverse English on this situation to put it in this fashion: "No member of the legislature shall hold any office, position or employment of this State," or "under this State."

HEEN: That's in Section 10, that problem.

CHAIRMAN: This relates to eligibility for election, Delegate Trask.

A. TRASK: We ought to consider deleting that entire Section 8.

HEEN: I might state that if you are going to confine this to persons who have salaries then there are a lot of persons who are members of commissions who do not get salaries, and they should not be appointed -- I mean be eligible for election to the legislature while they hold those offices. There are numerous commissions where the members of those commissions receive no compensation whatever.

CHAIRMAN: You're thinking of the Public Utility Commission, and the Harbor Board.

HEEN: No, I think Public Utilities, they do get some compensation, but the commissions, the Board of Osteopathy, Optometry, Board of Agriculture, I think they receive no salaries. There are lots of others. Board of Cosmeticians, they receive no salary, Naturopathy and so on down the line.

CHAIRMAN: Delegate King.

KING: Delegate Loper was trying to get attention a moment ago.

CHAIRMAN: Delegate Loper, I'm sorry.

LOPER: I wanted to ask a question of the chairman of the committee. Whether it was the intention, I assume it is, that people who are members of the school board, or Commissioners of Public Instruction would not be permitted to run for the legislature?

HEEN: That's correct, in this language, or the members of the Board of Regents. The members of the Board of Education would not be eligible to seek election to the legislature or to be appointed to the legislature to fill a vacancy. They can do this in order to make themselves eligible both to election and appointment, by resigning their office. There is no complication there, they can resign.

LOPER: Was it the intention of the committee also to then exclude members of the newly created Territorial Commission on Children and Youth from running for the territorial legislature?

HEEN: That's correct, it'll take care of them too. If they want to run, let them resign.

LOPER: Mr. Chairman, a third question. Is it the intention to exclude people on retirement that are drawing a pension from the Territory or from the State?

HEEN: When they are in retirement they no longer hold any position or office. They are in retirement.

TAVARES: I believe still that there are some pertinent arguments made by the chairman which should be considered and which are sound. I still think that a provision can be drawn to take care of that, narrowly enough drawn, to take care of the situation I have in mind where non-policy forming officers who don't get compensation can still run, or or employees who don't -- who are not -- certain types of employees can still run. I therefore move to defer action on this section until after other consideration.

DELEGATES: Mr. Chairman. Mr. Chairman. Mr. Chairman!

CHAIRMAN: The Chair would appreciate it if three delegates wouldn't speak at the same time. The Chair is trying

to recognize Delegate Crossley, for a second. You do second it, do you?

CROSSLEY: I second the motion.

CHAIRMAN: It's been moved and seconded that we take this up at a later time in the discussion of this article.

SILVA: I move we defer this until Wednesday, then.

CHAIRMAN: That wasn't the Chair's understanding of the motion.

SILVA: I amend the motion to defer until Wednesday. A motion to defer at a certain time is always in order.

ASHFORD: I'll second that motion.

CHAIRMAN: It has been moved and seconded that this be deferred until Wednesday. You accept the amendment?

CROSSLEY: I will accept the amendment.

CHAIRMAN: All in favor -- Delegate Roberts.

ROBERTS: I have no objection to deferment, but I would like to raise one or two questions for the chairman of the Legislative Committee.

CHAIRMAN: Delegate Roberts, if you have no objection, can't we put the question and you can do that at another time?

ROBERTS: Sorry.

CHAIRMAN: All in favor signify by saying "aye." Contrary. Carried.

HOLROYDE: Did the movant of that motion accept the amendment?

CHAIRMAN: Yes.

HOLROYDE: The second did?

CHAIRMAN: Yes.

TAVARES: I didn't do it through the loudspeaker, Mr. Chairman.

CHAIRMAN: Deferred until Wednesday.

HEEN: Mr. Chairman.

> Section 9. Privileges of members. No member of the legislature shall be held to answer before any other tribunal for any statement made or action taken in the exercise of his legislative functions in either house; and members of the legislature shall, in all cases except treason, felony or breach of the peace, be privileged from arrest during their attendance at the sessions of their respective houses, and in going to and returning from the same.

If you will turn to page 11 of the committee report, you will find there a concise explanation of that section. I move for the adoption of that section.

HOLROYDE: I will second the motion.

WOOLAWAY: I would like to ask the chairman of the committee a question. I'm wondering if he's just worrying about the $3,000,000 suit which is now pending against him.

CHAIRMAN: That's out of order.

HEEN:

> Section 9 sets forth the privileges of members of the legislature. The immunity from liability of members of the legislature has been enlarged to include "any statement made or action taken" in the exercise of legislative functions, as compared to section 28 of the Organic Act, which limits the immunity to "words uttered." The proposed section is intended to cover written as well as oral statements and any action taken in the exercise of legislative functions, in the broadest sense. The provision for exemption from arrest is the same as contained in section 29 of the Organic Act, except that the ten-day limitation on going to and returning from sessions has been omitted.

Now, there's always some question, at least in my mind, whether the term "words uttered" meant oral statements and someone may claim that that includes written statements, but here the committee has definitely used the term "any statement that may be made" whether uttered or in writing. Then the committee went one step further to include in this privilege any action that might have been taken, so that the action, for instance, of the legislature in passing Act 2 of the special session of 1949 relative to the water-front strike, would be definitely creating an immunity on the part of the legislature from any $3,000,000 suit.

KELLERMAN: May I propose an amendment to line 5 of Section 9? Delete the word "treason." I think that came into the section from the Organic Act. We have deleted the section on treason from the Bill of Rights. Treason is, of course, a felony. I see no reason for the duplication and mentioning the crime independently. So I would move the deletion of that word and the comma that follows it.

SMITH: I'll second that.

CHAIRMAN: Any discussion?

SHIMAMURA: May I ask a question regarding that? When we discussed the sections on the Bill of Rights and the other pertinent section on treason, wasn't that especially with reference to treason against the government of the State of Hawaii?

CHAIRMAN: That's correct. And this statement is treason generally against the United States.

SHIMAMURA: Yes, I was wondering about that.

ASHFORD: It seems to me that the point of Delegate Kellerman's proposed amendment is that if we write in "treason" as well as "felony," it raises the question as to what felony is, whether treason is or is not a felony.

TAVARES: I agree with the last delegate and with the proponent of the motion. I think that the word "treason" is utterly redundant. Treason is a felony; felony covers everything; why put in an extra word there. It's just a carry over from ancient times, it's absolutely unnecessary.

HEEN: Speaking for myself, I have no objection to the striking out of the word "treason."

CHAIRMAN: Could the chairman of the committee enlighten the chairman as to what section of the Federal Constitution this is found in?

HEEN: I believe this is found in the Organic Act.

KAWAHARA: In the Federal Constitution, I believe in Section 6.

HEEN: Section 29 in the Organic Act.

CHAIRMAN: I might call the body's attention to Section 6 of Article I of the Federal Constitution, that

> in all such Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for

any Speech or Debate in either House, they shall not be questioned in any other Place.

Is this as broad as the immunity conferred under the Federal Constitution, Delegate Heen?

HEEN: I didn't quite - -

CHAIRMAN: Is your section as broad as the immunity conferred under the Federal Constitution?

HEEN: Broader.

CHAIRMAN: It involves the deletion of the word "treason."

SILVA: I would prefer to leave the word in there even though it has probably the same meaning. Any person elected to the legislature and creates such an act, it shouldn't be pointed out to him if he does. If the act is treason he should be pointed out as a traitor, and the word - - the statement "treason" should be left in there for that purpose. If he's a legislator - -

CHAIRMAN: The thing that Delegate Tavares was pointing out, and Delegate Kellerman, was that treason is a felony. Now it is a kind of felony which has a statutory definition in the Federal Constitution and presumably that's why the framers of the Federal Constitution used both words in the Federal Constitution.

SILVA: Well, I realize that. I just want it so that people can know that in their Constitution that that word can be pointed out to them, that's what he did right there. Never mind about the felony - - even though it's a felony, but the legislator did that, that's the word and he's a traitor.

TAVARES: There is nothing to prevent the legislature, or either house of the legislature, if it removes one of its members for treason, which is a felony, from saying they're removing for that felony which is treason. It's absolutely open to them. Putting treason in here is like saying "rice and food." "Food" includes "rice" so why mention "rice." You've got a million other things you could mention also.

LEE: Of course, Mr. Chairman, I agree with the last speaker but I remember the committee voted once to include the word "commitment" [sic] after the word "pardon," period.

CHAIRMAN: The Chair doesn't feel it's very material. The question will be put. All in favor of the amendment which is the deletion of the word "treason" signify by saying "aye." Contrary. The ayes have it; the word is deleted.

LARSEN: I read this "breach of the peace," which apparently comes from 1776 - -

HEEN: Mr. Chairman, will the speaker yield while we are on this point here. The comma after the word "treason" should also be deleted.

CHAIRMAN: Style Committee will take care of that. No appeal.

LARSEN: Not being a legislator, it seems to me in today's day what is much more important in protecting the community, and you see I am a little bit suspicious possibly of legislators, we might put in drunk driving.

CHAIRMAN: That would be unduly restrictive, Delegate Larsen.

LARSEN: But it is also unduly protective.

KAWAHARA: Keeping in conformity with the Federal Constitution, I would like to propose an amendment so that Section 9 would read, in the third line, "No member of the legislature shall be held to answer before any other tribunal for any statement or speech made," and delete the words "or action taken in the exercise of its legislative functions in either house," so that the words "or action taken" will be deleted and words "or speech" be substituted, and the section will read:

> No member of the legislature shall be held to answer before any other tribunal for any statement or speech made in the exercise of his legislative functions in either house.

J. TRASK: I'll second the motion.

LARSEN: I would like to ask when is a speech not a statement?

CHAIRMAN: You hear a lot of speeches here, Delegate Larsen, and sometimes they're not much of a statement when the - -

LARSEN: I accept that, but didn't dare to say it.

TAVARES: I speak in opposition to the amendment. It seems to me the amendment is designed to again place the legislature in the position it finds itself with this $3,000,000 suit. In my opinion that is a trumped up suit and I think this lends aid and comfort to the people who trumped up that suit. I submit that this amendment should not be adopted, that in modern times the cleverness or whatever you want to call it of certain people has invented means of trying to harass legislators trying to perform their duties and I think they should be kept free, as free as possible from that kind of external pressure in performing their duties.

CHAIRMAN: The Chair is of the opinion that the present statute requires no change to prevent the immunity from the pending suits. As a matter of fact, the Chair is a special deputy attorney general in that matter. I don't think you have to change the law to defeat that, to raise that issue in the federal courts.

TAVARES: I did not mean to imply that, but I think it's all right to nail it down to the hilt here and to make it doubly clear in this Constitution that we are not going to stand for that kind of pressure.

KAWAHARA: Does this not mean that by inserting the word "action" that we are giving a constitutional - - you might say a constitutional okay to the legislators to do anything within the provisions of the second part of this section? They may do anything except commit treason, felony and breach of peace, and I think the word, that's a dangerous insertion in our Constitution, to guarantee and say, "Okay, you may do this and may you do that."

HEEN: Now, Mr. Chairman, the delegate who has just spoken is confused. The second part there is an immunity from arrest. The first part is immunity from being harassed when the legislature performs their legislative functions. It must be in connection with the performance of legislative functions.

CROSSLEY: I now move the adoption of Section 9 as it has been amended.

CHAIRMAN: The Chair would like to hear the amendment again before the question is put.

KING: I don't think that motion is in order. Delegate Kawahara did make a - -

CHAIRMAN: I don't think there's been any second, Delegate King.

J. TRASK: I second it, Mr. Chairman.

CHAIRMAN: That's correct, the Chair was wrong.

SILVA: I wish that Mr. Trask would withdraw his motion. I think that if you do this, this would be in our Constitution, then our legislature would be here for years. They would be afraid to vote on any, any question.

CHAIRMAN: I doubt that very much.

SILVA: Well, I tell you I'd be afraid. I know what I went through during that last special session. I'd be afraid to vote on any question if that's taken out of the Constitution.

CHAIRMAN: For the convenience of the body, will Delegate Kawahara repeat his motion so that the Clerk can get it and the Chair also.

KAWAHARA: I move to amend Section 9, so that it will read as follows:

> No member of the legislature shall be held to answer before any other tribunal for any statement or speech made in the exercise of his legislative functions in either house.

CHAIRMAN: You'll have to go a little bit slower - -

KAWAHARA: In other words - -

CHAIRMAN: Indicate where the amendment comes.

KAWAHARA: In the third line delete the words " or action taken," and between the words " statement" and " made" insert a comma and insert the words " or speech" so that the third line would read, " any statement, or speech made in the exercise of his legislative functions in either house."

CHAIRMAN: You heard the motion. All in favor signify by saying " aye." Contrary. The motion is lost.
The question - - the Chair will now put the question on the section - -

SHIMAMURA: Before the Chair puts the question, may I ask a question of the learned chairman of the Committee on Legislative Powers and Functions, please. On line 4 there, " legislative function in either house," may I ask if the statement is to be restricted strictly to statements made or action taken while the legislature - - while the house is in session, and whether the statement or action taken is restricted to a statement made or an action taken strictly in that house? What happens if the legislature is in joint session, that is, both houses are in joint session? And another question pertinent to that, what happens if a member makes a statement in the committee or a legislative council aside from the sitting of the house?

CHAIRMAN: Delegate Shimamura, would your difficulty be met if the words " in either house" were deleted?

SHIMAMURA: I did not so move. I am just raising a question.

CHAIRMAN: Will you answer that, Delegate Heen.

HEEN: Of course, " in the exercise of his legislative functions" would cover a situation where a statement is made in committee because he is exercising his legislative function when he sits in a committee and the committee is operating under the authority of the house. The other question there about " either house" poses a problem because they do sit in joint session from time to time and that would not be perhaps - -

CHAIRMAN: Delegate Heen, may the Chair ask you a question? Will you state whether or not the immunity will apply whether you are sitting in committee or sitting in session? It's the same thing, as the Chair understands it.

HEEN: No, if you're sitting in session, that's one thing, that's regular session. But if you are sitting in a committee, you're still exercising legislative functions.

CHAIRMAN: Then the immunity applies?

HEEN: Immunity applies.

LOPER: What about a public hearing?

CHAIRMAN: That was the Chair's question, that's in committee and the immunity applies.

SAKAKIHARA: For the purpose of clarification here some of my members here from Hawaii are unable to make a distinction between sessions, in the sessions of the committees maybe on Sunday nights and on evenings. While it is not a regular session of the respective house, although it was indicated here by the remarks of the chairman of the committee that the immunity applies because it is the function of the legislature. Is that correct, Senator Heen?

HEEN: I didn't quite get the purport of the question.

CHAIRMAN: The question was whether or not the legislative immunity continues whether you are in actual session or in committee. I believe you have already indicated that it does.

SAKAKIHARA: Well, that's on Sundays, when the legislative sessions are excepted by law.

CHAIRMAN: That's correct, Sunday doesn't make any difference.

ASHFORD: May the chairman of the committe be asked the question that you put to Delegate Shimamura. That is, whether it would not really strengthen the section by cutting out " in either house."

CHAIRMAN: That is the chairman's view. What does the chairman of the Legislative Committee feel about that?

HEEN: Without further study, it would seem to me to eliminate some question that is involved there when the two houses sit in joint session. By eliminating that, you eliminate that quick.

CHAIRMAN: You eliminate the limitation. If you leave in the words " in either house" you've got a limitation on your immunity, and I suggest the possibility of deleting those words.

SHIMAMURA: I would like to be excused for interrupting a moment here. As far as that goes if you put in the word " of" instead of the word " in" perhaps that will solve that particular situation. " Legislative functions of either house" and you'd necessarily need not be sitting in session in one house, if you make it "of either house," as far as joint session goes. I wonder what the other delegates - -

HEEN: Mr. Chairman, in regards to that you will note that the language is " legislative functions." Whether it's one house or the other makes no difference as long as the functions are legislative.

SAKAKIHARA: In studying Section 9 and comparing with the Organic Act, the committee has merged Section 28 and Section 29 of the Organic Act and simplified it into one section, Section 9, in the proposal. There are some phases of this section which require further study and I therefore move that we defer action on Section 9 until Wednesday.

KAWAHARA: I second the motion.

CHAIRMAN: It's been moved and seconded that action on this section be deferred until Wednesday. All in favor signi-

fy by saying "aye." Contrary. The Chair will put the question again. The Chair is in doubt. All in favor of deferring action on this section until Wednesday signify by saying "aye." Contrary. May we have a show of hands? All in favor. Against. Deferred, motion carried.

SERIZAWA: For the sake of the clerks, I move for a short recess.

CHAIRMAN: A short recess will be declared.

(RECESS)

CHAIRMAN: Committee will come to order and will the delegates please take their seats? Will the Sergeant-at-Arms ask the delegates to take their seats, please. Will the delegates please take their seats? The last action of the committee was on Section 9 which was deferred until Wednesday. We are now on Section 10.

APOLIONA: Since Section 10 is quite similar to Section 8, which we have deferred until a later date, I move that we defer Section 10.

CHAIRMAN: Will the delegate please just hold that until we get an expression from the chairman of the committee, and then the Chair will recognize you, Delegate Apoliona. Delegate Heen is recognized.

HEEN: Section 10 relates to disqualification of members of the legislature from holding "any other public office, position or employment of profit" during the term for which that member of the legislature is elected or appointed, "be elected or appointed to any public office, position or employment of profit which shall have been created, or the emoluments whereof shall have been increased, by legislative act during such term." It may be that the other members who are now absent from this committee might want to be heard on that as well as on Section 8.

CHAIRMAN: May the Chair ask you a question? Is this not an almost verbatim statement from Section 6 of the Federal Constitution?

HEEN: We did not pattern this particularly on the Federal Constitution, but this was patterned after Section 16 of the Organic Act.

CHAIRMAN: It doesn't appear to the Chair that there's anything controversial about this. However, the Chair will entertain any motion.

SAKAKIHARA: In view of the fact that this committee deferred action on Section 8, I move that action on Section 10 be deferred until Wednesday.

CHAIRMAN: That motion was made by Delegate Apoliona and I assume you second it.

SAKAKIHARA: I second the motion.

CHAIRMAN: It has been moved and seconded that action on Section 10 be deferred until Wednesday. All in favor signify by saying "aye." Contrary. Call for a show of hands. All in favor of deferment. Contrary. The motion is carried.

HEEN: With reference to Section 11, now that relates to salaries of members. It's proposed by this section that the salaries of the members of the legislature shall be fixed by the Constitution instead of leaving it to the legislature itself.

ASHFORD: I have an amendment.

CHAIRMAN: Your amendment has been printed and - -

DOWSON: Point of order, Mr. Chairman.

CHAIRMAN: State your point, Delegate Dowson.

DOWSON: There is no motion for the adoption of Section 11.

CHAIRMAN: You're correct.

DOWSON: I move for the adoption of Section 11.

CHAIRMAN: Is there a second?

WOOLAWAY: I second that.

CHAIRMAN: It has been moved and seconded that Section 11 be adopted. Delegate Ashford is recognized.

ASHFORD: I now move the adoption of the amendment which has been distributed to the various delegates. Apparently there is no second.

AKAU: I second it.

CHAIRMAN: It has been moved and seconded that Section 11 be amended to include the language: "No law directly or indirectly increasing the compensation or emoluments of the members shall be effective for a period of two years subsequent to its enactment."

ASHFORD: I think, perhaps, the words "compensation or" are surplussage. I think "emoluments" will cover it all but I used the two to be sure. Now the purpose of this is perfectly clear. In the executive and in the judiciary branches we have had some provisions as to increasing and decreasing. I think, myself, that the salary fixed by the legislators is too low - - by this section. I think the salaries should be sufficient so that members from the other islands should have ample to maintain them here and to have perfect independence of action. But I do not think that any legislature should vote to itself increases in the emoluments preserved by the Constitution. If it becomes necessary under this amendment, they could vote increases which would take effect two years afterwards. That is, give the voters a chance to say whether they approve.

LARSEN: May I ask a question of the chairman?

CHAIRMAN: I'd like to ask the delegate if he will hold that for a moment. Delegate Ashford, would your amendment be applicable then in substance only to the House of Representatives and not the senators? They have different terms.

ASHFORD: No, you see I didn't use the word "terms." "Shall be effective for a period of two years subsequent to its enactment." I think four years is too substantial a time, but you see you have an election in two years and if the voters express disapproval of that, the holdover senators would act in accordance with the mandate of the voters without any question.

CHAIRMAN: Your theory is that the law will then be repealed?

ASHFORD: Yes.

CHAIRMAN: After the subsequent election?

ASHFORD: Yes.

CHAIRMAN: Delegate Larsen is recognized.

LARSEN: I wanted to ask the chairman and call attention to delegates that it seems to me the one thing we have been wrought up about is not putting any figures in the Constitution. Five years from now, $1500 might not be worth $100 today. Now then the one case I remember off hand is the Pennsylvania legislature which wrote in they shall spend

$1,000,000 on education. That's still in the Constitution, and yet last year they spent $90,000,000 on their system of education. It seems to me that one thing we shouldn't do is tie ourselves down with a sum that we know might be hopelessly out of date in a year or two.

CHAIRMAN: We hope not, Delegate Larsen.

GILLILAND: I believe this proposed amendment by the delegate from Molokai is out of order. You have in Section 11, "The salary of members of the legislature shall be as follows: the sum of $1500 for each general session, the sum of $1000 for a budget session and $750 for each special session." Now under the Constitution we can - -

CHAIRMAN: The Chair agrees with you, Delegate Gilliland, this is a constitutional provision for the fixing of the salary and therefore there has to be some further amendment than the one offered. The Chair would like to ask Delegate Ashford if that is not correct?

ASHFORD: Mr. Chairman, if you change the one word "salary" of members in Section 11 to "emoluments" you have it covered and the subtitles are not a part anyway.

ROBERTS: I was going to point out that no change in salary can be made if Section 11 is adopted other than what we write into it except by a constitutional amendment.

CHAIRMAN: That's correct, that's what the - -

ROBERTS: That can't take effect for at least two years.

CHAIRMAN: That's the Chair's view.

HEEN: I was going to point that out.

ASHFORD: If the chairman of the committee and the various other members would read the report you will notice they use "salary" and not "emoluments."

CHAIRMAN: That is not the point, Delegate Ashford. The point is Section 11, by constitutional provision, stipulates that the salary shall be $1500 and there could be no law, directly or indirectly, increasing the figure over $1500 without a constitutional amendment.

ASHFORD: That's quite true, but if you'll notice in the report they narrowed the term to salaries, so it wouldn't include other emoluments, the $15 a day provision, for example. And this amendment is aimed at just such legislative provisions.

SHIMAMURA: May I ask the chairman of the Committee, the Organic Act, as every one knows provides for per diem and for mileage fees. There is no provision here for either mileage or per diem.

HEEN: That's correct; that's why the term "salary" was used, so that the legislature can take care of mileage and other expenses. As you know we have a statute now which provides for an allowance of $15 a day for members of the legislature who live in the outlying islands and $5 a day for those members who come from Oahu, for incidental expenses.

APOLIONA: If I'm wrong I stand corrected, but I think the entire substance of this debate is a little out of order. We haven't decided whether we're going to have a general session or a budget session and we are deciding, fixing the salaries of the different legislators for two sessions. I think we should go to 12 first, then come back to 11 afterwards.

TAVARES: I am in sympathy with the idea of this amendment but I wonder if it is - - if it doesn't go too far. In the first place I'd like to look up a little further what the word "emoluments" means because I'm a little afraid that that term is too broad. Now when you say "compensation or emoluments," after mentioning salary, you imply then that compensation and emolument are something in addition to the salary. Now what is an emolument? Does it mean that you can't give free lunches to the legislators if they're held in a night session, and can't order lunch and pay for the lunches? There are lots of other things that might be called emoluments and I think it goes too far, and if there is any idea of the members of passing this, that we ought to just get a little further definition of the word "emolument" before we vote on it.

CHAIRMAN: The Chair rules that the amendment is out of order. As the Chair construes the section - -

ASHFORD: I appeal from the ruling of the Chair.

LOPER: Since we have deferred action on Sections 8, 9 and 10, I don't know why we shouldn't defer action on this. I so move.

LARSEN: I second the motion.

SILVA: What's that, deferred? Now, Mr. Chairman, I was going to ask to be excused from voting, having a pecuniary interest in this thing.

CHAIRMAN: The Chair refuses to excuse you, Delegate Silva.

CROSSLEY: While there is a motion to defer, there has been an appeal on the ruling of the Chair which must be decided.

CHAIRMAN: Well, perhaps Delegate Ashford will withdraw her appeal.

CROSSLEY: If you'll withdraw your ruling, I think - -

ASHFORD: Yes, if you'll withdraw your ruling, I will be very glad to withdraw my appeal. That's clearly within the - -

CHAIRMAN: The Chair will withdraw its ruling but gives notice that the ruling, if the amendment comes in the same form upon a deferment, that the ruling will be just the same. The Chair will now put the question on deferment.

ASHFORD: The appeal will be just the same.

CHAIRMAN: The question is on the deferment.

WIRTZ: Point of order. I'd like to point out that the motion - - the amendment is in, it has been duly seconded and if we defer there's no question about the amendment coming in again. It's in. We have to vote.

CHAIRMAN: That's right.

DOWSON: Point of information, Mr. Chairman. I would like to know whether we are voting to defer action on the amendment or - -

CHAIRMAN: The question before the body is, shall we defer action on this Section 11 until Wednesday? All in favor signify by saying "aye." Contrary. The ayes have it.

HEEN: Perhaps it would be in order then to defer action on Section 12, which is somewhat tied up with the provision as to salaries. I move to defer action on Section 12.

APOLIONA: I second the motion.

CHAIRMAN: It has been moved and seconded that we defer action on Section 12 until Wednesday. All in favor signify by saying "aye." Contrary. Carried.

SAKAKIHARA: I now move that we rise and report progress and ask to sit again.

BRYAN: I'd like to second that motion. I note that we have 39 delegates on the floor, counting the chairman.

CHAIRMAN: It has been moved and seconded that we rise and report progress. Did the President hear the motion? There's been a motion that we rise and report progress. All those in favor signify by saying "aye." Contrary. Motion is carried.

Second Morning Session

CHAIRMAN: The committee will come to order.

GILLILAND: I think we ought to get together here and agree that if this matter we adopt today comes up again on Monday or any other day, that we stand by what we vote for today and not impose any motion to reconsider our action taken today.

SAKAKIHARA: I thought when we resolved into the Committee of the Whole, it was the ruling of the Chair that in order to be fair to the absent members here, that all of these things would be tentative and brought up again on Wednesday. Am I correct?

CHAIRMAN: I didn't understand your statement, Delegate Sakakihara.

SAKAKIHARA: When this committee resolved itself into the Committee of the Whole in the earlier part of this morning it was the ruling of the Chair, upon the query of some members of this committee, that the action would be just tentative here, that upon the return of the absent members that these matters acted upon today will be reconsidered by the absent members. Is that correct?

CHAIRMAN: That's not the ruling of the Chair, Delegate Sakakihara.

WIRTZ: My understanding of that understanding was that if one of the absent delegates made a motion to reconsider, it would be considered, and favorably, in view of the absence, but in the absence of any such request on the part of any absent delegates I understood that what we're doing today would be binding.

WOOLAWAY: I move for the adoption of Section 13.

SMITH: I'll second that.

CHAIRMAN: It has been moved and seconded that Section 13 be adopted. All those in favor signify by saying "aye." Contrary. It's adopted.

KING: Point of information. What section was that that was just adopted?

CHAIRMAN: Thirteen, relating to adjournment.

SILVA: Aren't we going to ask for discussion?

TAVARES: I'm sorry I didn't notice that, I wanted to ask the chairman a question. May I still do that about that section?

J. TRASK: Mr. Chairman?

CHAIRMAN: Proceed. Delegate Tavares has the floor.

J. TRASK: Point of order.

CHAIRMAN: Delegate Tavares has the floor.

SILVA: Point of order is well taken. You ruled that it has been carried as far as that section is concerned.

J. TRASK: Mr. Chairman, a point of order.

CHAIRMAN: The Chair has ruled that Delegate Tavares has the floor. Will the remainder of the delegates take their seats and we'll hear from Delegate Tavares what he wants to raise at this time.

TAVARES: A point of information, I ask unanimous consent so I can ask a question.

CHAIRMAN: You don't need any unanimous consent. Ask your question, Delegate Tavares.

TAVARES: The question is, is there anything else in this article which might provide for punishment in case either house did adjourn sine die without consent of the other?

DELEGATE: Point of order.

HEEN: No, there's nothing here to take care of this situation. This Section 13 was taken from the Organic Act verbatim.

SILVA: I appeal to the Chair the point of order, that section has carried. If you want - -

CHAIRMAN: The Chair agrees with you.

WOOLAWAY: I move that we reconsider Section 13.

APOLIONA: Second that motion.

CHAIRMAN: It has been moved and seconded that we reconsider the action on Section 13. All in favor signify by saying "aye." Contrary. Carried.

TAVARES: I'm sorry that the situation has arisen. I merely wanted to state I was hoping that someone would offer an amendment later that would, somewhere in the section, that would provide for some kind of teeth in this section because I know personally of an instance where for 30 days one house adjourned without the consent of the other and there was nothing the other house could do about it. I was wondering if the chairman had considered that matter in committee.

HEEN: The committee did not consider that matter at all.

CHAIRMAN: Delegate Tavares, are you familiar with the fact that that is the identical provision contained in the Federal Constitution?

TAVARES: Yes, Mr. Chairman, and I'm also aware of the fact of the futility of it in actual experience in this territory recently, under the Organic Act.

ASHFORD: I call the attention of the delegates to the fact that that adjournment was after the 30 day session.

PORTEUS: May I bring to the attention of the body what one of the delegates, I think, had reference to. One time there was a difference of opinion between the Senate and the House. So, because in those days there was no per diem, they got to a point where the Senate would not consent to going over more than three days. The Speaker of the House, as I understand it, excused the outside island members and the outside island members went home, and every day they rapped the gavel and said the House will come to order. It was announced that less than a quorum was present, and under the rules, being less than a quorum present, that minority was able to adjourn and they adjourned until the following day, and they kept that up until they thought they had reached the point where they could come to an agreement with the Senate and then they came back. That was the situation that I think the delegate from the fourth district had

reference to when he was saying, of what real effect will this be if one house is determined to circumvent the language.

SAKAKIHARA: Following up the statement of the previous speaker, I believe it's a matter of common knowledge in this territory that during the session of 1941 while the House was still in session, the Senate, on its own action adjourned the Senate without the consent of the House.

CHAIRMAN: The question before the body is action on Section 13. Are you ready for the question? All those in favor signify by saying "aye." Contrary. Carried.

WOOLAWAY: I now move for the adoption of Section 14.

CHAIRMAN: Is there a second?

HAYES: I second that motion.

CHAIRMAN: It has been moved and seconded that Section 14 be adopted.

TAVARES: I have a question I would like to ask the chairman if I may, about this section. As I recall it, in the article on suffrage and elections there is a provision concerning contested elections being determined by the courts, and I am wondering if there isn't a possibility here of an area which conflicts. That is, there is a contested election and the courts decide that a certain person was elected and somebody else claims that he wasn't, then the house is going to be able to determine that all over again. I'm wondering, if that is the case, if we shouldn't later on either eliminate this or later on amend the suffrage and elections section to exclude legislators.

CHAIRMAN: The Chair is inclined to agree with you that that should be taken up when the suffrage and election proposal comes up.

TAVARES: May we have the chairman's reaction on that, chairman of the other committee?

HEEN: I think that that matter should be reconsidered on that article on suffrage and elections. I appreciate the difficulties that might arise because of that particular provision in the article on suffrage and elections. I don't know whether or not that question might be considered a little more thoroughly and if so, deferment of action on Section 14 might be in order.

BRYAN: This question came up in committee and if I recall the conversation correctly, it was decided to leave the statement of the judge of election and returns and so forth in here because it might be a case where the returns were not correct but there was no contest. Where the other section calls for a determination in contested elections, if there's no contest, then this would cover.

WIRTZ: There is a possibility of conflict in this particular section and I move that that be deferred until Wednesday so that we can go into the language more thoroughly.

CROSSLEY: I second that motion.

CHAIRMAN: It has been moved and seconded, that it be deferred until Wednesday. All those in favor signify by saying "aye." Contrary. Deferred.

WOOLAWAY: I now move for the adoption of Section 15.

CROSSLEY: Second the motion.

CHAIRMAN: It's been moved and seconded that Section 15 relating to a quorum be adopted. Is there any discussion? All in favor signify by saying "aye." Contrary. Carried.

WOOLAWAY: I now move for the adoption of Section 16.

CROSSLEY: Second the motion.

CHAIRMAN: It's been moved and seconded that Section 16 be adopted. Is there any discussion?

TAVARES: As I recall from the report, I'd like to be corrected if I am mistaken, the use of the word "bill" here is intended to eliminate the use of joint resolutions which have been used a lot in the Territory heretofore, under the Organic Act provision. Is that correct?

HEEN: That's correct.

CHAIRMAN: Page 15 of the report so states, Delegate Tavares.

TAVARES: I was wondering if the chairman would answer this other further question and that is, was any study made as to whether there was any other use or efficacy for a joint resolution, before we exclude it entirely? As I recall, I'm sure the Federal Constitution doesn't read the same, but Congress has made use of joint resolutions in a manner which was different from acts or bills, and I wondered if that matter has been explored.

HEEN: It wasn't explored.

PORTEUS: It has not always been followed in the legislature, but on the whole a joint resolution was used for something that was once executed within a -- could be executed within a short period of time, relatively that is. Some might run for three or four years and at that time then drop out of sight. There was no use keeping a law on the statute books after a certain period, and I think that the legislature could use the device of the joint resolution. Once it has accomplished its purpose, it is then dropped out of sight and we don't have to carry it forward in the Revised Laws and other laws. It is distinguished from statutory laws of broad application that needed to remain on the books from now on out.

CHAIRMAN: Delegate Porteus, your attention is directed to this sentence in the report. "This provision would eliminate the practice of legislating by joint resolutions." Page 15.

PORTEUS: Mr. Chairman, would you explain to me what significance that pointing -- what that would mean?

CHAIRMAN: I'm just directing your attention to the explanation of the committee. Perhaps Delegate Heen could explain that.

PORTEUS. Well, perhaps, Mr. Chairman, you didn't listen to what I was saying. I was talking about the utilization of the joint resolution so that you would not put on the statute books a regular law, pointing out that the joint resolution did have value and pointing out that the legislature didn't always use the joint resolution as it might be used, but that it was a useful device where you wanted to have something executed within the next year or two and then drop out of sight. That's what a joint resolution should probably be used for, and in that I am disagreeing with what the committee said. The committee report says it eliminates joint resolutions. I'm pointing out there's an advantage perhaps in retaining it.

HEEN: Well, Mr. Chairman, I might call attention to the fact that all general appropriations bills run only for two years, and they go out of the picture at the end of two years. They don't get into the Revised Laws at all. The appropriations are enacted by bills and not by joint resolutions.

TAVARES: One more question if I may, one other question. That is, is this article a quotation or copied after any other state constitution? Is the exact wording exact?

HEEN: It came out of the Model Constitution that - -

TAVARES: Which?

HEEN: The first sentence, " No laws shall be passed except by bill."

TAVARES: That answers my question. On the other side, I should like to point out that although we have used joint resolutions in this territory, we have always held that they had to be passed three times, the same way as a bill, and that they have to have a title, the same way as a bill, so that I guess in general effect, they were probably the same except we used joint resolutions more for temporary purposes, as a rule.

HEEN: I might state it's been used usually for the purpose of requesting Congress to enact certain legislation by way of amending the Organic Act. That's always been done by joint resolution. As I recall it, there is no language in the Organic Act about any joint resolution at all, but joint resolutions have been enacted to become law and it has to have the enacting clause, "Be it enacted by the legislature," and also it required three readings, the same as a bill.

PORTEUS: I think the senator and delegate is quite correct, and one of the reasons that a joint resolution was used in respect to Congress or any other body was that, not only did it have a deliberative process accorded a bill for three separate readings and on three separate days in one house and the same procedure in the other, but it also required the consent of the governor, and consequently it seemed to carry very much more weight than a joint resolution - - I mean a resolution of both houses, or a House resolution or a Senate resolution alone. It also let the executive authority have a say so in the matter and it had, I thought, been a useful device and possibly one we would want to preserve. As I understand the committee report you would eliminate the use of a joint resolution.

CHAIRMAN: Committee report says " legislating" by that device. I don't know whether that's any different or not. Is it, Delegate Porteus?

HEEN: Those joint resolutions directed to Congress which required the approval of the governor required three readings. It can very well be passed by a bill. Call it a bill.

PORTEUS: I suppose that procedure could be followed. As a matter of fact we've also used the joint resolution to deal with other matters of a temporary nature. If I'm not mistaken, Keehi Lagoon, the authorization of the proceedings in respect to the acquisition of that property came through in part at least on a joint resolution.

HEEN: I might state, Mr. Chairman, that all these joint resolutions which have been passed after three readings and approved by the governor have been written into the session laws, and when they become functus, of course, they don't get into the Revised Laws. So I see no problem there, Mr. Chairman. Instead of calling them joint resolutions, call them bills.

CHAIRMAN: Ready for the question?

SAKAKIHARA: I beg to differ with the chairman of the committee that no appropriation has been made by joint resolution. When we made an enactment, a certain act by joint resolution, such as the Statehood Commission to go to Washington, the joint resolution also appropriated funds for the commission and it was held by the Attorney General's Department that the legislature was authorized to appropriate funds by means of joint resolution.

HEEN: After all it's just a matter of style, whether you are going to term one legislative act a joint resolution and another one a bill. They're all bills; they become law any way. You can call them all joint resolutions, and if you go through the procedure of three readings and the approval of the governor, they become legislative acts.

SAKAKIHARA: I don't, therefore, see why we should set off enactment by joint resolution and confine it simply to a bill.

CHAIRMAN: Will the chairman of the committee give us the language under which legislation is now being enacted under the Organic Act? What is the language?

HEEN: There is no language with reference to joint resolutions.

CHAIRMAN: Doesn't that answer your question, Delegate Sakakihara? In other words you can still pass them, I suppose.

SAKAKIHARA: But under Section 16, as proposed by the committee proposal, they were outlawed, they were prohibiting legislation by joint resolution.

SHIMAMURA: Although the Organic Act is silent as to resolutions - - joint resolutions, it also does not have any mandatory provisions that the enactment shall be by bill. Therefore, under the present system, under the Organic Act, a law might well be passed by resolution or joint resolution.

CROSSLEY: It appears to be controversial, I move we defer it.

SAKAKIHARA: Second.

CHAIRMAN: All in favor signify by saying " aye." Contrary. Carried. Till Wednesday, the understanding is the deferment is until Wednesday.

CROSSLEY: Yes. I move the adoption of Section 17, passage of bills.

WOOLAWAY: I'll second that motion.

TAVARES: I hate to appear an obstructionist. I really am not trying to obstruct, but it is my recollection, my understanding, that Congress is not bound by any three-day requirement and that many states are not bound, that under certain types of emergencies they can act without acting on separate days, and I wonder if the chairman would give us how many states require absolutely this three-day provision.

CHAIRMAN: Delegate Heen.

HEEN: The committee didn't go into that phase of the problem, simply adopted what appears now in the Organic Act.

TAVARES: Well, I'm just wondering if we are going to become a state, whether there may not be some cases where it will be to the urgent benefit of the state to act in less than five days or in less than three days. As I understand it, even under this provision, by passing a bill in both houses simultaneously and then switching one for the other in one of the houses you can still pass legislation in three days; but I have some feeling that as a state, which is a rather permanent status, there might be a situation where we might want to pass it sooner. As I recall it some states do have a provision that under certain emergency conditions and by

certain large majorities, bills can be passed more than once on the same day.

CHAIRMAN: Did you have an amendment, Delegate Tavares?

HEEN: It would seem to me that if you have a very important measure, that measure should at least require three days' deliberation and not less.

TAVARES: I am in sympathy with that for general legislation, but I can imagine a case where, if we were at war and wanted to mobilize quickly, that there would be a little advantage in being able to pass a bill in one day to raise a national guard or state guard or something a little higher.

CHAIRMAN: Are you ready for the question?

SAKAKIHARA: I believe this Section 17 deserves further study, according with the remarks of Delegate Tavares. I have had some experience of ten sessions in the legislature. We have found some difficulty under the present system of requiring bills to - -

CHAIRMAN: Your move is to defer it?

SAKAKIHARA: Defer, yes.

CHAIRMAN: Is there a second?

SAKAKIHARA: Till Wednesday.

ST. SURE: I second the motion.

CHAIRMAN: It has been moved and seconded that we defer action until Wednesday on this section. All in favor signify by saying "aye." Contrary. I think the motion is lost. The Chair will call for a show of hands on the motion. All in favor of deferring this section until Wednesday. Against. Motion is carried. Deferred until Wednesday.

WOOLAWAY: I move for the adoption of Section 18.

CROSSLEY: Second the motion.

FUKUSHIMA: I have a very long amendment on Section 18 concerning the pocket veto, and I believe after I had put it in it will be very controversial, so I move at this time that this section here and Section 19 be deferred until Wednesday.

CROSSLEY: Second the motion.

CHAIRMAN: Section 18 and 19 both be deferred until Wednesday?

FUKUSHIMA: That is correct.

CHAIRMAN: Is that seconded?

CROSSLEY: I seconded the motion.

CHAIRMAN: All in favor signify by saying "aye." Contrary. Carried. Sections 18 and 19 are deferred until Wednesday.

WOOLAWAY: I now move for the adoption of Section 20.

CROSSLEY: Second the motion.

ROBERTS: I have an amendment to Section 20. It may not be controversial. I would like to offer it.

CHAIRMAN: Has it been printed?

ROBERTS: No, it has not. It's a simple amendment I'd like to offer. In the fourth line, the words "who shall be guilty of contempt," I'd like to change that to "who have been convicted of contempt." We had previous discussion on the floor on the question of "who shall be guilty" and I think we adopted the language "who have been convicted," "found to have been guilty." I'd like to move that as an amendment, Mr. Chairman.

SAKAKIHARA: Only guilty persons are convicted of contempt, you don't convict innocent persons.

CHAIRMAN: I didn't get the question. Is there a second to this?

DELEGATE: I second the motion.

CHAIRMAN: It has been moved and seconded.

SAKAKIHARA: I rise to a point, Mr. Chairman. I beg to differ with the delegate from the fourth district. I see no harm in the language as used by the committee, only guilty persons are convicted.

HEEN: The use of the term "convicted" might imply conviction by court and this is a summary action on the part of the legislature itself. The legislature, a body of that kind, has power to punish for contempt on the part of any person who might interfere with the functions of the legislature.

ROBERTS: Do I understand that answer to mean that he may not be guilty and therefore can still be kept out?

CHAIRMAN: The question is that your amendment would imply, as it does to the mind of the Chair, that conviction means conviction not before the body but means in a court. Of course it doesn't mean that. The legislature has got the power of punishment for contempt without regards to what the courts may do.

HEEN: And as pointed out in the report, this will not prevent the legislature from enacting legislation for punishment of these persons in the criminal courts. That's being done now by the Congress where they have contempt of Congress or any committee of Congress. Then they have legislation whereby these persons who are - - may be proceeded against in the courts of law and punished there.

ROBERTS: I gather this is controversial.

CHAIRMAN: I don't think so.

TAVARES: Frankly, I think that the fears of the delegate who made the motion are not well founded. Before each house can punish they'll have to find the man guilty and I don't think the word "conviction" adds anything to it. But I do feel this, that there may be a more substantial defect from my point of view in this. I don't know why each house shouldn't be able to put one of its own members in jail if his action is contemptuous enough. Why should it be just an outside member? Under another section just deferred, they can suspend or remove him, but maybe they don't want to do either or it might be easier to slap him with a little fine and if it gets bad enough it might be proper to punish him like you would anybody else, as long as the house does it itself.

CHAIRMAN: Maybe the Republicans can put all the Democrats in the clink then under your amendment.

PORTEUS: Did I understand the chairman of the committee to advocate that as a desirable piece of legislation in the future?

SHIMAMURA: Section 20 in my humble opinion is very broad. It's a very substantial enlargement of the powers of the legislature contained in our present Organic Act. In the first place, it provides for summary punishment, and although the learned gentleman from the fourth district said that certainly there'll be a hearing, when you have summary punishment it's a question of whether or not you'll have a

hearing in the first place. In the second place, it's an enlargement of the present section of the Organic Act, in that this provides for any sort of contempt, whereas in the Organic Act as far as the section on contempt goes, or contemptuous behavior goes, it is direct contempt, technically known as direct contempt; for example, contempt before the judge in court which is in session. This is very broad and is not limited to direct contempt in the presence of the court, but to any sort of contempt.

ROBERTS: If the delegation would look at Section 20, Section 20 does not apply to the action of the legislature with regard to its own members. It deals with punishment of persons who are not members of the legislature. It seems to me therefore, Mr. Chairman, that when you are giving the legislature the opportunity to find people guilty of contempt without an opportunity to go to court to contest that, that seems to me to be highly improper. The language here is quite specific, it says that "any person who is not a member of the legislature who shall be guilty of contempt" of each house. Suppose that the house says "this guy is guilty." Does that mean he doesn't have a right to go to court and contest that? He has to be proven guilty by the court. This isn't the question of the action in the house of its own members. This goes to the very root of the protection of the individual. I therefore move, Mr. Chairman, that the amendment is quite proper and quite important, and if the body wants to defer that until Wednesday, I'm in agreement. It seems to me that it's a very vital amendment and should not be passed over very lightly.

CHAIRMAN: The Chair didn't get your amendment. What is your motion? That it be deferred?

ROBERTS: My motion was to amend, Mr. Chairman. That motion is still on the floor.

TAVARES: I move to defer action until Wednesday on this matter because I can see there is plenty of controversy.

PORTEUS: I second that motion.

CHAIRMAN: Moved and seconded that we defer action until Wednesday on Section 20. All in favor signify by saying "aye." Contrary. Deferred until Wednesday.

WOOLAWAY: I move that we adopt Section 21.

CHAIRMAN: Is there a second to that?

BRYAN: I second that motion.

CHAIRMAN: It has been moved and seconded that Section 21 be adopted.

TAVARES: It devolves upon me in behalf of Delegate Okino to raise some questions about this section, and since we have been deferring so many matters and there are some serious questions that he has raised in a memorandum which he submitted to me, I therefore move that we defer it until Wednesday, because they are substantial questions.

CHAIRMAN: Is there a second to that motion?

SAKAKIHARA: I second the motion.

CHAIRMAN: It has been moved and seconded that we defer until Wednesday, action on Section 21. All in favor signify by saying "aye." Contrary. Carried. Defer it until Wednesday.

CROSSLEY: Inasmuch as Section 22 deals with the Legislative Council and that is a highly controversial article, I move that we now rise, report no progress for the morning and beg leave to sit again.

SAKAKIHARA: I second the motion.

CHAIRMAN: It has been moved and seconded that we rise and report no progress and beg leave to sit again.

WOOLAWAY: I move that we rise and report progress. We did do something.

CHAIRMAN: All in favor signify by saying "aye." Contrary. Carried.

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CHAIRMAN: For the convenience of the delegates, the Chair will summarize the action thus far taken on this article. Article 1 has been adopted; Article 2 has been adopted --

DELEGATE: Don't you mean section?

CHAIRMAN: Section 1 has been adopted; Section 2 has been adopted; Section 3 has been adopted. This is Committee Proposal No. 29, Standing Committee Report No. 92 and Standing Committee Report No. 99, and Committee Proposal No. 30. I'd like to summarize what action has been taken. If the Chair is in error, a correction can be made. Section 1 of Committee Proposal No. 29 has been adopted. Section 2, the first sentence has been adopted. That's the Chair's recollection but the Clerk thought otherwise. The Chair's recollection is that the entire Section 2 has been adopted.

APOLIONA: The entire Section 2 has been adopted as amended. You divided the Big Island into two districts, two senatorial districts.

BRYAN: That is correct.

CHAIRMAN: That is correct. Section 3, the first sentence has been adopted; Section 4 has not been acted upon; Section 5 has been adopted, as amended; Section 6, relating to vacancies, has been adopted without amendment; Section 7 has been adopted without amendment; Section 8 was deferred until today; Section 9, the same ruling; Section 10 has likewise been deferred; Section 11 has been deferred; Section 12 has been deferred; Section 13 was adopted; Section 14 has been deferred; Section 15 has been adopted; Section 16 has been deferred; Section 17 was deferred; Section 18 was deferred; Section 19, deferred; Section 20, deferred; Section 21, deferred; Section 22 has not been debated at all.

HEEN: It's my understanding that the delegates would like to take up the question of reapportionment which is contained in Section 3. There was an amendment offered by Delegate Sakakihara to amend the second paragraph relating to the first representative district. That amendment was to delete the word—in lines 2 and 3—the words "and Keaukaha, the latter being more particularly described in the schedule," and placing a comma after the word "Puna" in the second line.

CHAIRMAN: At the time of that deferment it was deferred on the ground that possibly some members of the Hawaii delegation did not agree with that amendment. Could we have a report on that, Delegate Sakakihara? Have you reached an agreement on that?

SAKAKIHARA: The Hawaii delegation is divided and we have an absent member. I'd like at this time to request the Committee of the Whole to defer action on Section 3 insofar as applicable to the island of Hawaii until tomorrow when Delegate Sakai will be present.

SHIMAMURA: If the delegate from Hawaii is making that in the form of a motion, I move to amend his motion to defer all of Section 3.

SAKAKIHARA: I'll accept the amendment.

CHAIRMAN: It's been moved and seconded that the entire Section 3 be deferred until tomorrow.

FONG: I think we could defer the question of Hawaii, but as far as the other sections are concerned we are really deferring the meat of this whole committee report. I think we should go right ahead with the other sections.

CHAIRMAN: The Chair is of the same view.

KAWAHARA: I would like to speak against the motion to defer. We've been sitting here for quite a while now, and I think the statement made by Delegate Sakakihara is correct insofar as the island delegation is split. The delegate from the first district didn't say, of course, how we were split, and I'm quite sure we will continue to be split, and I think perhaps it would be wise for us to grab the bull by the horn now and vote and get this thing over with.

CHAIRMAN: We've got to get through this article some time. The Chair is of the same view. However, is there any further view on this? The motion is on the question for deferment. All in favor signify by saying "aye." Contrary. Lost.

SAKAKIHARA: I move at this time that we defer action on Section 3, first representative district, second representative district, third representative district, fourth representative district.

CHAIRMAN: The Chair rules your motion out of order. The motion has already been put and lost.

SAKAKIHARA: No, the motion was to defer action on all of Section 3, Mr. Chairman, the entire section.

YAMAUCHI: I second the motion.

CHAIRMAN: Moved and seconded that we defer action on - - will you state those sections again, Delegate Sakakihara?

SAKAKIHARA: Paragraphs where it reads first representative district, second representative district, third representative district and fourth representative district be deferred until tomorrow.

CHAIRMAN: Are you ready for the question? All in favor of the motion - -

LEE: It seems if we accept the policy not to defer but to take the thing by the horns it would be entirely inconsistent for the deferral of just this Hawaii problem when only one member of the delegation from Hawaii is absent. We have acted on other matters where one or two members have been absent. So, I'm against deferring the proposal unless we defer the entire matter.

SAKAKIHARA: May I explain the reason for the deferment for Hawaii? There is an even division - -

CHAIRMAN: The Chair can't hear you, Delegate Sakakihara.

SAKAKIHARA: I would like to advance the reason for deferment for the first, second, third and fourth representative districts on the grounds that insofar as the second representative district, which comprises the fourth representative district, there is an even division. Two members are for requiring candidates to run at large and two are for definite division of that district, and one of those members is not present and he will be here tomorrow.

CHAIRMAN: He's already had five days' notice. The last time the request for deferment came up was June 30th, Delegate Sakakihara. The Chair will put the question.

KING: May I call attention to the fact that Delegate Silva is not present also, so that means two absent from the Hawaii delegation.

CHAIRMAN: All in favor of deferment signify by saying "aye." Contrary. The motion is lost. Do you now want to put your amendment, Delegate Sakakihara?

SAKAKIHARA: I move that the second paragraph reading "First representative district," I move to amend, after the word "Puna" in the second line thereof and third line up to the word "schedule" be deleted, so that the amendment would read: "First representative district: that portion of the island of Hawaii known as Puna, one representative."

CHAIRMAN: Is there a second?

HAYES: I second the motion.

CHAIRMAN: Any discussion?

WIRTZ: Point of information. I would like to ask the chairman of the Committee on Legislative Functions and Powers, does this amendment in any way disturb the representation on equal proportions?

HEEN: I understand not.

CHAIRMAN: Any further discussion?

DOI: Some of the - - in fact, I want to say, the majority of the Hawaii delegation are interested in seeing that Hawaii be divided just into two districts, East and West Hawaii. Now as a matter of a point of information I would like to ask the Chair whether this is the time that you would like to see the amendment introduced or after we have passed on this other issue.

CHAIRMAN: I think if we take a vote on this, it would then be in order to move your amendment. It would go to the whole section as to the Hawaii redistricting.

LEE: I am not quite sure whether I understand the amendment. I heard the delegate from Hawaii. He said that the language should read as follows: "That portion of the island known as Puna, one representative." Is that right, eliminate the rest? Where would Keaukaha land?

SAKAKIHARA: Keaukaha would be taken care of in the second representative district. By deleting the words "excluding Keaukaha" after the word "Hilo" in the second line thereof.

LEE: All right. May I inquire of the chairman of the committee, with the absence of Keaukaha in the first representative district, how many voters will there be in the first representative district?

HEEN: There would still be four representatives.

LEE: Four.

HEEN: No, you mean in the first?

LEE: Yes.

HEEN: One.

LEE: No, what I meant was, how many voters does Puna have?

BRYAN: 1,819.

LEE: How many does Keaukaha have?

CHAIRMAN: Six hundred, according to the vice chairman.

SAKAKIHARA: Yes, 600; way over 600.

LEE: And wouldn't then the second representative district be over-balanced by way of voters if you put Keaukaha's six or seven hundred voters in that portion of the island of Hawaii known as South Hilo, or would it come out a better balance? Because I cannot seem to understand this manipulating going around here, I want to know why.

BRYAN: I am not sure that I understand that question, Mr. Chairman. I'll try to answer it if I understand it.

CHAIRMAN: What Delegate Lee is asking is whether or not there would be a better balance of registered voters if the proposal was adopted as it stands, including Puna and Keaukaha together. Would that, the deletion of it, disturb the balance as between the respective districts, as I understand him.

BRYAN: Well, there would be some disturbance, naturally.

LEE: Well, I want to find out what disturbance.

BRYAN: Keaukaha would increase the number of voters in the South Hilo District by approximately 644 and reduce the number of voters in Puna District, the first district under this proposal, by that number. That would leave -- I stand corrected on the first figures, approximately 1,711 voters in Puna. Now according to the method of equal proportions as we have applied it here, as long as there are over about 1,250 in any one district they are entitled to one representative as long as the remainder of their -- up to 2,400 is taken up by some other district on the same island. And as I understand it, the amendment is that while the committee gerrymandered that line a little bit in order to increase the vote in Puna, the representatives from the Big Island feel that that's not an area of like interest, so forth and so on. They believe that Keaukaha belongs with Hilo.

LEE: Then, am I to understand, Mr. Bryan, that there's some fatal defects in the majority report, committee report on legislative procedure?

CHAIRMAN: Will you address the Chair, please.

LEE: Thank you, Mr. Chairman, I was -- I'll still not yield the floor. I was just wondering -- I was just following up my question to the chairman of the committee.

BRYAN: May I answer that question?

LEE: Yes, go ahead.

BRYAN: Mr. Chairman?

CHAIRMAN: Please proceed.

BRYAN: We don't consider that this is a fatal defect, and the chairman of the committee assured me that there are no fatal defects in the committee report.

LEE: You mean the chairman was opposed to the committee report, as I understand.

BRYAN: Maybe I better let him speak for himself.

CHAIRMAN: You want to answer Brother Heen's rhetorical question?

HEEN: There is no fatal defect in the report made by the majority of that committee and this change would not make it another fatal defect at all. It'd just add so many more voters to one district by subtracting it from another district. But under the method of equal proportions the number of representatives will remain the same, one for Puna with Keaukaha eliminated, and still four for South Hilo with Keaukaha added to South Hilo.

KING: The precinct of Keaukaha is merely a part of the geographical district of South Hilo. It's not a part of the geographical district of Puna. Why it was put in Puna in the first place I am not certain except there was an effort to get a larger number of votes in the district that was going to elect one representative. It would be the natural thing to put it in South Hilo as they propose to do it now and it would not disturb the allocation of voters between Puna and South Hilo and North Hilo and Hamakua. So that there's no objections to the amendment on that basis. Incidentally, the gentleman who last spoke and questioned the fatal defects of the committee was a member of the committee, as far as I can recollect, and concurred with both of these recommendations with the exception of one or two points.

CHAIRMAN: That's what the Chair understands.

LEE: Well, I certainly didn't concur with the reapportionment end of it.

CHAIRMAN: Are you ready for the question?

MAU: If Puna -- if Keaukaha is withdrawn from the first representative district, then it merely leaves 1,700 votes in that first representative district as I understand it, which is quite a departure from the mean that they used in this thing called the equal proportion theory on the basis of 2,400 voters. Is that correct?

CHAIRMAN: Well, Delegate Mau, I believe the committee stated at the outset that upon the first apportionment there was an arbitrary apportionment; thereafter it has the mathematical application formula. The first apportionment of necessity had some arbitrary features to it.

OKINO: Point of information. If the amendment offered by Delegate Sakakihara is acted upon favorably, that is carried, would it be in order for some other delegate to move an amendment which would incorporate the first four paragraphs of Section 3 beginning from the first representative district, so that all aggregated representatives who are supposed to represent these four districts could be represented from all four districts as enumerated herein as one representative district?

CHAIRMAN: And thus divide the island of Hawaii in two, is that it?

OKINO: Yes.

CHAIRMAN: The Chair would rule that would be an appropriate amendment even after the adoption or rejection of Delegate Sakakihara's proposed amendment.

OKINO: Thank you.

BRYAN: I'd like to correct one statement the chairman made a minute ago. That is, the first apportionment is not arbitrary, the first apportionment is on the basis of equal proportion. However, if you study the committee report as it refers to reapportionment in the future you will see that we have provided there where a district does not have at least a major fraction of the basic denominator required for each representative then it shall be redistricted to be added to another district so that they will be entitled to one representative. That's why I used the term 1,250. It's not too illogical. The committee tried to build the districts up as large as possible in order that that wouldn't happen in the foreseeable future.

MAU: One more question. I see on the board there the most colorful map is that of the island of Hawaii. Does that make any difference at all in the four representative districts set up for the island of Hawaii, the part in blue as compared with the part in pink way up north? They don't have any numbers. The southern part of the island is marked out in blue. Which representative district does that belong to?

SAKAKIHARA: The fourth representative district.

BRYAN: May I answer that, Mr. Chairman. I think he's speaking of West Hawaii. That belongs to the fourth representative district which is all of West Hawaii.

CHAIRMAN: Are you ready for the question? The question is on Delegate Sakakihara's amendment which would delete Keaukaha from the second paragraph of Section 3. All in favor signify by saying "aye." Contrary. The Chair is in doubt. All in favor please rise. Contrary. The motion is carried.

DOI: I would like to move to amend Section 3, the section of Section 3 dealing with the first representative district to the fourth representative district inclusive. In lieu of those four representative districts, I would like to move to place the following words:

First representative district: East Hawaii, island of Hawaii, six representatives;
Second representative district: West Hawaii, island of Hawaii, two representatives.

CHAIRMAN: May I ask how those two districts would be described if your amendment was carried?

DOI: The exact wording has been used as regards the senatorial district, and I believe that is sufficient as reference to the present division of Hawaii.

YAMAMOTO: I second it.

FUKUSHIMA: I'd like to ask a question of the movant. Does that increase the representation from the island of Hawaii?

DOI: No, it doesn't. It's the same number, eight. It doesn't give East Hawaii any increase nor does it give West Hawaii any additional numbers than that recommended by the Committee on Legislative Matters.

HEEN: May I suggest that as amended the paragraph relating to the first representative district shall read the same as it reads in the Organic Act:

First representative district: that portion of the island of Hawaii known as Puna, Hilo and Hamakua.

That's the way it reads in the Organic Act.

DOI: That would be satisfactory.

OKINO: I should like to make this suggestion. I think it would be better to say North and South Hilo.

HEEN: Well, with reference to what is now the fourth representative district in the committee proposal we speak of West Hawaii the same way it is spoken of in the Organic Act, "that portion of the island of Hawaii known as Kau, Kona and Kohala." In other words, they don't divide the two Kohalas into North and South Kohala nor do they divide the Konas into South Kona and North Kona. Of course it can be done, North Kona and South Kona, North Kohala and South Kohala and refer to the Hilos as being South Hilo and North Hilo, if you want to do it that way; but if you follow the Organic Act we'll have no trouble at all.

HAYES: Under this amendment, I believe Delegate Doi is taking two away from West Hawaii. Isn't that correct?

CHAIRMAN: No, it's simply dividing the - -

DOI: We are following the recommendations of the committee proposal as regards the division between West and East Hawaii. There is no increase or decrease.

HAYES: But at the present time West Hawaii - - at the present time you do have eight representatives from the island of Hawaii, don't we?

DOI: That is only because we are following the committee recommendations again and that is equal proportions.

HAYES: So that under your amendment, then, West Hawaii would lose two representatives.

DOI: Under the committee proposal, Mr. Chairman.

HAYES: I'm talking about today. We have four representatives from the island of West Hawaii and four from East Hawaii. That's the situation as it is today, is it not?

DOI: That is correct.

HAYES: Well, that's what I'm saying. The amendment that is being made now - -

DOI: But even if we adopt the recommendation of the committee, it would still be the same. We will be taking away two from West Hawaii. I don't see why that argument should be used against this amendment.

CHAIRMAN: That's part of the problem of reapportionment.

NIELSEN: To resolve this thing, it simply means that instead of breaking down into districts in East Hawaii, we simply elect at large six from East Hawaii and at large two from West Hawaii. That's all this amendment of Mr. Doi's means, that they're at large in both East and West Hawaii.

KING: I would like to speak in agreement with the chairman, if I understood him correctly, and that is that the amendment should designate the district East Hawaii and then name the districts, Puna, Hilo and Hamakua; West Hawaii, name the districts, Kau, Kona and Kohala.

CHAIRMAN: The Chair feels you should adhere to the language of the Organic Act. It'd be simpler, would it not?

DOI: That is right. We are happy to do that. The reason why we suggested the recommendation so worded was because the section on the Senate was done in the same wording I stated. We are very happy to adopt the recommendation made by Senator Heen.

CHAIRMAN: Are you ready for the - -

SAKAKIHARA: May I amend the motion? The second representative district, amend line two, add comma after the word "Hilo," delete "excluding Keaukaha," four representatives, and the remainder remain the same, the third and the fourth.

KING: The amendment offered by Delegate Doi would really telescope the first, second, third and fourth representative districts into two. The amendment now offered by Delegate Sakakihara - -

SAKAKIHARA: I withdraw my amendment.

CHAIRMAN: There has been no second, Delegate King. The Chair will put the question.

DOI: Before the question is put I would just like to make one statement. The amendment as proposed at this moment was the consensus of the majority of the delegation from Hawaii that met during lunch hour.

LYMAN: I happen to come from the Puna district. We in the Puna district feel that if we are going to reapportion and if we have earned a representative in the legislature of the State of Hawaii we should be entitled to it. For the past fifty years the rural areas on the island of Hawaii have always been dictated to by the urban center, Hilo. I, therefore, ask that the group vote against this amendment.

KAUHANE: I know that this is a Big Island fight and I should not get into the mixup, but unfortunately I just can't sit by here with some of the voting constituents of the Big Island who have come in and suggested that the representative districts, both the first and second districts, should follow on the same lines as the election held for the election of delegates to this Constitutional Convention. The reason that they put forth such a suggestion is as follows: that if we were to take the election of delegates from combined precincts B which will include Puna and Keaukaha, there is all opportunity for the minority group to be represented from that combination. If we take precinct combination C, which embraces Hilo, Honokaa and Hamakua, that that part of the first representative district would have an opportunity to send people of their choosing from a minority group to represent them in the legislature. The same holds true with combined precincts G and H. I am just wondering whether some of my Democratic colleagues who sit here in this Constitutional Convention are looking at the situation that will confront the Democratic Party when we become a state—the possibilities of not being able to elect Democrats from various precincts to represent the minority people of that section of East and West Hawaii.

CHAIRMAN: You think this is a Republican plot, do you?

KAUHANE: I am trying to get away from a Republican controlled legislature as being advocated by the present chairman of the Republican Party, so much so that I feel that equal representation and strength should be considered here the request of the people. The constituents who vote for the elected officials from the Big Island who sit here in this Convention, and work as janitors and Sergeant-at-Arms and what not, feel that the present method by which the delegates were elected is satisfactory to them.

They also say this, Mr. Chairman, that the division of the two - - of Hawaii into two senatorial districts will cause a hardship on the senator that is to be elected representing the people of West Hawaii, that they feel that the senator should be elected from the whole County of Hawaii rather than having Hawaii cut up into two senatorial districts. That is the information that has reached me and I'd like to pass it on to the members of this delegation.

OKINO: I might add that the vote on this question is somewhat of a test as to what might follow eventually.

CHAIRMAN: The Chair will put the question. The question is on Delegate Doi's amendment which in substance would divide the island of Hawaii into two districts as defined in the Organic Act, the first district to have three representatives and the second to have two. All those in favor - -

TAVARES: I don't feel the matter has been aired enough for the rest of us to know what's what. We've heard two or three people speak for and against.

CHAIRMAN: Well, you have the floor.

TAVARES: I'd like to have the Hawaii delegation argue more pro and con so we can get the merits of both sides.

CHAIRMAN: Well, they've been given every opportunity.

SAKAKIHARA: May I submit the case in opposition to the motion to establish two representative districts for the island of Hawaii and the representatives running at large as proposed under Mr. Doi's amendment. I have been in the legislature for many sessions. I think I served ten sessions in the legislature. I feel very strongly that the rural districts should be assured of representation, particularly from the island of Hawaii. Speaking geographically, Puna is entitled to representation in the House of Representatives, and the district of North Hilo and Hamakua combined is entitled to one representative in the legislature. I had much difficulty in the sessions of the legislature trying to find out from the people of that district—districts of Puna, Hamakua and North Hilo—as to their needs and wants and I'm sure if the rural districts, as proposed in the committee's report, excluding Keaukaha, were given adequate representation, then the burden on the members being elected from East Hawaii at large would not be so great. And I believe that the members from Hawaii would more effectively represent the people of the district of Puna, the district of North Hilo and Hamakua combined and the South Hilo District. I submit, Mr. Chairman, and ladies and gentlemen, that this amendment should be voted down.

KAWAHARA: The previous speaker has mentioned something about geographical representation. It has been my impression that the membership in the Senate would take care of that geographical representation. I would like to point out one more thing. If we went along with this idea of giving Puna one representative, perhaps we should give the district of Kau, which is slightly larger than the island of Oahu, one representative, even though Kau has some 1,100 voters. We have somewhat resigned ourselves to this idea, that in the Senate we will get geographical representation and in the House, come what may, hell or high water, we will take our representation according to population. I don't know, I think the arguments are somewhat inconsistent. On the one hand we say, let's have geographical representation, let's have rural areas represented. Certainly, in the Senate we will be represented; in the House we will count the number of heads and as far as I can see, in Kau there's something like 1,108 registered voters. I don't know how many there are in Puna but I understand somewhere around 1,800. I think we have to be realistic and take what's coming to us.

SAKAKIHARA: In reply to the remarks of the last speaker, I think the 15 members of the Committee on Legislative Powers and Functions will bear me out and the minutes of that committee will bear me out, that on the question of reapportionment, I as a member, and the only member from East Hawaii, at that time, offered to the West Hawaii delegates one representative from Kau, one from North and South Kona, one for North and South Kohala, and that was rejected in spite of the fact that my colleagues from East Hawaii were rather reluctant to give one more to West Hawaii.

CHAIRMAN: Delegate Sakakihara, the Chair notes that you joined in the committee report without dissent.

SAKAKIHARA: I do, yes.

CHAIRMAN: And yet you come to the floor of the Committee of the Whole and offer an amendment.

SAKAKIHARA: No. Amendment, in so far as we reserved that - -

CHAIRMAN: Correct.

SAKAKIHARA: I reserved my right in the committee report.

LARSEN: It seems to me we're coming back to the original again. The committee did a tremendous lot of work on trying to make it fair. If now every little district is going to pull here, pull there, pull everywhere, each trying to grab a little extra, a few votes here and a few votes there, we're not going to end with something better than we've got. We've a good suggestion here, and I would like to urge the majority to let's vote on this committee [proposal]. We're certainly not making it better by this type of thing we're doing now, trying to split them here. If we're going to have representation, one to 2,450, let's take it. In ten years from now, if it hasn't worked out well, then let us change it.

CHAIRMAN: Are you speaking for or against the amendment?

LARSEN: I am voting against the amendment and support the committee.

DOI: I too am in favor of giving the rural areas representation as well as different districts as they exist in Hawaii today, but if we were to do that we would need nine representatives instead of eight.

I would also like to say the mere fact that a local unit elects one representative doesn't mean that that unit gets the best representation possible. I would think that in this case Puna, speaking specifically, would benefit more by voting for the six East Hawaii delegates than they would if they should vote and elect only one representative. I do not think the six representatives could ignore a vote of 1,800 from Puna and they must accede to the needs and wishes of the people from Puna.

CHAIRMAN: The Chair will put the question.

SAKAKIHARA: May I further amplify that remark to correct the impression left by the previous speaker. That is not true.

CHAIRMAN: I didn't hear what the delegate said.

SAKAKIHARA: I said I would like to correct a misimpression left here by the previous speaker. I served in the 1947 session of the legislature. In spite of the appeal and request of the people of the district of Puna for various public improvements, namely and particularly the highways in Puna, Puna District was neglected, was not given one copper penny in the final appropriation, and I felt very strongly since then that the Puna district should be represented in the legislature. It was not until the 1949 session that I made a strong appeal to the Hawaii delegation in the House and with the help of the members from Oahu, Kauai and Maui, that was how Puna was taken care of at the 1949 session. I regret very much the previous speaker has had no prior legislative experience which some of us have, and I believe very strongly that the rural district, namely the district of Puna and the districts of North Hilo and Hamakua combined, should have a representation in the House.

CHAIRMAN: The question is on the amendment.

LYMAN: For thirty years we have heard the same old story from the same old fellows running from Hilo and they've never produced the goods. I want to back up Mr. Sakakihara and what he has said. It's only in the last two years that Puna got one red copper penny—they got $200,000—but for the thirty years previous to that Puna never got a penny.

CHAIRMAN: I gather you're against the amendment.

LYMAN: I am.

KING: I would like to speak along the lines Delegate Larsen spoke. The committee amendment, I mean the committee report, after a great deal of thought and consideration and the expression of the wishes of the delegates from the various districts were presented to the committee for consideration, provided for the division of East Hawaii into three districts, Puna, South Hilo and then North Hilo and Hamakua. This amendment that was offered by Delegate Sakakihara is merely a rectification of the boundaries. It doesn't affect the total number of delegates or their allocation. In other words, Puna, less Keaukaha, would elect one delegate; South Hilo, plus Keaukaha, would elect four; North Hilo and Hamakua would elect one. That's in the committee report and I believe we should support it. If we're going to open it up for six at large, the probabilities are all six would come from the city of Hilo, and neither Puna nor North Hilo and Hamakua would obtain any representation.

MAU: In line with what has been said in support of the committee report, I notice that three of the committee members who favored that report voted to amend. So I don't know where we stand now. It seems to me that after the first amendment had been made and voted on and agreed to, that further amendments—if the representatives or delegates from Hawaii desired such change from the committee report—that they ought to be given some consideration.

CHAIRMAN: The Chair understands that Delegate Sakakihara's amendment was more of a perfecting amendment, not a substantive amendment.

MAU: But no committee member got up to say that was what they agreed to.

LEE: In line with that just mentioned by Delegate Mau, as long as a particular representative district doesn't lose any members, the number does not decrease, I assume that that argument would also apply to any other amendments proposed, say in the fourth district or fifth district on Oahu.

CHAIRMAN: Let us argue one at a time. The Chair will put the question. The question is on the amendment. The amendment would divide the island of Hawaii into two districts, one and two, the first to have six representatives and the other to have two. All those in favor signify by saying "aye." Contrary. The motion, the amendment is lost.

LEE: I think there was some doubt in my mind on the matter. I suggest a raising of hands on that matter or a roll call.

DELEGATES: Roll call.

CHAIRMAN: The Clerk will call the roll.

Ayes, 20. Noes, 36 (Apoliona, Ashford, Bryan, Castro, Cockett, Corbett, Dowson, Fong, Gilliland, Hayes, Holroyde, Ihara, Kage, Kam, Kanemaru, Kellerman, Kido, King, Lai, Larsen, Loper, Lyman, Ohrt, Porteus, H. Rice, Richards, Roberts, Sakakihara, Smith, St. Sure, Tavares, A. Trask, Wirtz, Woolaway, Yamauchi, Anthony). Not voting, 7 (Arashiro, Crossley, Kawakami, Phillips, Sakai, Silva, White).

CHAIRMAN: The motion is lost.

SAKAKIHARA: May I offer an amendment to the paragraph relating to the second representative district? In second line, on line two thereof after the comma after the word "Hilo" delete the words "excluding Keaukaha" so that the amendment would read:

Second representative district, that portion of the island of Hawaii known as South Hilo, four representatives.

CHAIRMAN: Is there a second?

KING: I'll second it.

CHAIRMAN: That is simply in conformity with the prior amendment.

KING: It is a perfecting amendment to carry out the amendment already adopted with regard to the first representative district.

CHAIRMAN: The Chair doesn't feel there's any need for debate on this. All those in favor signify by saying "aye." Contrary. It's carried.

SAKAKIHARA: May I move for the adoption of the third paragraph which reads:

Third representative district; that portion of the island of Hawaii known as North Hilo and Hamakua, one representative;

OKINO: I second that motion.

CHAIRMAN: Couldn't we take both at the same time, Delegate Sakakihara, third and fourth?

SAKAKIHARA: The fourth is very controversial, Mr. Chairman. That is the reason why I deliberately left it out.

CHAIRMAN: Is there any discussion? If not the Chair will put the question. All those in favor signify by saying "aye." Contrary. The ayes have it. It's adopted.

SAKAKIHARA: Since Senator Charles H. Silva and Supervisor Sakuichi Sakai, both of West Hawaii, are absent here now, I respectfully request the Committee of the Whole to defer action on the fourth representative district.

CHAIRMAN: Haven't we already voted on that once?

SAKAKIHARA: No, we have not, Mr. Chairman.

CHAIRMAN: Didn't you ask to defer the whole section?

KING: Well, Mr. Chairman, that was another proposition, to defer all four.

CHAIRMAN: Is there a second?

YAMAUCHI: I second it.

KING: This merely defers action on the fourth representative district which gives to West Hawaii two delegates at large. Delegate Sakakihara's motion is that we defer action until two of the delegates from that district are here, Delegate Silva and Delegate Sakai.

CHAIRMAN: All in - -

NIELSEN: I don't see any reason to defer action on that. We're only entitled to two representatives in West Hawaii under reapportionment and we're going to go along on reapportionment. We're only entitled to two, and two at large is the only way to elect them over there. So I see no reason for deferment by East Hawaii on this matter.

DELEGATE: That's right.

OKINO: In fairness to Delegate Silva and Delegate Sakai, I feel that the matter should be deferred. Delegate Nielsen and Delegate Kawahara are delegates from Kona. The two delegates from Kohala are absent and I think in all fairness the matter should be deferred.

CHAIRMAN: They knew this was coming up though, didn't they?

KAWAHARA: I'd like to correct the statement made by the previous speaker that I'm a delegate from Kona. I am a delegate from the Combination H which includes Kau, the district of Kau. Even if the other two delegates did come and express an opposing view it would be the same. I'm quite sure that the voting would be fifty-fifty. In other words, I think we're going to be split. I'm in favor of taking this matter up now so that it's going to be two to two, so that - - Well, Delegate Silva is here. I'm in favor of taking this matter up now, Mr. Chairman.

CHAIRMAN: It seems to the Chair we should take a vote on this.

SAKAKIHARA: The reason why I deferred action in the absence of Senator Silva is because I happen to know that he has an amendment to second paragraph - -

CHAIRMAN: He is here now. The Chair will recognize him right away. Delegate Silva, if you can catch your breath and turn to Section 3 - -

SILVA: I think I am pretty well familiar with the subject. I was just wondering whether we on the island of Hawaii are going to divide East Hawaii into districts. On the same island, by the same token we move to another district and we say—that very same island—the representative district shall not be divided. Then in the senatorial district we divide the County of Hawaii into two senatorial districts, the first and the second. In the second senatorial district with two senators we fail to - -

CHAIRMAN: Pardon me, you didn't get what was before the house, the question of whether or not we should defer.

SILVA: Defer?

CHAIRMAN: Defer or - -

SILVA: I think to defer is very much in order, Mr. Chairman, because Mr. Sakai isn't here and the West Hawaii delegates are sort of divided two-two on that question.

CHAIRMAN: Well, there's been considerable sentiment expressed in favor of going forward with this. So if you have anything to say why it should be deferred, you ought to give it to the body here.

SILVA: Well, as I pointed out a moment ago that Mr. Sakai isn't present. I think Sakai and myself are for cutting West Hawaii into two representative districts so that North and South Kohala with a portion of probably Kona, like they elected to the Convention here, would elect one representative, and the other part of Kona with Kau, like Mr. Kawahara was elected under those circumstances, would elect the other representative. Otherwise you're going to find Kohala District and Kau without representation at all.

CHAIRMAN: The question is on the deferment. All those in favor signify by saying "aye." Contrary. The motion is lost.

HAYES: I feel that we should let Senator Silva catch his breath and go to the next one and then we come back to the other. I don't believe he knows what we've already done with East Hawaii, dividing them up as reported by the committee. Are you ready?

SAKAKIHARA: I desire to ask the Committee of the Whole to defer until the end of the Proposal No. 29 action on fourth representative district.

CHAIRMAN: Would you amend that motion to read until the end of the section? In other words we then could clean up the section.

SAKAKIHARA: Yes.

CHAIRMAN: I think that would meet your point.

HAYES: I second it.

CHAIRMAN: It's been moved and seconded that we defer action on this until we dispose of the other items in the section. All in favor signify by saying "aye." Contrary. It's carried.

Fifth representative district. Is there a motion that be adopted? Mr. Chairman, is there any further action need to be taken on this section?

HEEN: No, as I understand it, action has already been taken whereby Molokai and Lanai has been made into one representative district with one representative, and the rest of Maui constituting one representative district with five representatives.

KING: Just for a brief statement. Three letters were received in the Convention this morning, two from Molokai and one from Lanai. They were referred to the Committee of the Whole. They are pertinent to this particular subject. I suggest that perhaps the Clerk might re-read these letters before we complete discussion on these two districts.

LEE: I don't think that's necessary. I think it's communications from some Republican clubs.

DELEGATES: Mr. Chairman.

WOOLAWAY: Mr. Chairman, under the circumstances - -

CHAIRMAN: Just a minute.

KING: Mr. Chairman, in reply to - -

CHAIRMAN: Delegate Kauhane is recognized.

KAUHANE: Thank you, Mr. Chairman. I think I am of the same opinion as Delegate Lee that the letter has already been read. The fact that we received three letters from the island of Molokai and the rest of the people did not write in their views, I am certain that they favor what was voted upon by this delegation whereby Lanai and Molokai shall be constituted as one representative district. So therefore the preponderance of evidence is in favor of the action taken by the committee by the silence of any protesting letters.

CHAIRMAN: Delegate Woolaway is recognized.

KING: I rise to the point of personal privilege, please. The previous speaker before the last one, Delegate Lee said - -

CHAIRMAN: Don't take him too seriously.

KING: Well, never mind, I want the records to show that one of the letters was from Judge S. H. H. Ashford, a leading Democrat on the island of Molokai and the brother of the lady who sponsored the amendment and he's opposed to the amendment.

WOOLAWAY: Under the circumstances I now move for the suspension of rules so that we can reconsider our action on Maui, the County of Maui.

ST. SURE: I second that motion.

CHAIRMAN: It's been moved and seconded that we suspend the rules in order to permit this committee to reconsider its action.

ROBERTS: I'd like to call attention to what the group is doing. The motion to suspend the rules on this is for second consideration. We've already acted on this, as I recall, twice, and on the basis of the rules that we've adopted for the Committee of the Whole as well as outside, it is that it not be reconsidered twice, and therefore the suspension of the rules as proposed is a procedure for opening up any other question that might later be open.

WOOLAWAY: Mr. Chairman, if I am not mistaken we reconsidered once.

CHAIRMAN: If that is the case, then there is no occasion to suspend the rules.

PORTEUS: I think those who made the motion are correct in asking for a suspension of the rules if they desire to get into this question further. I think the delegate from the fourth district is correct in pointing out that the motion for the suspension of the rules for the purposes of considering these particular sections is to get around the ruling that the matter has been reconsidered once and under our rules cannot be reconsidered twice. Therefore, it is necessary to suspend the rules in order to deal with this situation on the County of Maui. The rules are not - - as I understand it, the motion is not made for the suspension of rules. Any business that anybody wants to take up from now on out - -

CHAIRMAN: The Chair understands that it only applies to the County of Maui. Are you ready for the question. It's been moved and seconded the rules be suspended in order to permit reconsideration of the re-districting of the County of Maui. All in favor signify by saying "aye." Contrary. The Chair is in doubt.

DELEGATE: Roll call.

CHAIRMAN: I think we can have a standing vote on this. All those in favor of suspension will please rise. Contrary. So close, I think we'd better have a roll call. I think Brother Heen stood up twice.

LEE: Mr. Chairman, did you count 32 ayes? If not the motion would fail anyway. So, if there's less than 32, the motion would fail.

CHAIRMAN: That's right, it was not 32, it was 26 to 25 or something like that. The motion fails. You're quite right. It requires 32 votes.

WOOLAWAY: I'd like you to note that there were six Maui people in favor of suspension here.

HEEN: I move for a recess, Mr. Chairman, a short recess.

CHAIRMAN: Recess for five minutes.

(RECESS)

CHAIRMAN: Will the delegates please take their seats?

DELEGATE: Let's go.

H. RICE: I suggest we start on Oahu now.

CHAIRMAN: Delegate Heen, it's been suggested that we start on the reapportionment of the island of Oahu.

BRYAN: I'd like to move the adoption of the paragraph beginning "The eighth representative district." I think for the sake of clarity, although there are amendments which would change the district numbers, if until we finish the article we can retain the numbers in the report they will jibe with the numbers on the map, and I think it will keep it a little clearer until we get to the end, and then we can change it or you can change them in the report.

LAI: I second the motion.

CHAIRMAN: That is just a mechanical change. It's been moved and seconded that the eighth representative district as recommended by the committee be adopted. Is there any discussion?

LEE: Let's see, that's Koolaupoko and Koolauloa. What precincts are they at the present time, may I inquire? That's Kaneohe, the first of the fifth?

HOLROYDE: That's right, first of the fifth.

LEE: Second of the fifth?

HOLROYDE: Second of the fifth, third of the fifth, fourth of the fifth, twenty-eighth of the fourth, and thirty-eighth.

LEE: I see, that includes Waimanalo and Kailua.

HOLROYDE: It does, that is correct.

CHAIRMAN: All those in favor signify by saying "aye." Contrary. Carried.
Ninth representative district. Will you make a motion please?

BRYAN: I'd be very glad to. I move we adopt the paragraph concerning the ninth representative district.

LAI: I second that motion.

CHAIRMAN: It's been moved and seconded that we adopt the paragraph of Section 3 relating to the ninth representative district on the island of Oahu. Any discussion? If not, all those in favor signify by saying "aye." Contrary. The ayes have it.

BRYAN: I'd like to move the adoption of the paragraph concerning the tenth representative district.

LAI: I second the motion.

CHAIRMAN: It's been moved and seconded that the paragraph relating to the tenth representative district on the island of Oahu be adopted. All those in favor signify by saying "aye." Contrary. Carried.

KAUHANE: I move for the adoption of the eleventh representative district.

KAM: I second that motion.

CHAIRMAN: Any discussion? If not the Chair will put the question. All in favor signify by saying "aye." Contrary. Carried.

BRYAN: I move the adoption of the paragraph dealing with the twelfth representative district.

CHAIRMAN: What was that?

BRYAN: Twelfth. I move the adoption of the paragraph concerning the twelfth.

NODA: I second the motion.

SHIMAMURA: I made a motion previously, some days ago. I should like to renew my motion to amend by substituting for paragraph thirteen and fourteen of Section 3 the following:

> Twelfth representative district: that portion of the island of Oahu known as upper Nuuanu and Kapalama, and more particularly described in the schedule under the caption the twelfth representative district and the thirteenth representative district, six representatives.

And number the subsequent representative districts to conform. I have the written amendment here, Mr. Chairman.

CHAIRMAN: The Chair would like to point out the minute we get into this kind of amendment we're going to take a long time. Now presumably the committee had representatives from both political parties and came out without any dispute as to this particular section.

SHIMAMURA: I am willing that it be deferred until a later date. It has been deferred for several days already.

LEE: I move that it be deferred until the end of the section.

CHAIRMAN: End of what section?

LEE: This particular section, Section 3.

SHIMAMURA: I second the motion.

CHAIRMAN: It's been moved and seconded - - Delegate Fong.

FONG: I think we're ready to vote on that question

CHAIRMAN: You have to vote on this motion then. It's been moved and seconded that it be deferred until the end of the discussion on the section. All those in favor signify by saying "aye." Contrary. The motion is lost.

WIRTZ: I'd like to ask the chairman of the Legislative Committee a question. In the amendment as I understood it, offered by Delegate Shimamura, a combination of the twelfth and thirteenth would still combine the total number of representatives.

KAUHANE: Point of order. Wasn't the motion lost?

CHAIRMAN: The motion was lost. The motion to defer was lost. So we're now on the subject of the twelfth representative district.

BRYAN: No second.

CHAIRMAN: The motion to defer it was lost.

WIRTZ: Am I in order?

CHAIRMAN: You're in order. Proceed.

WIRTZ: The question that I want to ask the chairman of the Legislative Committee is, by combining the twelve and the thirteen, how does that affect the representation on the theory or doctrine of equal proportions?

BRYAN: Before I speak on the question I insist that we have a second on the motion.

J. TRASK: I second the motion.

BRYAN: As I understand it - -

CHAIRMAN: It's been moved and seconded that the twelfth representative district be amended to include Kapalama, as I understand it. Is that the effect of your motion, Delegate Shimamura?

SHIMAMURA: That is right, Mr. Chairman.

CHAIRMAN: Proceed.

BRYAN: That would, under the method of equal proportions, would leave them with five representatives rather than six and the sixth representative would go to Koolau.

J. TRASK: Mr. Chairman, let me clarify that. The word is Koolau, and not Kulau.

CHAIRMAN: The Chairman has already chastised him for that, Delegate Trask, silently.

H. RICE: I'd like to know if - - and it says "Nuuanu, more particularly described in the schedule." I don't understand that schedule. Where is that schedule presented to us?

CHAIRMAN: That's a part of the matter that's before the committee. It's Proposal No. 30 accompanying - -

AKAU: I'd like to ask the delegation here to vote against the amendment. I think it's high time we got what was coming to us and if we vote for the amendment, unfortunately these districts would actually lose one representative. So if you're voting I trust that you'll vote against it.

WIRTZ: The purpose of my question was to bring that out. I understood the movant to say that he wanted six representatives in those two districts. That was part of his motion, to combine the twelfth and thirteenth and leave the total number at six. That is why I brought out the question from the chairman of the Legislative Committee that under the theory of equal proportions twelve and thirteen combined would only have five.

CHAIRMAN: This is the same amendment that was proposed at our last meeting which did involve the combination of the twelfth and thirteenth representative districts allocating to the two districts six.

HEEN: That's correct. If the delegate who proposed the amendment insists upon six, then he's out of order for the Convention has gone on record as adopting the principle of equal proportions. Having adopted that principle, then if he wishes to have that motion considered, he will have to leave that to be determined under the method of equal proportions as to how many representatives will be elected from the combination of the two districts.

CHAIRMAN: Delegate Shimamura, what have you to say to that point of order. It seems to me there would be some substance to it.

MAU: If what the chairman of the committee has just stated is correct, what about the action we took in Puna? Isn't that the same? Is there a difference there?

CHAIRMAN: That did not involve the taking away or adding to the number, as the Chair understands it. This does.

MAU: This doesn't add to anything. Both of them give three each, that would be six.

HEEN: In the case of Puna and South Hilo it didn't make any difference. Under the method of equal proportions neither Puna lost any nor South Hilo gain any.

MAU: As I understand the amendment neither will these districts, if combined, lose any representative.

CHAIRMAN: They will if we abide by what this body has already agreed upon, namely, the application of the principle of equal proportions. That's what Delegate Heen is pointing out.

MAU: Assuming that the Convention votes for it, and I don't think it will, they still have six if they vote for the amendment.

CHAIRMAN: His point of order is that we first have got to reconsider our basic principle before this motion is in order. I am now asking Delegate Shimamura if he doesn't agree that there's substance to that point of order.

MAU: I'd like to be informed about that, on that point of order, whether or not we took that as a separate motion and voted on the theory or whether we voted on a section which carried that theory.

CHAIRMAN: No, we voted on that as a principle.

NIELSEN: How many registered voters, may I ask, are in the twelfth and thirteenth combined?

CHAIRMAN: Will you hold that a minute until the Chair straightens out the point of order? Delegate Shimamura, the Chair is inclined to agree with the chairman of the committee on that point of order unless you can convince us otherwise.

SHIMAMURA: I don't think that point of order in my humble opinion is well taken. For this reason. We voted on this special paragraph twelve, and this amendment is to this particular paragraph, and if this Convention adopts this amendment it is amending this particular paragraph.

CHAIRMAN: Don't you agree that it's an invasion of what the committee has already done in regard to adopting the principle of equal proportions?

SHIMAMURA: The principle of equal proportions as far as the particular article is concerned relates to the reapportionment in 1959. It's no part of this article at all, except for Section 4.

BRYAN: I'd like to speak on that point of order. As I recall the morning that we had the explanation of the mathematical process of equal proportions there was a motion made, duly carried, and I believe the minutes will bear it out, that we follow the method of equal proportions in allocating the representatives in the apportionment which we are speaking of now.

HOLROYDE: May I add a little bit to that also? Delegate Mau's inquiry is to Puna. He implied that the equal proportions system was not applied there, didn't appear like it was applied there, and I grant from where he sits his observation probably looked to be correct, but the committee here checked equal proportions method when that proposal was first submitted and found out that it did not alter the representation at all and that theory was followed in that change. There was no - - under the system of equal proportions there was no change in representation.

OKINO: Point of information. I should like to ask the chairman of the Committee on Legislative Powers and Functions a question. If the twelfth and thirteenth representative districts are combined and if the number of representatives by reason of this combination is to reduce the number of representatives from six to five, where is the sixth representative going?

HEEN: Under the method of equal proportions and using the priority list that is established in connection with the application of that method, that one delegate lost by the combination of the twelfth and thirteenth would go to Windward Oahu, Koolauloa and Koolaupoko.

KING: Mr. Chairman, have you ruled on the point of order yet?

CHAIRMAN: I have not. The Chair is trying to find out what's in the minutes. The Chair is of the view that we adopted the principle of equal proportions. That being so, it seems to follow that if this will involve, upon an application of that principle, a change of one representative, the present motion is out of order.

KAUHANE: Point of order. I believe the committee did a very good job by arriving at equal proportions to determine the number of representatives for each representative district, but the poll has just been taken of the representatives from the fifth district and the majority of them are

against the amendment, so I think let us vote on the amendment that is now being submitted. I move the previous question.

HEEN: I insist upon my point of order. My recollection is clear, Mr. Chairman, that at the earlier stages of the consideration of the question of apportionment and reapportionment, I believe I made the motion that the committee adopt as the sense of the committee that the method of equal proportions be applied, and that carried.

CHAIRMAN: The Chair is of that opinion and will so rule. Delegate Shimamura, you may take an appeal from the ruling of the Chair if you care to.

J. TRASK: In lieu of the decision just made by the Chair, I want to amend Delegate Shimamura's amendment to strike out the word "six" and include the word "five."

CHAIRMAN: Is that acceptable, Delegate Shimamura?

SHIMAMURA: No, Mr. Chairman, that is not acceptable to me.

FUKUSHIMA: For the benefit of the rural areas, I'll second the motion.

CHAIRMAN: The Chair didn't hear your statement, Delegate Fukushima.

FUKUSHIMA: I'll second Delegate Trask's motion.

CHAIRMAN: Delegate Trask's motion is to move to amend combining the twelfth and thirteenth districts, changing the figure by one representative.

FUKUSHIMA: That is correct. I'll second that motion.

APOLIONA: If you have ruled that Delegate Shimamura's amendment is out of order, then Delegate Trask's amendment to that amendment is out of order, too.

CHAIRMAN: No, that's not correct. This does not invade what the body has already adopted as to the theory of equal proportions.

KAWAHARA: May I ask a question of the chairman of the Committee on Legislative Powers and Functions? As I read Section 4, of the Committee Proposal No. 29, Section 4, there is a definite statement that reapportionment of the House of Representatives in 1959 shall be on the basis of equal proportions. Nothing in Section 3 -- there is no definite positive statement to the effect that the reapportionment or apportionment shall be on the basis of equal proportions.

CHAIRMAN: You don't reapportion the Senate, just the House of Representatives.

HEEN: That's correct. There's no mention of that method of reapportionment in Section 3 but the fact remains that the apportionment, initial apportionment was made on that basis. If you will read the report it states that the initial apportionment until reapportionment was made under the method of equal proportions.

CHAIRMAN: The question is on the amendment.

SHIMAMURA: I did not have an opportunity to address myself to the Chair on the Chair's ruling on the point of order. May I speak to that now, Mr. Chairman?

CHAIRMAN: You may.

SHIMAMURA: If there was such a vote, and I think the Chairman is correct, that it was a sense vote.

CHAIRMAN: It was a what?

SHIMAMURA: It was a sense vote.

CHAIRMAN: That is correct.

SHIMAMURA: That was a mere general vote on the general proposition of a sense vote and it does not directly alter the situation. In other words, this does not directly conflict with that vote because this is an amendment to a definite specific paragraph. I think the Chairman has ruled because the incidental effect of the house voting on this section on this particular paragraph, if it did agree to it, would be to overrule its prior sense vote. This is not in direct consideration of the sense vote, Mr. Chairman. This amendment is a specific amendment to a definite paragraph.

CHAIRMAN: Delegate Shimamura, the Clerk has finally found the minutes. The discussion occurred when Mr. Dodge had made his explanation, and this is from the Clerk's notes: "Following the explanation of Mr. Dodge, Delegate Larsen moved that the Committee of the Whole accept the method of equal proportions as worked out by the Committee on Legislative Powers and Functions. Seconded by Delegate Heen. There was considerable discussion on this matter following which the Chair put the question to adopt the method of equal proportions as worked out by the Committee on Legislative Powers and Functions, which motion was adopted."

SHIMAMURA: May I ask when that vote was taken, whether that sense vote was taken after my motion to amend?

CHAIRMAN: That was taken before your motion to amend, so the Chair adheres to its ruling.

TAVARES: I rise to a point of order. If Delegate Shimamura's motion is out of order, an amendment to it is out of order because it places us in this position: if we vote for the amendment we are making a motion not out of order, in order; if we vote against it then we are voting to retain the original one which is out of order.

CHAIRMAN: The Chair construes it as a new and independent motion made by Delegate Trask and seconded by Delegate Fukushima.

FUKUSHIMA: Mr. Chairman, if this is a new motion, I withdraw my second.

CHAIRMAN: There is nothing before the house.

A. TRASK: I second the motion.

CHAIRMAN: It has been moved by Delegate James Trask and seconded by Delegate Arthur Trask that the twelfth and thirteenth representative districts be combined and that the two as combined have five representatives.

FONG: I don't think I can sit here and let that highway robbery go by.

CHAIRMAN: Are you referring to the Chair's ruling or what, Delegate Fong?

FONG: This motion.

CHAIRMAN: Oh!

MAU: Point of order. Do the rules provide that a brother can second the motion of another brother?

CHAIRMAN: I think so.

FONG: Six precincts are entitled to three representatives; five precincts are entitled to three, that is referring to the twelfth, thirteenth and eleventh precincts. The Legislative Committee had a hard time arriving at what it should do in the matter of reapportionment of the districts known as X, Y and Z, Kalihi, Palama and Nuuanu and it first adopted the

number of eight representatives for the three districts, but in looking over the redistricting of the other part of the fifth district we found that we were out of line. You will note that you have voted on the various reapportionment for the districts, the districts of Koolaupoko and Koolauloa will have two representatives, that is in conformity with the Constitutional Convention in which they had two representatives. The portion of Waialua and Wahiawa would have two representatives and the portion of Waianae and Ewa, two. You will note that in the fifth district the districts are cut up so that none of the districts have representatives exceeding three in number. This amendment if it goes through would have the effect of stealing one representative from the twelfth and the thirteenth precincts - -

A. TRASK: Point of order.

CHAIRMAN: He is against the larceny.

FONG: This is larceny in the highest degree. This amendment - -

A. TRASK: Point of information and order. Larceny is not possible unless you first establish the fact and we haven't a fact yet.

CHAIRMAN: It only relates to personal property, not to human beings.

FONG: The twelfth precinct would have three representatives according to the committee report and the thirteenth precinct would have three representatives according to the committee report. Now, if this amendment goes through then a combination of the two will consist of only five representatives which will mean we will lose one representative from the twelfth precinct and thirteenth precinct. Now in the fifth district you will note from the committee's report that the district went according to the Constitutional Convention line. Now, there was no gerrymandering of the fifth district. That line was established by a non-partisan group composed of Democrats as well as Republicans. They were the ones that set forth the Constitutional Convention districts upon which the delegates were elected, and the members of the Legislative Committee felt that they would follow the lines as set forth by the Constitutional Convention group which first delineated the district. So I want to say to the group here that there is no gerrymandering of these districts as far as these two combinations are concerned. So I would like to ask that the Convention vote down this amendment.

FUKUSHIMA: I'd like to voice my feeling as to that amendment which is now before the house. I'm against the amendment. I'm against all amendments to the committee proposal. A few days ago I thought I was at a bingo game. Now apparently this is an old time taffy pull.

CHAIRMAN: The Chair will put the question. The question is on the amendment. All in favor signify by saying "aye." Contrary. Amendment lost.

DELEGATE: Previous question.

CHAIRMAN: The Chair will put the question on the twelfth representative district. All those in favor of adopting the provision relating to the twelfth representative district signify by saying "aye." Contrary. Carried.

BRYAN: I move the adoption of the paragraph concerning the thirteenth representative district.

CHAIRMAN: Is there a second?

LAI: Second the motion.

CHAIRMAN: Moved and seconded. Ready for the question? All those in favor signify by saying "aye." Contrary. Carried.

BRYAN: I move the adoption of the paragraph concerning the fourteenth representative district.

J. TRASK: Second the motion.

ROBERTS: The action this afternoon on the fifth district, fifth area, covered the Constitutional Convention combinations U, V, W, X, Y and Z. Combination U became the eighth district, V became the ninth district, W became the tenth district, X became the eleventh district, Y the twelfth and Z the thirteenth. The previous speaker, Mr. Fong, pointed out that the distribution of those districts was done by a non-partisan group. I have no reason to contest that. I think, therefore, accepting that premise, the combinations O, P, Q, R and S of the fourth should therefore be distributed in like manner. I have an amendment to offer which would provide that combination O become the fourteenth district.

CHAIRMAN: Just a minute, there is no combination O in this proposal.

ROBERTS: I am merely indicating the overall basis for my proposal. Combination P becomes the fifteenth; combination Q, the sixteenth; combination R, the seventeenth and combination S, the eighteenth. The overall effect of that would be to give each of those combinations three seats with a total of fifteen seats, as is now proposed in the fourteenth, fifteenth and sixteenth. I'd like, Mr. Chairman, since only one proposal is before us, that of the fourteenth representative district - -

CHAIRMAN: Before you speak to it, is there a second to this motion?

LAI: I second that motion.

CHAIRMAN: Proceed, Delegate Roberts.

ROBERTS: I have been - -

HEEN: Point of information. What becomes of combination T?

ROBERTS: Combination T becomes the nineteenth representative district. There is no distribution - - there's no increase in the seats on the basis of equal proportions. It made good sense to me that a proposal as applied to the fifth, which gave representation of seats of two, two and two to U, V and W and three, three, and three to X, Y and Z, that that same distribution should apply to combinations O, P, Q, R and S. There can be no accusation of gerrymandering on the same basis, since each of those combinations are entitled to three seats so far as the population is concerned of those five areas, the population in terms of registered voters. The fourteenth has 7,000; the fifteenth, 7,600; the sixteenth, 7,400; the seventeenth, 7,700 and the eighteenth, 8,000. Each of those would then have three representatives. I think we can avoid a lot of discussion because the combination as proposed by the committee set up new boundaries and new lines. The boundaries as adopted for the Constitutional Convention to me seem to have been fair. I have not been shown anything which indicates that they were gerrymandered or biased or prejudiced. I think therefore that the combinations used for the Constitutional Convention should also be used in the district.

CHAIRMAN: Delegate Heen, would you care to express your views on that?

HEEN: I have not given the subject as proposed now any study at all.

LEE: It seems to me, Mr. Chairman, that any comments should come from the ones who have been delegated by the majority member group in the Legislative Powers and Functions. He's in the minority, we are all minority.

CHAIRMAN: Delegate Bryan, you got any views on this subject?

BRYAN: I think when we started the discussion of apportionment some days ago I tried to explain that so far as the committee could, they tried to consider the views of the members of the committee that were from the particular districts under discussion at the time. At that time the members of the committee of the fifth district were in favor of having the districts as presented by the committee. The members of the committee from the fourth district favored larger districts, for that reason we have broken the fourth district up into larger districts with greater representation from each district. That is about the only thing I can say about it.

In the fourth district some of the people felt their population was more concentrated than in the fifth district and they felt for that reason they would like larger districts with more representatives. Now that is not wholly true because our districts twelve and thirteen have a fair concentration of population. However, those districts were made to keep the fifth district or old fifth district uniform. In the fourth district, as I recall, we went along with the majority of the members of the fourth district that wanted it in larger districts.

LEE: I might add I believe there was a little confusion and tiredness on the part of the members of the committee. By that time there were many members who disagreed with the size of the Senate and House. When it came to Oahu those members who were in the minority were pretty well worn out. They knew that the group over there had the votes and there was no use of saying anything, so that actually very little consideration was given to the fourth district. Of course, we had several ex-officio members who had a lot of weight in the committee and that's the way it went along, but as far as I'm concerned I made no expression. At this time I want to say this much, that I am definitely opposed to the present plan of reapportionment in the fourth district. I have a substitute plan if this one doesn't pass.

CHAIRMAN: The Chair will ask Delegate Porteus if he'll enlighten us on this. You've heard the proposed amendment to change the committee report?

PORTEUS: Yes, Mr. Chairman. I don't know why I am selected to speak on it other than I have for many years had a great interest in the representation on Oahu insofar as the legislature is concerned. For some years in the legislature we attempted to find some formula under which we could have an apportionment to give more votes to Oahu. A scheme was suggested that we increase the members of the House. We always ran into the difficulty, however, that when we came to draw the precinct boundaries, nobody seemed to be able to agree with the other. Two people could agree, any two people could probably compromise and agree but the others couldn't get along and I think it was much the same way as far as this committee was concerned.

It is true that there have been certain districts set up, which the legislature adopted in a bill authorizing this Constitutional Convention. At that time we felt that it was better to follow the plan as more or less outlined in the Act before Congress without trying to draw any boundaries, and it was said at that time that the Constitutional Convention itself would be the body which would determine the particular boundaries. The boundaries, I think, worked out very well insofar as election to this Convention is concerned.

However, insofar as the legislature is concerned, I think the former delegate to Congress, our President, will bear me out, that I have always felt that we should not have small districts. I've always been in favor of running our lines on the old boundaries, land boundaries of Hawaii from the mountain down to the sea. Basically that was what was done on the island of Hawaii. Basically that was what was being done in the committee report insofar as Maui is concerned. At present it's true, it now stands five to one but it's on a geographical distribution. I think the fourth district is now split up. It follows geographic lines along the mountainsides until they start going into the lowlands, and as soon as they go into the lowlands, then they pick up a major street and follow that major street or landmark down to the ocean. Now that is the division. Originally there have been many who thought the fourth district should be divided into about three divisions. However, the committee in considering it, felt that the fourth district could very logically be divided into four, and that was the result of the committee's deliberations.

I for one have always liked, as I say, the districts with more people in them, with more people to be elected from the particular district. I never favored the running of all those to be elected from the fourth district at large if we were fortunate enough to have a number such as twelve or even eighteen as is now contemplated. I might point out that in the fifth district, for instance, or the rural area, the rural area would have had six votes. Now, that would seem a very appropriate district. However, those in the rural areas felt that they would prefer to divide that into three sections, and it came down to a natural division, and it seemed logical enough to have them divided as they desired. When it came into the fifth district, I think it was soon found that with Kalihi electing three and then the next division running from the mountains to the sea, five could well be elected. However, in looking the situation over I believe those that -- who were elected from the fifth district to this Convention soon found that by following the lines as laid out for this Convention, instead of having five elected at large there, by dividing into two districts they got six and picked up a man.

As far as the fourth district is concerned I'm very much in favor of having the larger number run. I know that in many issues before a legislature it has sometimes happened that a small area becomes somewhat irked with a position of a particular representative or person in politics. However, as time goes on usually the people get over their annoyances and swing back behind that person if he has rendered good service. I believe that the division as the committee has laid it out, while not the divisions that I would draw on the map, is nonetheless a reasonable division. I might point out that they would elect five, and then in the center section six, then four and then three. Insofar as the area electing six is concerned, there is some prospect in the future that with the housing area removed from Manoa Valley that that section might well in the future lose representation from that central area up to the area out at Kuliouou, the last representative district on this island. I don't think there's great prospect for increase. I think rather there is more chance for decrease. I believe the division of the committee to be an equitable one. I think it's perfectly workable and after all that's the thing we want.

I think the people from the fourth district, the senators who have been elected will testify, have on the whole not insisted that their senators and representatives bring back

to them particular bacon for their particular little area, but rather they let them play their politics not quite as close to the ground as is played in some of the other areas. I am sure that the chairman of the committee will testify to such being the case over the many years of service that he's rendered in the Senate. There are others that I think have experienced the same situation. For instance, when you are afforded the opportunity to have kindergartens, we may politically leave the matter to the Department of Public Instruction and let the Department of Public Instruction allocate those kindergartens where the need is the greatest. Whereas in certain of the other districts it is necessary that those who are able to secure kindergartens actually mandate where they go, and they are forced to do that because if they don't, then at the next election someone will stand up and say, "Had I been there in that man's place I would have brought you a kindergarten to this particular school." I think, Mr. Chairman, that the division is a reasonable one, a workable one. I hope the committee will be supported.

DELEGATE: Question.

CHAIRMAN: What we are debating is Delegate Roberts' amendment. Do you have anything to say, Delegate King?

KING: Yes. Delegate Roberts' amendment would make an additional representative district in the fourth district. I feel that that would throw out the equal proportions again. I would like to ask the chairman of the committee if that subject had been considered. The minute you add or subtract an election district you disturb the balance in accordance with the principle of equal proportions.

HEEN: That's correct. You would have to figure the thing all over again. I might say that I am opposed to the amendment offered by Delegate Roberts. I believe in having larger districts and larger representation where you can draw on more material to represent the people in the House of Representatives. Under the proposal as it stands now some of the districts will elect six representatives, others five. Under the Roberts' amendment they'll be reduced to smaller figures and you draw, of course, on lesser material.

HOLROYDE: In fairness, however, to Dr. Roberts' suggestion, the system of equal proportions has been applied to it and it doesn't affect the balance between the fourth and fifth districts.

CHAIRMAN: The Chair understands that. Are you ready for the question?

AKAU: Before we vote, we didn't do such a bad piece of work in getting some very fine people here on that Constitutional Convention basis. I would say that it's a very good amendment.

ROBERTS: I would like to suggest that careful thought be given to this amendment. It does not change in any respect the number of representatives allowed to the fourth district. The numbers to be elected from each of the districts are no smaller than those in the fifth district where they have two and three combinations. They certainly are not smaller than the Hawaii one in Puna which only has one. I think we are less subject to criticism if we follow the lines used for the Constitutional Convention. It seems to me that as you examine these lines, the basis for the meandering of the line has created some doubt in many delegates' minds as to the allocation and distribution of votes. I think the combinations that I suggest, which have been found workable and have been used and cannot be regarded as improper, since they are being used for the fifth, provide for representation of three in each of the groups, gives representation to the fourth district which will provide distribution in terms of over-all ideas which are equally applicable in the fifth district. I would therefore urge that this amendment be adopted. If it is, then we are through with the districting of the fourth district -- fourth area and all of the combinations are taken care of.

CHAIRMAN: The Chair will put the question.

TAVARES: May I point out one more matter? Some statement was made that this Convention didn't do so badly about election. I don't know which delegates were being referred to, but I would like to remind the delegates that some of the delegates ran at large over the whole fourth district and didn't run from the combinations.

SHIMAMURA: May I ask specifically—I think the question was asked in a general way—but what will happen to the theory of equal proportions as far as this amendment is concerned?

CHAIRMAN: That will not be violated, as I understand it from Mr. Holroyde and from Delegate Roberts.

SHIMAMURA: Will not be violated?

CHAIRMAN: Will not be. The Chair will put the question. The question is on the Roberts' amendment. All those in favor signify by saying "aye." Contrary. The amendment is lost.

J. TRASK: Roll call.

ROBERTS: Is it proper now to ask for a roll call?

CHAIRMAN: No.

KAUHANE: I was somewhat in doubt because some yelled loudly through the microphones.

CHAIRMAN: All right. All those in favor will please rise. Roll call must be put before the question is put, Delegate Roberts -- asked for, rather. The Chair is asking for a division on the Roberts' amendment. All those in favor will rise. Contrary. The motion is lost.

LEE: I believe that in between the sentiments expressed for the Roberts' amendment and the committe's amendment, there is a proposal that I have had printed and circulated among the members there, which I now offer as an amendment wherein the divisions would be more in line with the rest of the divisions recommended by the majority of the committee. The fourteenth representative district as set out there would include Precincts 15, 16, 17, 21, 22, 23, etc., four representatives; fifteenth representative district, four representatives; sixteenth representative district, four representatives; and seventeenth representative district, three representatives; and the eighteenth representative district,three representatives. So that actually you have the matter of size taken care of in the numbers of four. You know that four will be the largest number of all of the divisions by this report, and it seems to me that instead of four representative districts in the fourth district you have five representative districts. It seems to me that this amendment is proper, and I, therefore, move for the adoption of the amendment.

Amend Section 3 of Committee Proposal No. 29 in the following respects:

(1) Amend the definition of the fourteenth representative district to read as follows:

"Fourteenth representative district: that portion of the island of Oahu included in Precincts 15, 16, 17, 21, 22, 23, 24, 25, 26, 27 and 32";

(2) Amend the definition of the fifteenth representative district to read as follows:

"Fifteenth representative district: that portion of the island of Oahu included in Precincts 8, 9, 10, 11, 18, 19, 20, and 31."

(3) Amend the definition of the sixteenth representative district to read as follows:

"Sixteenth representative district: that portion of the island of Oahu included in Precincts 6, 7, 12, 13, 14, 34 and 36";

(4) Amend the definition of the seventeenth representative district to read as follows:

"Seventeenth representative district: that portion of the island of Oahu included in Precincts 2, 3, 4, 29, 30 and 33";

(5) By renumbering the eighteenth representative district to be the nineteenth representative district; and

(6) By inserting a new eighteenth representative district defined as follows:

"Eighteenth representative district: that portion of the island of Oahu included in Precincts 1, 5, 35 and 37."

CHAIRMAN: The Chair would like to ask Delegate Lee, you were a member of the committee. You did not dissent from the apportionment feature of the committee report, did you?

LEE: I'd like to remind the Chairman what I said previously, that by the end of that session we had, everybody was pretty well worn out, and when the committee report was prepared it was just a question of either including in the minority - - signing minority side or the majority side, and I signed on the minority side although I didn't specify as to this particular provision. However, I believe that consideration can be given by the Committee of the Whole at the present time. I've taken this matter up with Mr. Dodge, and Mr. Dodge informs me there would be no loss in representation under the theory of equal proportions. Perhaps if the committee would want enlightenment on it, I'd like to call on Mr. Dodge to point out the division on the geographical map there.

CHAIRMAN: I think it would be more to the point at this time if you'd summarize briefly what this does.

A. TRASK: Point of order.

CHAIRMAN: Delegate Lee has the floor.

A. TRASK: I'll second the motion in the meantime so that the debate can continue, Mr. Chairman.

CHAIRMAN: Very well. It's been moved and seconded that Section 3, Committee Proposal No. 29 be amended with respect to the fourteenth to the eighteenth representative districts inclusive.

LEE: I'd like at this time to call on Mr. Dodge to point out the division where the fourteenth representative district would be, where the fifteenth representative district would be, and where the sixteenth representative district would be.

CHAIRMAN: I'd suggest you take a pointer and indicate, Mr. Dodge.

DODGE: The proposal by Delegate Lee would retain Nuuanu, of course, as the dividing line. The first, the Waikiki boundary of his fourteenth district would be along the boundary line that separates the fourteenth and the fifteenth precinct. The amendment has been prepared so you can spot on the maps that you have before you the precincts that are included in there, and it would run down to King Street, which is the - - it uses the dividing lines that are now dividing the various precincts. It does not cut across any precinct line. It comes down the dividing line of the fourteenth and fifteenth precincts to King Street.

The next representative district is that area that lies makai of King Street and runs over here to, approximately, Kapahulu. That area makai of King and ewa of Kapahulu over to Nuuanu, the lower portion of that is one representative district. The sixteenth representative district then would run from the boundary line that is roughly along Palolo Avenue—just on the ewa side of Palolo Valley there—runs from there over to the boundary line between the fourteenth and the fifteenth districts and stops again at Waialae. The seventeenth representative district would take in the Diamond Head area up to Waialae, and straight out Kalanianaole out here. The balance or the eighteenth representative district would be what is now T on the committee proposal except that it includes a little area on the ewa side of Wilhelmina Rise and is on the mauka side of Kalanianaole Highway. The numbers that they would elect are shown in the amendment prepared, and they have been worked out by equal proportions.

DELEGATES: Question.

KAUHANE: I would like to ask Mr. Dodge to point out the twenty-second precinct on the map.

DODGE: The twenty-second precinct - -

KAUHANE: Would you move this way, Dodge, towards the rail so I can have it identified by you. The twenty-second precinct. I've got it here. I am only trying to show, when he points out the twenty-second precinct, and then I would like him to show me the fifteenth precinct.

DODGE: The fifteenth?

KAUHANE: That's right.

DODGE: The fifteenth precinct is roughly this area in here.

KAUHANE: Well, my question is this, on Mr. Lee's amendment on the fourteenth representative district. Although much has been said here about gerrymandering, that we are not attempting to gerrymander the precinct combination, but it is clearly shown when Mr. Dodge pointed out the twenty-second precinct, which is Central Grammar School on Emma Street, and then he goes to Wilder and Kewalo Streets, the fifteenth precinct at Wilder and Kewalo, we are somewhat stretching too far apart from precincts that are so close. I think that the lesser of the two evils, of the taking the committee proposal and recommendation of the precinct combinations or the precincts as submitted by the committee and the one by Representative Lee, that I'd sooner accept the amendment that was offered by Delegate Roberts because these precincts, as stated in the combination of the election of the delegates to the Constitutional Convention, is so close, and that the people, if the people are to be considered in this instance, would be given the representation that they really need. That's only the first question that I'm asking now.

LEE: I wonder if Delegate Kauhane might yield to this point? Delegate Roberts' motion has already failed.

CHAIRMAN: That's right. What we would like to be enlightened on is the advantage of your amendment over the proposal.

LEE: In the fourth district you have to start from Nuuanu and start moving towards the waikiki direction. Whichever plan you take you have to move towards the waikiki direction, and moving to Wilder and Kewalo is the farthest extent that area in the twenty-second precinct—as pointed out by Delegate Kauhane—goes to, and from then on you start with another combination.

HOLROYDE: One point in regards to Delegate Lee's proposal is the fact that it throws out of kilter the delicate balance between the fourth and fifth districts. He gives the fifth district one more representative under his proposal. I don't know whether he did that purposely or not, but under equal proportions that happens.

CHAIRMAN: Is that correct, Delegate Lee?

LEE: That is not my understanding, because you have four, eight, twelve; and three, three, fifteen, eighteen as the representation in the fourth district.

BRYAN: If that's correct, Delegate Lee's proposal is out of order. It does not follow the method of equal proportions. His proposal - -

CHAIRMAN: Well, the issue we'd like to find out now is whether it does or does not follow the method of equal proportions. If it does not then, like Delegate Shimamura's amendment, the Chair will rule it out of order.

BRYAN: May I speak on that?

CHAIRMAN: Yes.

LEE: Go ahead, proceed, go ahead.

BRYAN: I understood at first that it did and in checking the figures, according to Mr. Dodge, there's been either a misprint or an error made in the proposal before us. It should read under paragraph six "the eighteenth representative district, two representatives," which means that it would do as Delegate Holroyde suggested, throw the balance between the fourth and fifth districts out somewhat.

LEE: I understood it that under the eighteenth representative district there would be three representatives under the method of equal proportions. I was informed of that by Mr. Dodge. Now, if there is any change in that, of course, I have to reconsider my amendment. If this information given to me was false he should at least have let me know.

CHAIRMAN: Chair will declare a 2-minute recess. Will you find that out, Delegate Lee?

(RECESS)

LEE: I'd like to say that there was a slight error in the location of the twenty-ninth precinct which is in the seventeenth representative district under paragraph four.

CHAIRMAN: You have some changes in your amendment?

LEE: Yes. If the members will consult the amendment you will notice that in paragraph four it includes the twenty-ninth precinct. Well, the twenty-ninth precinct was supposed to be down at the bottom to be included after the word "five," 1, 5, 29, 35 and 37."

CHAIRMAN: Just a minute, Delegate Lee. You first strike out "29" in paragraph four, is that right?

LEE: Yes.

CHAIRMAN: Where do you insert it?

LEE: Insert it after sixth paragraph, after "precinct five."

CHAIRMAN: Insert the number, 29.

LEE: So that the representatives will remain as they are in the proposed representative district, so that this will not violate the method of equal proportions.

CHAIRMAN: You've checked that with Mr. Dodge, our authority on that question?

LEE: Yes, with Mr. Dodge; the experts, Mr. Bryan and Mr. Holroyde, Mr. King and Senator Tavares.

CHAIRMAN: They're all in accord with that statement? Are you ready for the question? The question is on the - - Delegate King.

KING: The perfected changes in the amendment is agreed to, but that's all?

CHAIRMAN: Oh, yes. Oh, yes.

KING: I would like to speak briefly against the amendment or change. Turn to the map, those of you who have maps. Delegate Lee's amendment would make a makai representative district from Nuuanu Avenue to Kapahulu Avenue below King Street, taking all of the city, the old district of Kakaako, Kewalo, McCully Tract and Waikiki, and then have Manoa and Pauoa, Makiki put together, then Kaimuki, and then end out in the small district up here. There's no advantages proposed by his amendment over that submitted by the committee, and it seems to me that the amendment should not carry.

LEE: If there's no further debate, I think I'll - -

CHAIRMAN: Delegate Lee may close the debate.

LEE: May I close the debate here? I believe most of the votes are already cast in the minds of the delegates. What this amendment really actually does in my opinion is give the common man a chance to be elected in the fourth district.

CHAIRMAN: All those in favor of the amendment - -

SILVA: Before you go any further I want to ask Senator Lee a question. What does he consider the other fellow? Who's this common man and who's the other fellow? Is the other fellow a freak or something of that sort?

CHAIRMAN: That question's out of order. The Chair is about to put the question. All those in favor of the amendment signify by saying "aye." Contrary. The amendment is lost.

LEE: Roll call, Mr. Chairman. The vote was pretty close. I demand a roll call.

CHAIRMAN: All those in favor will please rise. In favor of the amendment.

LEE: How about a roll call, Mr. Chairman. Aren't we entitled to a roll call, Mr. Chairman?

CHAIRMAN: No.

LEE: Well, then the Chair will ask all those in favor to rise. Is that it?

CHAIRMAN: I'm now putting the motion again. All those in favor will please rise - - in favor of the Lee amendment. Contrary. The Chair is still in doubt so the Clerk will please call the roll?

Ayes, 23. Noes, 33 (Apoliona, Ashford, Bryan, Castro, Cockett, Corbett, Crossley, Dowson, Fong, Fukushima, Gilliland, Hayes, Holroyde, Kage, Kauhane, Kellerman, Kido, King, Lai, Larsen, Lyman, Ohrt, Porteus, Richards, Sakakihara, Silva, Smith, St. Sure, Tavares, Wist, Woolaway, Yamauchi, Anthony). Not voting, 7 (Kawakami, Kometani, Loper, Mizuha, Phillips, Sakai, White).

CHAIRMAN: The motion is lost.

KAUHANE: I move that the committee rise, report progress and ask leave to sit again.

PORTEUS: I don't think that the motion has been put yet to adopt the proposal as reported by the committee. I move - -

CHAIRMAN: Before that is done, the Chair on re-examination of the notes must state that it was in error a few minutes ago in regard to Delegate Shimamura's motion. That motion was in fact made prior to the adoption of the equal proportions principle and therefore the Chair was in error. There was a date here that the Chair was confused about and the Chair will be inclined to reverse itself if the question is pressed at this time.

HOLROYDE: Point of order. I think there was a motion to adopt the fourteenth section and Delegate Lee's amendment was an amendment to that. Was it not? I don't think he could have presented that without having something before the house.

CHAIRMAN: The Chair was calling attention to a previous ruling in regard to one specific district, the twelfth and thirteenth, that Delegate Shimamura was pressing and the Chair ruled him out of order.

PORTEUS: I think I was in error in asking for the adoption of the entire section. I think really we were only on the fourteenth representative district. I think if we take those one by one we would clear the record. I move for the adoption of the fourteenth representative district.

HAYES: I second it.

CHAIRMAN: All those in favor signify by saying "aye." Contrary. Carried.

APOLIONA: I move for the adoption of the fifteenth representative district.

LAI: I second that motion.

CHAIRMAN: Any discussion? All those in favor signify by saying "aye." Contrary. Carried.

LAI: I move to adopt sixteenth representative district.

APOLIONA: I second that motion.

CHAIRMAN: It has been moved and seconded that the paragraph relating to the sixteenth representative district be adopted. All in favor signify by saying "aye." Contrary. Carried.

KELLERMAN: I move to adopt the seventeenth representative district.

HAYES: I second that motion.

CHAIRMAN: Is there any discussion?

KING: There is a matter which I think the Committee on Style can correct. The seventeenth representative district comprises Kahala and Aina Haina. Aina Haina is a tract name and not a geographical name and should be written Waialae or Wailupe. I do not want to suggest it as an amendment but have the record of the Committee of the Whole indicate that the Committee on Style may correct it.

There is another further matter. The State of Hawaii will include not only the islands we have been discussing, but a lot of little islands such as Midway, Johnson, Palmyra, and the Organic Act—not the Organic Act, but the statutes of Hawaii—in defining the county boundaries do mention all other islands not otherwise assigned, and I suggest the Committee on Style be instructed to add that on to the seventeenth election district, so that the seventeenth election district will include Palmyra, Johnson Island, Midway. And whoever runs from that district will have the pleasure of campaigning among those islands.

CHAIRMAN: All the cats and dogs go into the seventeenth, is that right? There's a motion for the adoption - -

BRYAN: I would like to speak to the motion. I might suggest that they add those miscellaneous islands to Koolau so they could pick up another representative.

DELEGATE: Question.

CHAIRMAN: The Chair will put the question. All in favor signify by saying "aye." Contrary. Carried.

SERIZAWA: I move that we adopt the paragraph on the eighteenth representative district.

C. RICE: I second that motion.

CHAIRMAN: Any discussion? It has been moved and seconded that we adopt the paragraph relating to the eighteenth representative district. All those in favor signify by saying "aye." Contrary. Carried.

CHAIRMAN: Section 4. Will you proceed, Delegate Heen?

PORTEUS: Is it in order to ask for adoption of the entire section?

CHAIRMAN: I should think that would be done when we complete the work on the article.

SAKAKIHARA: I think we deferred to the end of this section, Section 3, the paragraph relating to the second representative district.

CHAIRMAN: The second representative district? That was adopted.

SAKAKIHARA: No, that was deferred 'til the end of the section.

CHAIRMAN: You're quite right. You're quite right.

HEEN: It was the fourth.

CHAIRMAN: It was the fourth, not the second. The Chair will entertain a motion that the paragraph relating to the fourth representative district be adopted.

KAUHANE: I so move.

DELEGATE: I'll second the motion.

CHAIRMAN: It has been moved and seconded that the paragraph in Proposal 29 relating to the fourth representative district be adopted.

SILVA: There's an amendment, I think, on the desk of every delegate here.

CHAIRMAN: Read your amendment.

SILVA: The amendment amends Committee Proposal 29, Section 3.

> Fourth representative district: that portion of the island of Hawaii known as the second representative

district, precincts 16, 1, 2, 3, 4, 5, 6, 7 and 8 inclusive, one representative.

That gives you a total of 2,229 -- 49 votes.

Fifth representative district: that portion of the island of Hawaii known as the second representative district, precincts 9, 10, 11, 12, 13, 14 and 15 inclusive, one representative.

That is 2,918 votes. That is similar to the districts that we had for the Constitutional Convention in which Sakai was elected and Kawahara was elected, without the two at large. You have two representative districts in that one district and that'll give a better chance for the smaller districts to be represented. Otherwise you are going to have your concentration of voters in both the Konas, and Kau, and the Kohalas will probably be out of the picture. That falls in line with the idea of giving Puna one representative district and Hamakua one representative district.

You on the island of Hawaii, you've gone and reapportioned one side of the island as far as senators and representatives are concerned; then you go to the other representative districts and you say in that representative district there shall be no reapportionment in the House nor in the Senate, both shall be at large from the very same county. Now, I just wanted to be a little bit consistent not too much, but I'd like to point out that on the island of Hawaii you've gone over to Puna and given them one representative with 1,800 votes. In West Hawaii with 5,000 some odd votes, you say these outlying districts of North and South Kohala should not have representation, they should run at large. North and South Kohala has more votes than the district of Puna. Yet, you allow Puna to have one and you don't allow North and South Kohala with these few precincts in Kona which gives 2,249, and that is the purpose of the amendment. I now move for the adoption of the amendment.

SAKAKIHARA: I second the motion.

CHAIRMAN: It has been moved and seconded that the amendment be adopted. The Chair will put the question.

NIELSEN: That will put 2,049 in one district and 3,119 in the other. Will that agree with reapportionment? I would like to ask the chairman of the Legislative Committee.

CHAIRMAN: Delegate Heen or Delegate Bryan, would you answer that?

HEEN: No, I can't tell you offhand. That would have to be figured out.

HOLROYDE: Basically, they'll each get one and according to Mr. Dodge that will be allowable under equal proportions. They will each get a basic one.

CHAIRMAN: Are you ready for the -- Delegate Nielsen.

NIELSEN: That places half of Kona and Kau with 3,149, higher than any other in the whole Territory. I think at large is the answer here and I'm going to vote against the amendment. The sentiment over there in Kona and Kau is all to be at large.

SAKAKIHARA: Mr. Chairman, correction. The fourth representative district, including precincts 16, 1, 2, 3, 4, 5, 6, 7 and 8 will have 2,249 votes. The fifth representative district, that portion of the island of Hawaii known as the second representative district, precincts 9, 10, 11, 12, 13, 14 and 15 will have 2,918 votes, not over 3,000.

HEEN: Might I ask the last speaker if all these precincts will be in the districts of North Kohala and South Kohala, in one part? And all the other precincts in the districts of North Kona, South Kona and Kau?

SAKAKIHARA: No, sir. The fourth representative district will include from Kailua, North Kona, to South and North Kohala, inclusive, and part of North Kona, South Kona and the district of Kau will comprise the fifth representative district.

CHAIRMAN: If there is no other discussion, the Chair will put the question.

KAWAHARA: I am not too strongly opposed to this amendment, except for this reason, that some of the arguments presented are rather inconsistent. If you will notice the map of West Hawaii there, you will notice that there are three distinct geographical areas; Kau, the districts of North and South Kona, and the districts of North and South Kohala. In the districts of North and South Kona there is something like 2,300 registered voters. In the district of Kau there is something like 1,100; the difference of something like 1,100 voters. By splitting Kona in two it is very convenient, certainly, to throw half of Kona into Kau and throw the rest of Kona into Kohala. If that's the will of the Convention, that's okay with us.

I would have to oppose it on this ground, that we are not following the intention, for example, of what we started out to do when we gave Puna one representative. In order to be consistent it would be necessary to give Kau one representative and Kona one and Kohala one. By splitting the whole district up in two we are splitting Kona up. Kona itself is a geographical and economic unit; Kau likewise is a geographical and economic unit; and Kohala likewise is a geographical and economic unit. However, because of the fact that we can't get more than two, I see no reason why we should arbitrarily draw a line somewhere between North and South Kona and say this half goes to Kohala and the other half going to Kau. For that reason I'm opposed to this amendment.

CHAIRMAN: Delegate Silva, would you like to close the debate on this?

SILVA: Yes, I would. That is not true as far as the arbitrary line dividing both Konas. When we elected these delegates to the Convention, Mr. Kawahara was elected. He ran from Kau up and through part of North Kona, Keauho, with Holualoa thrown in there; and Mr. Sakai from North and South Kohala, including Waimea and Kawaihae, Ponohula and Kalaua. Ponohula has 32 votes, Kalaua 82 and Kailua 250 somewhat, votes. That was thrown in with the Kohalas and that was one representative to this Convention. Mr. Nielsen and I ran at large.

Now, I'd like to give the strong economic districts of that community representation rather than arbitrarily throw them into a part where they have no representation at all. The wealth of West Hawaii is dependent upon the Kohalas and Kau. They are the biggest taxpayers in the community and they should have a crack at the House of Representatives whether they elect one or -- they should have some voice. That was the reason that I put this amendment in. And it only takes 200 somewhat votes from Kona, and even if you leave the Konas by themselves, then the Kohalas in comparison with Puna, just the Kohalas alone, North and South Kohala, has 1,823 votes, just like Puna. If it is the wishes or if this is true then I would be only too glad to let North and South Kohala elect one representative and all of the Konas and the Kaus elect the other representative. If they will do

that it's okay with me. If they don't want to cut any part of Kona at all then I say surely North and South Kohala has sufficient votes to elect one representative, just like Puna. They have 1,823 votes.

CHAIRMAN: The Chair will put the question. The question is on the amendment proposed by Delegate Charles Silva which would amend the paragraph relating to the fourth representative district, dividing it in two. Are you ready for the question? All those in favor of the amendment signify by saying "aye." Contrary. The amendment is lost.

DELEGATE: Roll call.

CHAIRMAN: The Chair will rule you're not entitled to a roll call unless it is requested before the Chair put the question.

KAUHANE: Mr. Chairman, you have twice deviated from your rule. In one instance you said the motion carried on a voice vote, and you insisted on the roll call. Secondly you took a standing vote, and you again was in order - -

CHAIRMAN: It's because my arithmetic differed from the Clerk's.

KAUHANE: No, I think your arithmetic was all right, only you wanted to satisfy an individual.

TAVARES: I move for a division of the house. There isn't - -

CHAIRMAN: All those in favor will please stand? In favor of the amendment of Delegate Silva. Against? The motion is carried.

KAUHANE: See what he's done, Mr. Chairman?

CHAIRMAN: Thank you, Delegate Kauhane.

NIELSEN: It's all right with Kona because we'll probably elect both of them right from Kona this way.

KING: Mr. Chairman, a minor point that the Committee on Style might take into consideration. The precincts enumerated must be tagged with some year. "Precincts 9, 10, 11, 12, 13, 14 and 15 inclusive as delineated in the Secretary of the Territory's Proclamation of 1948" or some other - -

CHAIRMAN: There'll have to be reference made to the schedule attached like the other sections.

HEEN: That's correct, Mr. Chairman. It can be taken care of in the schedule.

KING: Another minor point. The numbering of the different paragraphs will have to be corrected.

CHAIRMAN: They will have to be renumbered in accordance with these amendments. Section 4 is before the house.

DOWSON: I move we adopt Section 3, as amended.

SAKAKIHARA: I second the motion.

CHAIRMAN: It has been moved and seconded that Section 3, as amended, be adopted. Are you ready for the question? All those in favor signify by saying "aye." Contrary. Carried.

SAKAKIHARA: I now move that we rise and report progress and ask to sit again.

FONG: Second the motion.

CHAIRMAN: Is there any discussion? All those in favor signify by saying "aye." Contrary. Carried.

JULY 6, 1950 • Afternoon Session

CHAIRMAN: Committee of the Whole is in session.

HEEN: We are now considering Section 4 which relates to reapportionment of the House of Representatives. I now move that we approve the first sentence of that section which reads, "On or before June 1 of the year 1959 and each tenth year thereafter, the governor shall reapportion the members of the House of Representatives in the following manner."

HOLROYDE: Mr. Chairman, I second the motion.

C. RICE: I would like to know why they picked '59 instead of '60, after the census. I think '60 would be better.

HEEN: The reason for that, we were basing the reapportionment on the number of registered voters, the population of registered voters, instead of on the population as determined by the federal census.

C. RICE: Well, in '59 they have an election, don't they?

HEEN: That's correct.

C. RICE: I asked the deputy county clerk over here how long it took him to take the names off of people that didn't vote. It took him nearly two years.

HEEN: No, '59 is no election.

C. RICE: What?

HEEN: The election is in 1960.

C. RICE: '60?

HEEN: So there's considerable time from June 1, 1959 till the time of election.

C. RICE: I was just thinking maybe Delegate Roberts was going to bring in the one on population. I think it'd be fairer, population. That's why I brought up '59 before it passed.

ROBERTS: I have an amendment to propose which I discussed in our previous consideration of this question.

CHAIRMAN: Amendment to the sentence?

ROBERTS: Amendment to this section, Section 4.

CHAIRMAN: The Chair will rule you out of order at this time unless it relates to this sentence.

ROBERTS: Well, this sentence would involve that, because if you are going to use the population figures of the census you have to use June 1, 1961 as you have the census figures of 1960. I was going to move the subsequent language on population instead of voters registered, but if you are going sentence by sentence, I now move, Mr. Chairman, that in the second line of Section 4, "June 1 of the year 1959," delete the figures "1959" and substitute "1961."

AKAU: I second that motion.

CHAIRMAN: It has been moved and seconded that the year "1961" be substituted for "1959" in the first sentence of Section 4. Any discussion?

BRYAN: I think it would expedite matters perhaps if we would dispose first of the question of principle, whether it's going to be on population or on registered voters, then the amendments could be made more orderly and I think the entire section could be considered in a more orderly fashion. I'd like to ask Delegate Roberts if he would withdraw his

motion in order that we might make the motion that reapportionment shall be on the basis either of registered voters or on the basis of population.

CHAIRMAN: I suggest that we take a sense vote on whether reapportionment shall be based upon registered voters or population, if Delegate Roberts will withdraw his motion and make the suggested motion.

ROBERTS: I'll withdraw the motion, although I was said out of order by the Chair previously when I was going to move that.

CHAIRMAN: The Chair allowed you to proceed upon your assurance it related to the first sentence, you will recall.

ROBERTS: I discussed this question before and I don't think it's necessary to repeat the general discussion with regard to the desirability of using population instead of registered voters for your reapportionment.

CHAIRMAN: For the sake of the record, have you moved that we adopt the population figures for reapportionment?

ROBERTS: I will so move.

CHAIRMAN: Is there a second?

FUKUSHIMA: I second the motion.

CHAIRMAN: Proceed.

HEEN: I would like to find out whether this is population generally or citizen population?

ROBERTS: My basic premise and argument last time was that the legislators represent all of the people in the particular area from which they are elected. Therefore, population includes all individuals.

CHAIRMAN: Aliens as well as citizens?

ROBERTS: All, that is correct.

CHAIRMAN: Are you ready for the question? The question is whether or not reapportionment shall be based upon population rather than registered votes. All those in favor - -

KING: The reason the committee didn't adopt population was that you cannot get population figures for individual election districts. You get them for geographical districts and for islands, but you cannot get them - - for instance, the setup in Kalihi, Kapalama, Nuuanu and in the fourth district.

Now there's another point why population is not necessary. I had a study made by the Legislative Reference Bureau and found that the percentages of votes cast or votes registered and population did not differ too materially, and as a matter of fact, the population percentages for the other islands, the neighbor islands, are less than the votes cast. If we are going to use population and then use the system of equal proportions, the other islands might suffer. The island of Hawaii for instance cast in 1948, 18,500 votes. That was 17.2 per cent of the total votes cast. The population on the 1950 census is only 14.5 per cent. The island of Maui cast 12,616 votes which was 11.7 per cent, and the population figures, Maui county has only 10 per cent of the total population of the territory. The same is true of Kauai. They cast 7.3 per cent of the votes; they have only 6.4 per cent of the population.

So the committee was wisely guided in using registered voters instead of population. The figures I quoted were for votes cast in '48 but the same is true of the registered votes of 1950; therefore, I feel the amendment would upset what we've already done in regard to reapportionment.

CHAIRMAN: It has all been pretty well aired at the last debate. The Chair would like to put the question.

FUKUSHIMA: Section 4 does not deal with the immediate problem. This is a question of reapportionment in 1959, or according to the amendment proposed by Delegate Roberts, 1961.

CHAIRMAN: No, that's withdrawn, that was withdrawn.

FUKUSHIMA: That is correct, but if we are to assume that we are to reapportion the legislature on the basis of population, this is projected to 1961 and it is not, and it will not, hamper what we have done so far. We've done only Section 3, which is on the basis of registered voters; that is because we could not get the figures at this time. However, in 1961, upon proper request I am sure that the federal census will give us the figures that we want as far as population is concerned, so the point that was made by President King is not correct.

CHAIRMAN: Are you ready for the question?

HOLROYDE: Just one minute before we close this. The delegate's first part of his statement was correct. It doesn't affect Section 3. However, he says, "I am sure that we can get these census figures taken the way we want them by district." Now what assurance can he give us that that's so? I'm a little hesitant about that part of the proposition.

CHAIRMAN: I think his view is it's done elsewhere and there is no reason why we shouldn't do it here.

FUKUSHIMA: That is correct, Mr. Chairman. It is done all over the 48 states; there's no reason why we can't have it done here.

CHAIRMAN: Are you ready for the question? All in favor signify by saying "aye." Contrary. Lost.

The question is now on the first sentence of Section 4. Are you ready for the question? All those in favor signify by saying "aye." Contrary. Carried.

HEEN: I now move that this committee adopt the second sentence of Section 4, which reads as follows:

> The total number of representatives shall first be reapportioned among four basic areas; namely, (1) the island of Hawaii, (2) the islands of Maui, Molokai, Lanai and Kahoolawe, (3) the island of Oahu, and (4) the islands of Kauai and Niihau, on the basis of the number of voters registered at the last preceding general election in each of such basic areas and computed by the method known as the method of equal proportions, no basic area to receive less than one member.

CHAIRMAN: Is there a second?

HOLROYDE: I second that.

CHAIRMAN: Any discussion?

C. RICE: I'd like to change the word "registered." Where it says "number of voters registered," "number of voters voting in the last preceding election," then we could go down - -

CHAIRMAN: You mean the number of votes cast?

C. RICE: Number of votes cast, or voting in the last general election, cast. I have the last general returns, official tabulation.

CHAIRMAN: May I understand your amendment? On the fourth line of Section 4, you would delete "voters registered" and insert in lieu of that "votes cast"?

C. RICE: Yes, in the last preceding general election.

CHAIRMAN: "At the last preceding," and the language will be the same. Proceed, Delegate Rice. Is there a second to that?

NIELSEN: I'll second the motion.

C. RICE: West Hawaii has the biggest number of voters -- of registered voters. They vote 90.8 per cent, Kauai votes 90.6 per cent, East Hawaii votes 90 per cent, fifth district 87.6, and the fourth district 84.99. Is Dr. Larsen here, I mean Delegate Larsen? He told me there must be an epidemic and so forth, if they don't vote. I want him here because I think there was an epidemic.

CHAIRMAN: Will the Sergeant-at-Arms get Dr. Larsen?

C. RICE: The last election here for the delegates to the Convention, 10,000 stayed away.

TAVARES: I understand Dr. Larsen is addressing a meeting of physicians this afternoon. I don't think he should be disturbed.

CHAIRMAN: Will the Sergeant-at-Arms stop the messenger?

C. RICE: Then in the last general election 87 per cent stayed away. I think the people that take an interest to go out and vote, they are the ones who should be counted. It isn't just because it makes some of the other districts higher but I think the votes cast are the ones. It's very easy to do it, just as easy as taking the registered voters. They have a record. You have a record of how many votes in each district are cast and the dividing of precincts is very easy, and why not put a premium on the fellow who goes to vote?

CHAIRMAN: Any further discussion? If not, the Chair will put the question.

BRYAN: I think that Delegate Larsen's point was not without foundation. I'd like to ask the members from the Hilo area what the votes cast would have been had there been an election the day of the tidal wave. A registered votes would still be a good figure that we could go by, but had the general election fallen on that day or had the tidal wave come on general election, how many representatives would they have in the House for the next 10 years after that?

CHAIRMAN: The Chair will put the question, the question is on the --

HEEN: I am opposed to the amendment. The committee considered these various problems: votes cast, registered voters, population, citizen population and so forth. There is only one state that uses this measure of votes cast for the governor, that's Arizona, and that's only for the House of Representatives. Now, Massachusetts uses legal voters, both for the House and the Senate. Rhode Island uses qualified voters for the House. Tennessee, qualified voters for both the House and the Senate. Texas, qualified electors for the Senate.

APOLIONA: I am against this amendment and at the same time I would like to submit to the honorable Delegate Rice from Kauai some facts of maybe why the Oahu people show a small percentage of votes cast. I wish, Mr. Chairman, that this delegation here -- delegates here do not blame the people who register to vote. They are ready to at all times, but the people who are really to blame for keeping those people away from the polls are these business houses in town who keep the stores open so the people can't go to vote. Those are the people who are to blame, not those who are registered to vote. They want to go to work -- to vote, and I think this Convention here should give that thought some consideration. Blame the people who keep the people from the polls, not the people themselves.

NIELSEN: I am very much in favor of this amendment because I think it's going to teach Americanism. I think it's a step that the other states would like to take right now and I think if we can put a premium, as Charlie Rice says, on the men and women that will go to the polls and vote, it will mean that they get a bonus in going to the polls and electing the people they want to serve. I am fully for it.

TAVARES: I am opposed to the amendment. I think the sponsor should withdraw it, in the light of just what Delegate Bryan alone said. Too much can happen by some fortuitous circumstances, acts of God and so forth that would unfairly discriminate against an area. If you are going to have an average figure over the last 10 years, that would be a different thing; but if you're just going to take one particular day, and what happened on that particular day, which could be influenced by so many different considerations, I think it is unwise and I think the sponsor ought to withdraw it.

CHAIRMAN: I don't think he will but the Chair will put the question.

ARASHIRO: May I ask the Republican party leader and the Democratic party leader the reason for their choosing the number for delegates to the Convention on the basis of votes cast for the Delegate to the Congress of the United States or based it on that?

CHAIRMAN: The Chair doesn't feel that that's germane to this issue. As I understand Delegate Rice, they have a high number of votes cast over on Kauai and therefore he's in favor of his amendment. Is that correct, Delegate Rice?

C. RICE: No, that's not right. You shouldn't put words into my mouth. I know you are trying to put cards in my hands but that doesn't work with words. No, I think this is right, don't make any difference, but it's true that the man who goes out to vote should be counted and there is no --

A. TRASK: Point of order. If the --

CHAIRMAN: State your point of order.

A. TRASK: If the delegate of Kauai -- I'm sure he wants the vote down here. The delegates down here would like to hear him.

C. RICE: I couldn't quite hear. Oh, can't hear. I was afraid my voice was too loud. No, I sincerely think that this should be the way to select them. It isn't that just a few of the outside islands gain by it, they don't gain much. But there'd be no subterfuge, there'd be no leaving dead men or anybody else on the list. We know who comes to vote and it'll be an encouragement for everybody to get the people out to vote. You'll have a bigger percentage of voters voting on that day and it's a great encouragement and I think it's fair and square and should be adopted as amended.

DOI: I am against the amendment proposed. The argument advanced in favor of the amendment to the effect that the registered votes carry many dead voters, I think is invalid because under the present system, I believe, should a voter fail to go and vote, his name is dropped from the register at the next general election. The argument also advanced that using the basis of votes cast will make better Americans, also I think does not carry much weight. Reason for that is reapportionment comes around once in ten years

and I don't think that is incentive enough to make good Americans.

DOWSON: I am against the amendment because should it pass it would be unfair to certain areas which are adjacent to military installations. I believe in times of emergency, these people who work there in these military installations would not be able to go and vote. They are patriotic and sticking to their installations and we can't very well call them down for not voting.

DELEGATE: Question?

CHAIRMAN: The question is on the amendment of Delegate Rice, who would substitute "votes cast" for "registered voters" in the fourth line of page 5 of Committee Proposal No. 29. All those in favor signify by saying "aye." Contrary. Afraid it's lost.

RICHARDS: I have another amendment to offer. The matter was brought up yesterday in regard to the other islands that are to vote along with one of the groupings on the island of Oahu. Now, if they are to vote with that particular grouping, they should also be included in the matter of reapportionment. Therefore, I should think that line three should be amended to read: "the island of Oahu and the other islands not specifically enumerated."

CHAIRMAN: I think we agreed when that was last raised that that would be taken care of by the Style Committee.

RICHARDS: But, Mr. Chairman, I think that this is a little bit different. That was as far as Section 3 was concerned but this is Section 4, a different section, and has to do with reapportionment and I think that a note should definitely be made that those islands should be included in reapportionment.

CHAIRMAN: Does the chairman of the committee have any views on that?

HEEN: I think that's a good amendment.

TAVARES: I second that motion.

CHAIRMAN: What are the words of your amendment, Delegate Richards?

RICHARDS: I drafted them very rapidly. I don't know whether that's proper or not, but my suggestion is, "and the other islands not specifically enumerated," in view of the fact that all the other islands that are in the different groupings are specifically enumerated.

CROSSLEY: I understand that will go in number 4, "the islands of Kauai and Niihau and such other islands as not enumerated."

CHAIRMAN: No, you're in error on that.

HEEN: Question, Mr. Chairman. All these other islands will be tied to Oahu?

CHAIRMAN: Chair has already noted that on the amendment, Delegate Heen. Are you ready for the question? I think we can vote on this question and the actual language can be left to the Style Committee. The sense of it is clear enough.

ARASHIRO: Point of information. Are we now voting only on the Section 4, paragraph A?

CHAIRMAN: We are now voting on the Section 4, paragraph A. Delegate Richards has called attention of the body to a technical defect in the description, or the omission from the description of the other islands not in the enumeration in this particular paragraph. This would in effect bring those other islands and islets within Oahu.

Are you ready for the question? All those in favor signify by saying "aye." Contrary. It's carried.

Chair will now put the question on the section.

HOLROYDE: I move that that section now be adopted as amended.

HEEN: Second the motion.

CHAIRMAN: It has been moved and seconded that Section 4-A, as amended, be adopted. Any discussion? All those in favor signify by saying "aye." Contrary. Carried.

HEEN: I move that sub-section B of Section 4 be adopted down to - - no, all of that section.

CHAIRMAN: The whole section, Delegate Heen? On the copies before me I note the word "ratio" has been taken out and "quotient" inserted. Is that - -

HEEN: That's correct.

CHAIRMAN: Should that correction be made on all the prints before the delegates?

HEEN: That's correct.

CHAIRMAN: That occurs in two places. Paragraph B, the very end of the paragraph, the word "ratio" should be taken out and substituted "quotient," and nine lines above that where the same word appears, take out "ratio" and insert "quotient." Is there a second?

NODA: I second the motion.

TAVARES: To be perfectly clear that should be reinforced as a motion to amend, and I second Judge Heen's amendment.

HEEN: I second Delegate Tavares' motion.

TAVARES: All right, I'll make the motion, Mr. Chairman.

CHAIRMAN: It has been moved and seconded that the substitution of the word "quotient" in the two places, indicated by the Chair, be adopted. All those in favor signify by saying "aye." Contrary. Carried.

HEEN: I now move that this sub-section B of Section 4, be adopted as amended.

HOLROYDE: I'll second that.

ASHFORD: I move to amend that motion by striking out the last sentence.

CHAIRMAN: Beginning with the word "Upon," Delegate Ashford?

ASHFORD: Yes.

WIRTZ: Point of information.

CHAIRMAN: Hearing no second, the Chair will be obliged to put the question on the motion.

WIRTZ: Point of information. When you are referring to section B do you mean that paragraph or all of the rest of it all the way over to Section 5? A lot of us don't know what you're talking about, "the last sentence in sub-section B."

HEEN: I amend my motion and confine that to the first paragraph of sub-section B of Section 4.

CHAIRMAN: All those in favor of adopting the first paragraph of Section 4, sub-section B as amended, signify by saying "aye." Contrary. Carried.

HEEN: I now move the adoption of the second paragraph of sub-section B of Section 4.

HOLROYDE: I'll second that.

HEEN: That paragraph reads as follows:

> The governor shall thereupon issue a proclamation showing the results of such reapportionment, and such reapportionment shall be effective for the election of members to such house for the next five succeeding legislatures.

CHAIRMAN: Is there any discussion?

AKAU: If we are going to meet every year, Delegate Heen, would you say that should be for the "five succeeding legislatures," if we're going to meet for the budget and then for the regular one? Would that still hold true?

HEEN: That's correct. It is the same legislature sitting annually instead of biennially.

RICHARDS: I have a question that I would also like to ask. Assuming that there has been a change in the Constitution within that particular period, this would be in conflict with it if we use the term "for the next five succeeding legislatures."

CHAIRMAN: Any change in the Constitution would have to take care of that difficulty. Are you ready for the question? All those in favor signify by saying "aye." Contrary. Carried.

HEEN: I now move the adoption of the third paragraph of sub-section B of Section 4.

HOLROYDE: I will second the motion.

HEEN: This particular paragraph deals with the writ of mandamus that might be issued in order to compel the governor to perform the duties as described in the two paragraphs prior to that, the Supreme Court being given original jurisdiction for that purpose. It also provides that if the governor does not reapportion correctly on the basis of the method of equal proportions, the act of the governor may be corrected also by mandamus.

CHAIRMAN: Any further discussion? If not, the Chair will put the question. All those in favor signify by saying "aye." Contrary. Carried.

HEEN: On my notes, I note that Section 5 was adopted in an amended form.

CHAIRMAN: That is in the Chair's notes too. There was an amendment proposed by Delegate Tavares, however the amendment was not complete. I was going to call the body's attention to it. That amendment was in the third line beginning with "the office of members," "the term of office."

TAVARES: That was objected to as being a matter of style. I think then the matter was sort of either ruled out of order, or I withdrew it, something, it wasn't acted on.

CHAIRMAN: I think you're correct. I suggest that Delegate Tavares has the floor, I want to see if his recollection is the same as mine. He made the motion and I suggested -- the Chair suggested that it could be taken care of in the Style Committee in both places where it appears, and you acquiesced in that view. Is that correct?

TAVARES: Yes, Mr. Chairman.

CHAIRMAN: It has been adopted, Delegate Heen.

WOOLAWAY: Sections 5, 6, and 7 have been adopted, I now move for the adoption of Section 8.

CHAIRMAN: May I go through the list here? Will you hold that just a second? Section 6 has been adopted, Section 7 has been adopted and Section 8 was deferred. You're quite right. Is there a second to that?

WOOLAWAY: I should change that to move the adoption of Section 8 as amended. I believe we put in the word "salaries" between "any" and "public."

CHAIRMAN: The second line after "while holding any," insert the word "salaries," and I believe the word "position" was stricken, according to my notes.

ASHFORD: I think following the word "office," there should be included "other than legislative," because he may hold a legislative office and still be qualified to run.

HOLROYDE: Could I second that? I'll just second that motion to the adoption.

CHAIRMAN: You're seconding what?

HOLROYDE: Woolaway's motion. I don't believe there was a second.

CHAIRMAN: Question before the house is on Section 8 as amended. Did Delegate Ashford care to make an amendment?

ASHFORD: I will offer that amendment, Mr. Chairman, that after the word "office" there be included "other than legislative." Otherwise a member of the legislature wouldn't be eligible to run.

HEEN: That's correct, speaking technically, but we have the same language in the Organic Act and that language has never been held to preclude members of the legislature from running for election.

CHAIRMAN: It appears to the Chair, Delegate Ashford, that it's implicit in that section that a man can hold the office that he's elected to.

ASHFORD: I don't think anybody seconded that motion. I think the reason it has stood is that it hasn't been attacked.

WIRTZ: I second that motion. Perhaps the movant will accept a slight amendment, if we insert the word "other" before "salary."

CHAIRMAN: I think that would do it a little more expeditiously, Delegate Ashford. The amendment is to insert the word "other" before the word "salary," hence a legislator could be a public officer and receive a salary, but no other salaried officer.

PORTEUS: In connection with this I wonder whether some member of the committee might care to answer the following question? At what time does a legislator cease to hold office? It was my understanding from the examination of the proposal that a legislator goes out of office at the next general election, If he goes out of office at the next general election, beginning on that day he's out of office. As a matter of fact he's not a legislator on the day that they're voting for him and he succeeds himself. But I don't think there's even any technical question there because he goes out of office on election day, not at the end of the day, he goes out of office immediately on the start of the election day and he isn't elected until the end of the election day, until the votes are tallied, cast and a certificate of election is filed.

CHAIRMAN: Delegate Ashford, have you any rebuttal to that suggestion? Sounds kind of reasonable to the Chair.

A. TRASK: I don't think that argument is valid because this section, as I remember the last debate on it, was to the eligibility of the person to file for the office. So even though the election day is subsequent, it will always be subsequent to the day of filing the application for the office.

TAVARES: I seem to have a faint recollection that provisions of this type, such as age and various other qualifications, have been held to apply to the situation as it existed at the time they take office, whatever time that is. In other words, we have elected senators to the United States Senate who are under age, and if they became of age before the session opened or before they took office why they were considered eligible. Some of them, in fact, were just not allowed to take their seats until they became of age and then have been given a seat, so that I don't think that should cause too much damage. If on the day before election or perhaps even on election day before they are declared elected they resign from their offices, I would think they would be eligible under this provision.

ARASHIRO: Under this provision does it make it possible for a legislator to be a member of the board of regents or the school board?

CHAIRMAN: No. No. The prohibition is against holding a salaried job.

ARASHIRO: But if they are not paid salaries, non-paying - -

CHAIRMAN: That's right, they can hold that job.

HEEN: No, Mr. Chairman, that situation, I think, is taken care of in Section 10. I might state there was some discussion of having an amendment inserted in this Section 8, that each position - - each office shall be salaried offices or position but there was no vote on that as I recall it.

CHAIRMAN: May the Chair ask - - Delegate Arashiro has raised the question—why weren't the disqualifications dealt with in a single section rather than in two, Delegate Heen. I note that it's dealt with in Section 8 and also in Section 10.

HEEN: Well, Section 8 disqualifies public officers and employees from being eligible for election or to hold a seat in the legislature. Now Section 10 is the other way around.

WIRTZ: To clarify the atmosphere, I'll remove my suggestion of the "other." I understand the movant is willing to withdraw her motion to amend. My recollection, however, on the other point [that] was raised by the chairman of the Legislative Committee was that we did vote on the question of "salary."

CHAIRMAN: We did not?

WIRTZ: We did.

CHAIRMAN: That is the Chair's recollection but the section was deferred, so the Chair will now read the section according to his notes. It reads as follows: "No person while holding any salaried public office or employment shall be eligible to election to, or to a seat in, the legislature." Are you ready for the question? Question is on the adoption.

ROBERTS: I have an amendment to offer to this section. My amendment is to delete the second sentence and to substitute, therefore, the following: "No legislator shall hold any other office or employment of profit - -

CHAIRMAN: Delegate Roberts, that's covering Section 10, if you'll examine it.

ROBERTS: The purpose of my amendment is to meet the problem of individuals who are employed and who would be disqualified under this proposal from running for office. I note for example, there are a number of individuals in this Convention, who were elected to the Convention, who would not be permitted to run for office under this provision if adopted in the Constitution. I would therefore, Mr. Chairman, move to delete that section in order to provide individuals who have the general qualifications to run and if they are elected, during their term of office, then they shall not hold any other office. That section was adopted for the governor. The governor, for example, can run for the United States Senate. Any member of the legislature could run for the Senate of the United States. They aren't disqualified from running. Why shouldn't an individual in the community, if you're looking for individuals to run, be permitted to run for office?

CHAIRMAN: In the judiciary article, they forfeit their office if they run for an elective office.

ROBERTS: Well, talking about the judges, the problem there was quite different.

A. TRASK: I second the motion made by Delegate Roberts.

ROBERTS: May I speak to the amendment, Mr. Chairman?

CHAIRMAN: Proceed.

ROBERTS: The amendment is to delete Section 8. There is only one other state in the Union that has made any provision for disqualification along this line, and that is the state of Missouri. And that state has made specific exemptions which include, for example, reserve corps, school boards, notary public and others.

It seems to me that if we are looking for individuals in the community to run for office, that if we want to provide as broad a basis for individuals for the new legislature which has increased its membership, then you ought to go to every area in the community to bring competent and qualified people there to serve the community and the public. This thing it seems to me would prevent individuals in the community from running.

Suggestion was made the other day that the way to do it was to resign from your office. That seems to be hardly an answer. If a person has a livelihood he can't give up his job, and no individual in private employment gives up his job when he runs for office. He takes leave of absence. Why shouldn't individuals in the community who have jobs as teachers, for example, if they wish to run, get a leave of absence? Why should they be denied the opportunity for serving their community? I think this amendment, Mr. Chairman, would permit all individuals to run if they have the general qualifications. If they are elected, then obviously they have to give up their previous employment while they are in the legislature.

A. TRASK: In support of the deletion, I think the best argument for this deletion is the fact that there are so many people in government service here contributing to this covenant and doing an excellent job. I think the invitation to people to run for public office should be a general one.

I am very curious to look at Section 22 of this proposal where the members of the legislature, after they're elected and get their salaries, they may vote themselves additional salaries. Now that's an extraordinary feature.

CHAIRMAN: We haven't passed that yet.

A. TRASK: I know, but that is the proposal and I'm directing the attention of the delegates to that provision. The governor can run for the United States Senate while he is still

the governor. And directing our attention to this matter with reference to what Delegate Tavares brought to the attention of the Convention with respect to the United States senators who were elected when they were under age, provision with respect to Article I of the United States Constitution says: "No person shall *be* a senator who shall *not* have attained to the age of 30 years:"

CHAIRMAN: This section goes to the question of eligibility rather than -- Yes, there's a difference.

A. TRASK: Precisely, that's why the argument of Delegate Tavares was not in line. You not only seek to have a person be in government service, but you penalize him and you make him ineligible to apply for office, to be elected, and I think certainly that the government workers have an advantage over most people in government. And I think they should not have this confronting them and alienate a large part of the people of the territory, some 15,000 in number.

CHAIRMAN: What would happen to his public duties during the time he was running for office? Who would do that?

A. TRASK: I think we could leave that to the wisdom of the legislature.

HAYES: I have a question I would like to ask Delegate Roberts and my question is this. For instance, he runs for the legislature and he is elected and after the legislature has closed its work, does he go back again to his position that he left to run?

ROBERTS: Let me assure the lady delegate that I do not intend to run for the legislature.

CHAIRMAN: She wants you to construe the section for her, though. That was her query.

ROBERTS: If an individual in the community has a job and he feels that he can make some contribution in the legislature, he can take a leave of absence and run for that office, and if he is elected, then sits in the legislature and is on leave and may return to his office when that legislature is pau. That same privilege is accorded to private employees who run for office and are elected, serve their term, and then they go back to their job. There's no reason why the same provision is not applicable and proper for other individuals in the community.

SILVA: There is no getting away that working for the government and working for private employment are two different things in its entirety. Working for the government is a privilege rather than working for private employment. Now, there is no binding duty in working for the government. If that is true, then all of us, every citizen throughout the territory should have the same privilege and any time there is a depression, we should go to the government and say, well, I want to be a teacher and I am entitled to be a teacher like the other school teachers or like the other government worker. There is a distinct difference and I am opposed to the amendment in its entirety. I can't see for any member of any department, whether in the school or any department of government, to get into the legislature and work out for the very same department in which he represents. That, in itself, is contrary to our own Constitution to have a judicial branch, legislative and administrative branch all in one.

TAVARES: As the one who suggested the first amendment, I think I am going to have to eat a little humble pie here. I am now convinced that Section 8 ought to go out entirely with the understanding that we are leaving it to the legislature by law to regulate this situation. I am now convinced that even the language I put in, "salary," doesn't hit the problem. There are some heads of departments who are members of boards and commissions that don't get paid that shouldn't run for the legislature. On the other hand, there are some officers, like notary public, who do get profit from fees who shouldn't have to resign in order to run for office, and I don't think we can cover it unless we do what Delegate Roberts said Missouri did in their constitution.

Now we have a civil service law which, after weighing the pros and cons of employees running for office, has decided that there are more evils from allowing them to run for office than the benefits of allowing them to do so, and therefore the civil service law allows the civil service commission to prevent that under rules and regulations. If you put Delegate Roberts' amendment in and it means what he says it does, you are invalidating your civil service rules.

Now, Mr. Chairman, a school teacher running for office sounds fine, but that school teacher has thousands of children whom he is in a position to influence unduly and unfairly, and even if he doesn't do it, as some of the school men will testify, he is accused of doing it anyhow and the people don't like it. I think in the long run we should leave it to the legislature. I, therefore, move that we delete the whole Section 8 with the understanding that the legislature can regulate it as it does under civil service.

ARASHIRO: I second that motion because I feel that Section 10 can properly take care of that.

CHAIRMAN: It has been moved and seconded that Section 8 be deleted in its entirety.

ROBERTS: That was my motion, Mr. Chairman, and that was seconded by Delegate Trask—to delete Section 8.

CHAIRMAN: I thought you had some added language.

ROBERTS: I did, but when the suggestion was made that it was not proper I therefore moved to delete.

CHAIRMAN: Are you ready for the question? All those in favor signify by saying "aye." Contrary. Carried. Section is deleted.

WOOLAWAY: I now move for the adoption of Section 9.

CHAIRMAN: Is there a second?

COCKETT: I second that motion.

CHAIRMAN: It was moved and seconded that Section 9 be adopted. Any discussion? I call the attention of the body to the fact that at the last discussion of this, the debate centered about the words "any statement made or action taken" on the question of treason.

WIRTZ: Point of information. Weren't the words "except treason" -- no, just the word "treason," wasn't that deleted?

CHAIRMAN: No.

WIRTZ: My recollection is that it was deleted.

WOOLAWAY: Point of information.

CHAIRMAN: Not according to the Chair's notes.

WOOLAWAY: It was my understanding that Delegate Kawahara made that amendment and it was lost.

CHAIRMAN: Delegate Kawahara made the amendment to take out the words "or action taken" and insert the words "or speech" according to the Chair's notes. It was never acted upon.

KELLERMAN: I think I made the motion to delete the word "treason" and the comma following it and that was passed. Then the discussion went to "action taken" and after some discussion on that amendment, there was a motion to defer the paragraph. I think you will find that's correct.

TAVARES: My notes show on July 1 we did vote to delete the word "treason," but we did not pass on the others.

ASHFORD: Wasn't there also a motion to delete the words "in either house"? I think that was made by the chairman of the committee, "in the exercise of his legislative functions," cutting out the words "in either house."

PORTEUS: Will the body recess for a moment to give the chairman an opportunity to check his notes? Everyone is telling him what has been done and I don't think we are giving him the opportunity to find out from his own records what's happened.

CHAIRMAN: The Chair will declare a two-minute recess till he gets his bearings.

WIRTZ: I second the motion.

(RECESS)

CHAIRMAN: Committee of the Whole will please come to order. The word "treason" be deleted. That motion was carried. The second motion as put by Delegate Kawahara, that the words "action taken" be deleted, that motion was put by the Chair and lost. So the section now stands as it appears in the print before you with the word "treason" deleted and the comma.

HEEN: I move that the Section 9 as amended, be adopted.

DELEGATE: Second the motion.

TAVARES: I was under the impression that a motion was pending to delete the words "in either house."

CHAIRMAN: No, that is not correct.

TAVARES: Well, I so move.

HEEN: I second that motion.

CHAIRMAN: It has been moved and seconded that the words "in either house" appearing on the fourth line of Section 9 be deleted. Any discussion?

SHIMAMURA: May I ask the question similar to the one I raised at a previous session, Mr. Chairman? In other words, if you delete "in either house," you're making this provision much more expansive than it is now. Isn't that correct?

HEEN: That's correct. It'll take care of the situation where we have in some other article provided that the judicial officer may be removed by the two houses sitting in joint session, and I think there was one provision this morning along the same line.

SHIMAMURA: May I ask another question, Mr. Chairman?

CHAIRMAN: Proceed.

SHIMAMURA: What would be the situation of a member of the legislature who makes a speech, say at the legislative council meeting, if we have such a council? Would his immunity apply to such a speech if he makes some ordinarily -- let's rather say a statement that is ordinarily defamatory, would he be still immune?

CHAIRMAN: No; there would be no immunity unless it is expressly conferred in the section creating the council.

TAVARES: It is my understanding that it would depend upon whether he was performing a legislative function or not. I am not prepared to say, without studying that further, that just because it was a legislative council meeting that there wouldn't be immunity. I believe it wouldn't be as broad possibly but if it was in the exercise of legislative functions, as the court should find, then I think this would give immunity.

CHAIRMAN: I think the correct rule would be that it would stand on the same basis as the testimony before any other public body. There is a certain immunity, as you know, if you testify before the P. U. Commission, or court.

SHIMAMURA: Well, that's just the point I mean, because if it's in the performance of the legislative function presumably the question would arise whether or not that legislative immunity would cover that situation. That's why I raise the point. The section as it stood prior to the deletion of the words "in each house," would limit it to his deliberations, his speeches, and his actions in the house.

HEEN: In the exercise of legislative functions, it might be in a committee so long as he is exercising his legislative functions, and much of the function of the legislature is performed in committee, so that if a legislative council can be regarded as a committee of the legislature that immunity might extend to the members of that council so long as they are all members of the legislature who are members of that council.

CHAIRMAN: The proposed amendment would broaden the immunity in other words.

A. TRASK: This would, of course, extend to holdover committee legislative activity, would it not?

CHAIRMAN: That's correct. Are you ready for the question?

SAKAKIHARA: Would you be kind enough to restate the question.

CHAIRMAN: The question before the body is the deletion from Section 9, fifth line, after the words "legislative functions," delete the words "in either house," and the purpose of the deletion is to broaden the immunity rather than to restrict it. All those in favor signify by saying "aye." Contrary. Carried.

SAKAKIHARA: I have an amendment to Section 9. Section 9, the last word, "the same," delete the period and insert the following: --

CHAIRMAN: Chair did not get where you are beginning, Delegate Sakakihara.

SAKAKIHARA: Starting from "the same" in the last sentence there, delete the period and insert a semicolon, add the following sentence: "provided, that such privilege as to going and returning shall not cover a period of over 10 days each way."

YAMAMOTO: I second the motion.

HEEN: Your committee decided to delete that provision. That's the provision that appears now in the Organic Act. The Organic Act was passed 50 years ago when they had no automobiles. I believe, at that time, you had to have buggies and horses and it used to take 10 days to go from Kau to Hilo.

CHAIRMAN: No airplanes?

HEEN: No airplanes. Now you don't need that provision. You leave here at half-past four in the afternoon and get to Kauai about an hour after that.

CHAIRMAN: That seems to make sense to the Chair. Does the delegate want to withdraw his amendment?

SAKAKIHARA: Oh no, the amendment stays.

CHAIRMAN: Chair will put the question.

PORTEUS: May I point out that it would seem to some as though this were an extension of time by putting in "shall not exceed 10 days." If you have gone home, you're home. But under the provision as written here, a person might take a month to return home and try to claim his privilege. I think that time would be unreasonable, but at least in this, we would be pinning him down to the ten days. I don't think it is an extension but rather than that, it sets an outside limit.

CHAIRMAN: The body understands the question? All those in favor of the amendment signify by saying "aye." Contrary. The amendment is lost.

ROBERTS: I'd like to offer an amendment as follows: at the end of that section after the word "same" delete the period, put a colon, and provide the following language: "provided that such privilege as to going and returning shall not cover a period of over two days." If I have a second to that, I would like to speak to that amendment.

YAMAMOTO: I second it.

ROBERTS: The way the article reads now, a legislator could take a month or two off and engage in any kind of activity under the Constitution and be completely privileged and immune from arrest. I don't think we ought to grant him that immunity. The purpose of the immunity is to perform certain functions - -

CHAIRMAN: Just a minute, Delegate Roberts, "except felony or breach of the peace." "In all cases except felony or breach of the peace." Now if the legislature - -

ROBERTS: That is while he is in session and performing his duty. The parenthetical clause says "be privileged from arrest during their attendance at the sessions of their respective houses and in going to and from the same." It seems to me, therefore, what you're doing is giving a complete immunity without any specified time and that's the purpose of the proviso in the Organic Act. Now maybe the time is too long because we have airplanes and boats and automobiles, but you certainly don't want to give them a free-for-all on that. You ought to put some time limitation on it.

BRYAN: I'd like to speak against that amendment, not that I'm not particularly in favor with the sentiment of it but I think the words "and in going to and returning from" are sufficient. If a fellow is taking a month off on Kauai when his home is on Hawaii, he is not going to or returning from the legislature, in my mind.

FONG: This privilege from arrest is not an immunity in which a man after the attendance in the legislature cannot be arrested. Now this immunity only applies to the time when the legislature is in session. You can't arrest him at that time. Nothing prevents you from swearing a warrant after the legislative session is over to arrest him. Now this is only to prevent you from hampering the administration of the legislature.

TAVARES: I should like to quote from an authority cited in a note to Section 6, clause I of the United States Constitution. I'm reading from the U. S. Code Annotated. There is this decision cited from the case of Williamson vs. U. S., 207 U. S. 42552, Lawyer's Edition 278, and it says this, "The term treason, felony and breach of the peace as used in this section excepts from the operation of the privilege all criminal offenses." There is nothing to worry about.

CHAIRMAN: What are you, for or against the amendment?

TAVARES: I am against the amendment, it isn't necessary.

CHAIRMAN: Are you ready for the question? The Chair will call the attention of the body to the fact that the same language appears in the Federal Constitution, "in going to and returning from the same." The Chair will put the question. All in favor of the amendment signify by saying "aye." Contrary. The amendment is lost.

HOLROYDE: I move Section 9 be adopted as amended.

APOLIONA: I second the motion.

CHAIRMAN: The motion is on the adoption of Section 9 as amended. All those in favor signify by saying "aye." Contrary. It's adopted.

KAM: I move for the adoption of Section 10.

WOOLAWAY: I second the motion.

ASHFORD: Section 10 was adopted, wasn't it?

CHAIRMAN: No, we are now on Section 10.

AKAU: In this question of public office, would that apply to the holdover committee appointments? The statement is, "No member of the legislature shall hold any other public office, position or employment of profit." Now I raise the question, did the committee think about the holdover group and would that apply?

CHAIRMAN: They could still be on the holdover committee, that would not be a prohibition against that. "No other public office," it says.

AKAU: Delegate Heen, would that be considered a public office?

HEEN: Not the other kind of public office. It is still a legislative office.

CHAIRMAN: You don't trust the chairman of Legislative Powers either, is that the idea?

HEEN: I believe there is a defect in this Section 10 with reference to the use of the term "of profit" after the word "employment" in the third line. I believe that those two words should be deleted, otherwise members of the legislature may hold the position of police commissioner over on Kauai or police commissioner in Honolulu where there is no salary or profit attached—I mean legal profit—attached to those offices. I move for the deletion of the two words "of profit" following the word "employment" in the third line.

WIRTZ: May I ask a question? Is it also deleting the words "of profit" as they appear later in the section? They appear twice.

CHAIRMAN: That's right, that would be the same, three lines below that, Delegate Heen. "Be elected or appointed to any public office, position or employment of profit."

HEEN: I move the same amendment to delete the same two words following the word "employment" in the fifth line of that section.

ASHFORD: I'll second that motion.

CHAIRMAN: It has been moved and seconded that Section 10 be amended in two respects. To delete the words "of profit" in the two instances where those words appear.

FONG: May I ask whether a reserve officer in the United States Army is a public officer. Does that mean if I stay in the legislature I got to resign my reserve commission?

HEEN: I think that this language here would include reserve officers.

KING: I think the language ought to be limited to officers under the State of Hawaii and its political subdivisions, not to the federal government.

CHAIRMAN: Well, you wouldn't want to see an officer holding a salaried position in the federal government, would you? As a member of the legislature?

FONG: That would eliminate Delegate Samuel King also. He is a reserve officer, I understand, retired. He is still holding a public office. That would knock us all out, all the reserve officers who are in the legislature. That would prevent reserve officers from running for office. They are only reserve officers to the extent that when the government is in a dire emergency they are called to active duty, otherwise they are civilians. So I was wondering whether this was a little too harsh and I don't think this was the intention, to eliminate these people.

KING: Aside from the difficulties that might be experienced by Delegate Fong and myself, the Territory and the State of Hawaii of the future will have thousands of officers and men in the organized reserves of the army, navy and marine corps and all of them will receive some retainer pay and they will be public officers according to this section.

OKINO: I should like to ask the chairman of the Legislative Committee a question. As I read Section 10, the officers commonly known as notaries public are included, are they not?

HEEN: That is correct.

OKINO: I feel that an exception should be made for notaries public because many legislators from the outside islands are notaries public and there are not too many notaries public in the outside islands, and I think the people of the islands are entitled to those particular services. By inserting a very short clause after the word "employment" respectively in the third and fifth line, "excepting notaries public," it will take care of that situation.

CHAIRMAN: Delegate Okino, it appears to the Chair that there are several instances which would work a hardship on reserve officers. Wouldn't it be in order to defer this until we get a little perfecting language and proceed with the next section?

OKINO: I move for deferment at this time.

CHAIRMAN: Is there a second?

RICHARDS: If we are going to defer action on it for possible other wording, there is another question that I would like to raise regarding the wording here and a situation which could easily arise. As I read it, no member of the legislature shall hold any public office during the term for which he is elected. Now a situation can arise where someone is elected to the State senate for a period of four years. At the end of two years there is a change in the governorship. Now the governor might want him as his executive assistant or might want him in one of the cabinet positions. Now would this preclude the senator resigning because his term would not be up and accepting a position of other government employment?

CHAIRMAN: It appears to the Chair that it would. Is there a second to Delegate Okino's motion?

CASTRO: I second the motion to defer Section 9. Pardon me, 10.

CHAIRMAN: Until the end of this article?

CASTRO: Until the end of the article or such time as we can get satisfactory wording for this section.

CHAIRMAN: You have heard the question. All those in favor signify by saying "aye." Contrary. It's deferred.

WOOLAWAY: I move for the adoption of Section 11.

KELLERMAN: I move that we take up Section 12 before Section 11, because the issues involved in Section 11 are definitely tied in to whether we have an annual session or not. It seems to me that, depending upon how the vote goes on the next section, we might have to reconsider what we did on Section 11.

CHAIRMAN: You make a motion to that effect?

KELLERMAN: I will move - -

WOOLAWAY: I accept the amendment.

CHAIRMAN: Moved and seconded that we take up Section 12 at this time. All those in favor signify by saying "aye." Contrary. Carried. Floor is open for Section 12.

HEEN: I move for the adoption of the first paragraph of Section 12.

CHAIRMAN: Is there a second?

HOLROYDE: I'll second that motion.

CHAIRMAN: It has been moved and seconded that the first paragraph of Section 12 be adopted. This provides for annual sessions.

PORTEUS: In conjunction with the provision for annual sessions – I probably am anticipating the second paragraph – as I understand the matter of taxation and finance, there was a recommendation there that other legislation not be tackled until legislation affecting appropriations of money, not being passed until the general appropriations bill has been passed. If we have a budgetary session, might we not reconsider our action in that portion of the taxation and finance article? Did the chairman of the committee have that particularly in mind?

HEEN: I think the language of the second paragraph of Section 12 is not in conflict with the provision that was adopted in connection with the article on taxation and finance.

PORTEUS: Well, I thought the general appropriation bill would be passed at one session. You wouldn't have to pass it at the next session. If you passed it, it is already disposed of. If you don't have a general appropriations measure, what are you doing to do, wait to pass it when you don't have any particular one in mind?

CHAIRMAN: Do you have an amendment, Delegate Porteus?

PORTEUS: I want to get what the picture is between the Legislative Committee and the Committee on Taxation and Finance as to whether these things do or do not fit together under this scheme. They wish to have one session exclusively confined to general appropriation measures.

TAVARES: I think I can answer that question. The chairman of the Committee on Taxation and Finance was also a member of the Committee on Legislative Powers and Functions and the taxation and finance sections have been carefully dove-tailed into what we understood the language of this was going to be. There is now a provision for regular sessions which is defined in this bill, in this article sufficiently so that whether you have annual or biennial sessions, it will fit the taxation and finance article.

WIRTZ: I think there is some confusion that the appropriation bill is going to cover a period of two years. Under this system the appropriation bill will be for the next succeeding fiscal year. The only difference between the two sessions is that one - - there will be the appropriation bill in both sessions, but in one it will be limited to the appropriation bill and revenue measures and certain emergency measures.

CHAIRMAN: Delegate White, did you want to be recognized?

WHITE: It is my understanding that the provision which we adopted would apply to a biennial session or annual session, that was the purpose of it. The only difference is that you will have an annual budget instead of a biennial budget, that's all.

CHAIRMAN: Any further discussion? The question is on the first paragraph of Section 12. All those in favor signify by saying "aye." Contrary. Carried.

HEEN: I now move the adoption of the second paragraph of Section 12.

BRYAN: I'll second that motion.

ROBERTS: I have a question to address to the committee. I thought it had been our previous understanding that it would be possible at the budget session to take up confirmations in the Senate or for the possible removal of individuals. As I read the section, there is no provision at the budget session to permit the taking up of Senate confirmations.

CHAIRMAN: That isn't done in the session; it is a session of the Senate alone, confirmation.

ROBERTS: I know, but there is no sense in calling a special session of the Senate when the House and Senate are both in session and you can bring those matters up to them instead of reconvening them, providing for special consideration.

CHAIRMAN: You think there is a prohibition here?

HEEN: There is no prohibition here, Mr. Chairman.

CHAIRMAN Then there is nothing to stand in the way of the Senate confirming any nominee during any one of those sessions.

ROBERTS: As I read the section, Mr. Chairman, it says at the budget session, the legislature shall be limited to the consideration of the following things.

HEEN: That is correct.

CHAIRMAN: That is not the action of the Senate.

ROBERTS: I assume the Senate is part of the legislature.

HEEN: That is correct; the limitation is on the two houses, sitting as the legislature. But it so happens that the Senate is also in session; therefore, the Senate, being in session, can act on those appointments in the way of confirmation or consent to removal.

ROBERTS: If that goes in the Committee of the Whole as a statement of consideration by this committee, that will be perfectly all right.

CHAIRMAN: That's perfectly clear, Delegate Roberts.

OKINO: I should like to propose a question in connection with the second paragraph of Section 12. Is the expression "urgency measures" sufficiently broad and inclusive to include impeachment of public officers?

HEEN: It might well be if the governor becomes too dictatorial and wants to take over the government, it might be an urgency measure that might require drastic action on the part of the legislature.

OKINO: I should like that statement to be incorporated in the report. I think it will clear up the situation.

CHAIRMAN: Chair may appoint you as subcommittee of one to incorporate these things in the report, Delegate Okino.

OKINO: I shall appoint you as a committee member.

NIELSEN: I wasn't on either one of those committees, but I noticed in the third sentence it says, "for the succeeding fiscal year." Isn't the budget session supposed to cover the biennium?

HEEN: No, Mr. Chairman, it's supposed to cover each year, each year becomes a fiscal year instead of a biennial appropriation.

NIELSEN: Well, then you have a budget session every year?

HEEN: That is correct. In other words, in your general session you consider your general appropriations bill; in your budget session you consider only the appropriations bill and other bills referred to in the provision of this section, urgency measures and tax measures that may be required for the general appropriations bill.

NIELSEN: I was under a mistaken idea then. I thought there was one session, one year there was a budget session and the following year there was a general session.

WHITE: On this question of confirmation and other things, isn't that handled under the paragraph on the executive powers and duties where it says that the governor "shall at the commencement of each session, and may, at other times, give to the legislature information as to the affairs of the State and recommend such measures as the governor may deem expedient"? Does that permit him to take up those things that need to be taken up at that session?

CHAIRMAN: The Senate confirmation does not necessarily involve a session of the legislature. So the problem that Delegate Roberts raised is taken care of.

H. RICE: You're going to have 76 senators and representatives. Don't you think we ought to write it in here somewhere that each member should be allowed to introduce one bill or 10 bills or 15 bills, that's the limit?

CHAIRMAN: Chair is ready to put the question before any facetious remarks are extended.

PORTEUS: I note here that at a budget session or apparently at a general session a general appropriations bill

for a succeeding fiscal year only may be handled. It would seem to me under some circumstances that it would be desirable from the point of view of a department and from the point of view of the governor to be able to budget out their expenditures over more than one year's period. I think this is unduly restricted. If it appears desirable to have a budget for a succeeding fiscal year only, that could be handled. On the other hand, many expenditures for a department, as those who have been in the legislature know, may well be handled over more than one particular series of months. It may be a little desirable to postpone some of the purchases or to make some of the purchases a little earlier. Now, if you don't let a department budget itself out for about two years in advance or even a year and a half, I think that you're placing an undue restriction on your legislature, on your governor, and the executive departments because there are sometimes a good time to make purchases. You don't know quite when they'll be, whether they'll be in the next year or six months. Give them a little discretion and that, I think, will be more desirable than to restrict your budget to a one year period.

CHAIRMAN: Will the committee address themselves to that?

BRYAN: The only point that I want to make is the words, "for the succeeding fiscal year" referred to the general appropriations bill. It's just describing what the general appropriations bill is. Now other authorizations for expenditures and so forth and so on would not necessarily be limited to the succeeding fiscal year in my mind.

PORTEUS: It is my understanding that the general appropriations bill is the budget for the territory. The general appropriations bill that I thought we had been talking about in this Convention is the one that not only sets up the out-lay of money for personnel but it sets up the money to be expended for supplies, maintenance and the operation of the particular departments of government.

CHAIRMAN: Delegate White, can you clear up the Secretary?

WHITE: I think he's getting confused about budgeting and the general appropriation bill. You can develop a budget three or four years in advance, if it is necessary for proper planning, but when you come to a particular session you approve a certain amount of appropriation to take care of general operating expenses for a one year period. That doesn't prevent the development of a biennium budget as a guide to the legislature and as a guide to the executive, and then you come along to the following year and you may want to modify what you've already budgeted for the second period.

CHAIRMAN: Are you ready for the question?

PORTEUS: I take it then the answer is that you can tell the legislature all you want, the legislature can sit around and talk all it wants about maybe what might happen in a succeeding fiscal period, being a one year period, but if the governor and the executive department and the legislature feels that it would be better to set up a general appropriations bill and make it an appropriation for two years or for a year and a half, that under this provision then it is forbidden to do so.

AKAU: I'd just like to speak on the other side of the picture. I think the people in public office, in government office here, would appreciate the fact that they can set up their budget for one year. I think they have found it very difficult to see forward for a period of two years. I think we have a very glowing example of the Department of Institutions who didn't plan very well a couple of years ago and they were in hot water. I think we should do it on the basis of one year and let it go at that.

CHAIRMAN: Chair will put the question.

ROBERTS: I'd like to speak in support of the comments made by Representative Porteus. I think there are problems in terms of the operation of the legislature where you may want to provide budgets for a biennium. I know, for example, at the university if you're going to bring in individuals from the mainland to teach, you've got to make some overall provisions in planning for more than one specific year in terms of budget. I think the legislature should be given the opportunity to make provisions for longer budgets than one year. I think we ought to provide for some amendment to the section to take care of that and if it's agreeable with the group, could we defer action on that paragraph so some language could be provided?

HOLROYDE: Again we are talking about the difference between budget and appropriations. You can make a budget for ten years; there is nothing to prevent you; in fact most businesses do plan for ten years. But you appropriate for one year, then you come back and review and if you want to - - maybe you tentatively decided what you were going to do the following year, but you come back and review it again against that budget and maybe change the budget. But your appropriation is for a year, your budget can be for any number of years.

ROBERTS: Mr. Chairman, there is a distinction obvious - - Mr. Chairman, may I have the floor.

CHAIRMAN: Delegate Roberts, you have the floor.

ROBERTS: I just want to know.

CHAIRMAN: You what?

ROBERTS: I want to know whether I have the floor. I understand the difference between a budget and an appropriation. I think the problem basically is that, to say you've got a budget mapped out for ten years and then tell the department to go ahead, but they cannot go ahead except for one year because all you given them an appropriation for is one year. And even though they may look to you and say, "Yes, you've got this plan for the next five or ten years," but they cannot act unless they are given funds with which to act.

LOPER: I'd like to ask the chairman of the committee, if there's any reason why these words should not be deleted: "For the succeeding fiscal year and."

HEEN: It was definitely decided that the appropriations bill should cover only one fiscal year.

CHAIRMAN: Delegate White, do you have any further views on this? Does it present any problem to you?

WHITE: No, it doesn't to me. It seems it is a relatively simple problem. I think you always have problems where in employment you may go beyond the period of a fiscal year which might have to be taken care of in the amount that you appropriate, but I can't see that it raises any more problem than when you have to take on the employment of a man for four years when you have a biennium budget.

KELLERMAN: May I add in support of the committee report that we had before us in the committee the heads of several of the executive departments. They were unanimous in their opinion that an annual budget on a one fiscal year basis would be of material benefit to them in planning their expenditures and laying out their plan of work and what they

could expect to have without running into the question of cuts by the executive branch where there were discrepancies in revenues and funds - - taxation plans that were set up in an appropriation bill. They were unanimous in their approval of the workability of a single fiscal year plan.

CHAIRMAN: Chair will put the question. Question is on the adoption of the second paragraph of Section 12 beginning with the words, "At a budget session" down to the words "entered upon its journal." All those in favor signify by saying "aye." Contrary. The ayes have it, it's carried.

HEEN: I now move the adoption of the third paragraph of Section 12.

CHAIRMAN: Is there a second?

KAGE: I second the motion.

CHAIRMAN: Any discussion on the section? This limits the number of days of the session of the legislature.

TAVARES: May I ask a question? Under the Organic Act which has substantially the same language, the governor has exercised the power to grant more than one extension during the 30 day period. In other words, it doesn't mean that he can only exercise the right of extension once. In other words he can extend for five days and then two days and ten days more until the 30 days are up. I think that should be understood, that the power of extension is not lost by one exercise thereof within the limits.

CHAIRMAN: As a practical construction that would follow, I think.

HEEN: This language follows the language in the Organic Act and it has been so interpreted that the governor may extend for five days, and before the expiration of five days gives another extension of two or three days and so on down the line, so long as the combined extensions do not exceed 30 days, excluding Sundays and holidays.

ROBERTS: The second section provides for general sessions limited to a period of 60 days and budget sessions to 60 days and special sessions for 30 days.

HEEN: Mr. Chairman, correction, 30 days.

CHAIRMAN: Thirty days for special session - - budget and special sessions, 30 days.

ROBERTS: I'm sorry, that's correct.

CHAIRMAN: That's right.

ROBERTS: I'd like to amend the number of days for 90 days for the general session and 60 days for the budget session and 30 days for the special session. I also plan, Mr. Chairman - -

CHAIRMAN: Wait till I get that. Ninety for the regular, 60 for the budget and 30 for the special.

ROBERTS: That's correct.

HEEN: Ninety days for the general session and 60 days for the budget session. The budget session and the general session are regular sessions.

ROBERTS: My amendment, Mr. Chairman, was to change the words 60 to 90, to provide for 60 days for a budget session and 30 days for a special session.

CHAIRMAN: Do I hear a second?

MAU: Second.

CHAIRMAN: Seconded by Delegate Mau.

ROBERTS: My own personal preference would be to place no limitation on the time of the legislature. In discussing the matter with various delegates, however, I find that there is general opposition to a continuing session of the legislature.

CHAIRMAN: Delegate Roberts would like to have your attention. It just may be he has a contribution here. The Chair is inclined to think he has.

ROBERTS: We'll weigh that after I get through talking. It would seem to me that a 60 day session, which would include the general legislation and the passage of an appropriation bill, that 60 days is much too short a time. You ought to provide at least 90 days if you're not going to provide for a continuing session. The budget session, I think, ought to remain as they are and the special sessions ought to remain as they are. I would suggest that some opposition may be created by the fact that the salaries in Section 11 for the 60 day session are limited to $1500. When we come to that section I plan to move an amendment to provide additional compensation for the legislators for that additional time. I would amend that section when I get to it from $1500 to $2000 and from $1000 for the budget to $1500.

HEEN: Mr. Chairman, may I ask the speaker one question? I take it you will leave the provision there as to the extension of every regular session for a period of 30 days.

ROBERTS: Yes, the language in your section with regard to the extension by the governor would still remain. I understand that the purpose for limiting to 30 days would be that if the governor needs more than 30 days for some special operation then he has to call you back in special session and pay you appropriate funds for it.

HEEN: As I understand the last speaker, he feels that it would take 90 days to take care of all kinds of bills, including the general appropriations bill during a general session. Is that correct? Well, they can do that with 60 days plus 30 days' extension.

ROBERTS: The fact that we can do a job in three months doesn't mean sometimes that it might not take us more. I thought perhaps this job here might be done with less time, but when getting 63 people together we found that it was much more difficult and I would venture to suggest that perhaps it would be more difficult with a larger House and a larger Senate. There will be more individuals to consider and more differences of opinion to reconcile. I think you ought to be given adequate opportunity to do a job in giving adequate legislation and proper consideration to the appropriation bill.

MAU: In line with what the last speaker has just said, in this Convention we have only one body to deal with. If we are to have a bicameral legislature there'll be two houses to deal with and I think progress will be much slower than has been the progress in one house in this Convention. I want to call the attention of the delegates to the fact that this 60 day period has been going on for the last 50 years in the Territory. Of course times have changed. We have come a long ways from where we were 50 years ago. I think there's much more work for the legislature than say 20 years ago and yet the performance of the legislature in the past say ten years has been such that the public is inclined to believe that 60 days has been too short, and I sincerely believe that the legislators ought to have enough time in which to do a good job. I contend that if the legislature has to rush through its work as this Convention has been trying to do, to rush through its work, that possibly a good job cannot be done.

I also want to call attention to the fact that Congress used to meet between the months of December and March and now it is in session continually because of increased business, and I believe the same holds true for territorial and I hope state affairs.

CHAIRMAN: Question is on the amendment.

FONG: I want to speak in opposition to this amendment. In my experience in the legislature, I have found that 60 working days is plenty enough for the legislature to do its business. In the five sessions that I have been in, it was only on very few occasions that the governor has seen fit to convene the legislature in extra session for two or three days and the longest that I have stayed was about five or six days. Now the 60 working days which we have been given to carry on the work of the legislature has proven sufficient for the legislature to do its business. Now if you extend the session to 90 days it will mean that your legislature will be in session for almost one-third of the year, that is 90 working days will stretch out to about four months of work. Now four months of work is a pretty long time to have your legislators sit and I believe that 60 working days with the privilege of the governor to extend it for 30 days, the way he has been extending it two or three or four days depending upon the time needed, is plenty sufficient for us to carry on our work. Besides the regular session we now have the budget session and in the budget session we'll carry on some of the emergency measures which will be taking off the load from the general session. So actually we have an extra 30 days in the budget session, and I would say that 60 working days is plenty enough. So this amendment should be voted down.

APOLIONA: I, too, am against this amendment. Knowing the legislators as I do, I am casting no reflection on them, they are all good and honorable men. If you give them 60 days, they're going to ask for more. If you give them 90 days, they're going to ask for 120 days. I think the idea is to give them a lesser number of days so they will get down to work from the very beginning because legislators are just like we are. We are human, we like to loaf until the last few days and then rush everything. Personally, I think this extension of time is just giving the legislators more time to "dilly" around.

H. RICE: I wish the delegates would look at their manuals, pages 48 and 49, and they'll find that the majority of the states do try to limit the number of bills introduced into their legislature. The trouble is the legislature now has too many worthless bills introduced and that takes time to segregate them all and expecially - -

CHAIRMAN: Is that done by constitutional provision or is that a self imposed rule?

H. RICE: I'll read just a sentence here. "As a result of these constitutional provisions and legislative rules, a great majority of states in some way attempt to restrict the introduction of bills." I think that you will find that some say it will take four-fifths of the legislature to introduce bills after the 40th day. I'm against this amendment. I think the legislature is long enough in 60 days and I think if it's annual you will find it's plenty.

CHAIRMAN: The Chair will put the question. The question is on the amendment enlarging the number of legislative days to 90 for a general session, 60 for a budget session, and 30 for a special session, with the power to extend for an additional 30 days. All in favor of the amendment signify by saying "aye." Contrary. Amendment is lost.

Question is now on the paragraph. Are you ready for the question? All in favor of the adoption signify by saying "aye." Contrary. Unanimous. Not unanimous, excuse me, carried.

WOOLAWAY: I move for the adoption of Section 11.

NODA: I second the motion.

WOOLAWAY: It was my understanding we were going to take up Section 12 and then go back to Section 11 by the wishes of Delegate Kellerman.

ASHFORD: I have an amendment to Section 11 which is on the desks of the delegates. I offer that amendment.

CHAIRMAN: Delegate Ashford, may the Chair get the procedure straight. Has it been moved that Section 12 be adopted? The Chair will entertain a motion then that that section be adopted prior to receiving your amendment.

KELLERMAN: I move the adoption of Section 12.

CHAIRMAN: Is there a second?

SMITH: I second that motion.

CHAIRMAN: It has been moved and seconded that Section 12 be adopted. Is that the entire section, Delegate Kellerman? Chair will recognize Delegate Ashford.

HEEN: Mr. Chairman, if I may. In the first paragraph of Section 12, fourth line, they have this language, "All sessions shall be held at the capitol of the state." One article that was adopted by the Convention says that the seat of government of the state shall be in Honolulu, so this will have to be amended to conform with that provision in that article and maybe that can be a matter of style. That could be ironed out.

WIRTZ: I so move that the matter be taken up by the Style Committee, to conform.

HOLROYDE: I second the motion.

CHAIRMAN: The Chair will incorporate that understanding in the report, that it will be taken up by the Style Committee. The Chair will recognize Delegate Ashford who is trying to get her amendment before the house. I don't believe it has been offered yet.

CROSSLEY: Point of order, Mr. Chairman.

ASHFORD: Mr. Chairman, I - -

CROSSLEY: Point of order. You just asked for a motion on Section 12, Mr. Chairman, which is one section that we adopted paragraph by paragraph.

CHAIRMAN: Quite right, the Chair is getting a little dizzy. The Chair will now put the question on Section 12.

TAVARES: Point of information about Section 12. It seems like a trivial matter, but I think it should be understood. In the last paragraph of that section when it says, "Regular sessions shall commence at 10:00 a.m.," it means 10:00 a.m. whatever time the legislature may enact from time to time.

CHAIRMAN: Hawaiian Standard Time.

TAVARES: Daylight saving or any other time the legislature enacts.

CHAIRMAN: That's so understood. Are you ready for the question? All in favor signify by saying "aye." Contrary. Carried.

CROSSLEY: I now move for the adoption of Section 11.

WOOLAWAY: That's already been covered, carried.

CROSSLEY: It couldn't be, it's out of order, so I now move for the adoption of Section 11.

SMITH: I'll second that.

CHAIRMAN: It's been moved and seconded that Section 11 be adopted, and the Chair will now recognize Delegate Ashford.

ASHFORD: I have an amendment to Section 11, to the entire section.

Section 11. The compensation of members of the legislature shall consist of a salary of the sum of $1,500 for each general session and the sum of $1,000 for each budget session and the sum of $750 for each special session which sums shall be payable in such installments as may be prescribed by law, together with such additional emoluments as may be provided by law. No salary shall be payable when the senate alone is convened in special session.

No law directly or indirectly increasing the emoluments of the members shall be effective for a period of two years subsequent to its enactment.

CHAIRMAN: You move the amendment. Is there a second?

ASHFORD: I move that amendment.

CHAIRMAN: Is there a second?

WIRTZ: I second.

CHAIRMAN: It's been moved and seconded that Section 11 be amended in accordance with the amendment offered by Delegate Ashford, on the desks of the delegates.

ASHFORD: If I may speak to that. I incorporated in this Section 11 the salary schedule presented by the committee although I think that salary schedule is far too low. For a regular session at the time of the adoption of the Organic Act, $1000 was given. Now we've had more than 100 per cent inflation.

If we are to have a truly representative legislature they must be adequately paid, particularly people from the other islands who have to come here and live away from their homes, and unless they have adequate compensation, of course they can't leave, particularly one-man businesses or what not, can't come, but I did not attempt to amend that in the amendment I am offering because I didn't want to ask too much at one time.

The amendment which I do offer is to cover the situation which now exists. The legislature has voted itself an emolument of, I understand, $15 a day for legislators from the other islands and a lesser amount for legislators from Oahu. Now I am in hearty accord with that principle but I do not think that any legislature should be permitted to raise its own pay, and therefore the meat of my amendment is contained in the second paragraph that "no law directly or indirectly increasing the emoluments of the members shall be effective for a period of two years subsequent to its enactment."

CHAIRMAN: In other words, your amendment simply adds the second paragraph to the committee proposal, is that right?

ASHFORD: That's the essence of it, yes.

NIELSEN: I'd like to ask a question. This does freeze the salaries, however, at $1500 with no further per diem or anything to be allowed during the first session after statehood?

CHAIRMAN: That is correct. The Chair might suggest to Delegate Ashford—I don't know whether the delegate heard that inquiry—the adoption of this amendment would preclude a change in the salaries of legislators, and what the delegate from Hawaii is inviting the delegate from Molokai's attention to, is just that. If you desire to have the second paragraph acted upon, that could be done separately.

HOLROYDE: I would like to ask Delegate Tavares or someone else in the law profession if that act now on the books that allows them $15 a day, won't that continue?

TAVARES: I assume it would under the Ashford amendment. The emoluments are mentioned. They are provided for by law.

HOLROYDE: That's my understanding, so that won't be taken away, it will continue.

TAVARES: Was there a second to that motion, Mr. Chairman?

CHAIRMAN: Yes, there was a second.

ASHFORD: I'm not in agreement with that suggestion. I don't think that that would necessarily continue because that was the legislature of the Territory of Hawaii and we're setting up a new legislature by this State -- for the State. If the delegates will refer to Section 11 as included here by the committee, it doesn't give the legislature any power to raise their salaries, the salaries are frozen.

CHAIRMAN: Could Delegate Tavares enlighten the Chair as to what section of the Revised Laws this per diem is in?

TAVARES: As I recall it I think it's later than the Revised Laws of 1945. I think --

CHAIRMAN: Here, we got it here from an expert.

SAKAKIHARA: It was the 1945 session of the legislature.

CHAIRMAN: 1945 session laws?

SAKAKIHARA: Yes, 1945 session law.

HEEN: Mr. Chairman, are you referring to the allowance? That was enacted I believe in 1947 and amended in 1949, where it was raised from $10 to $15 for the members of the legislature from the outlying islands and where an allowance of $5 for incidental expenses was made for the members from Oahu.

NIELSEN: I'd like to ask Senator Heen, under this amendment then there can be no allowance per diem to the outside islands or the local representatives until they voted it for the next succeeding session? They couldn't get it the first session after statehood, is that right?

TAVARES: I disagree respectfully with Delegate Ashford. We are going to have, I believe, a provision in the ordinances and continuity of law portion of our Constitution which will continue in effect laws not inconsistent with this Constitution. I do not consider such a law inconsistent with this Constitution unless we provide otherwise specifically, and therefore it will be continued in effect until the legislature otherwise provides, in my humble opinion.

FONG: I think the passage of this amendment will give further strength to the opinion of Attorney General Tavares. There was a question as to whether the legislature could pass such a bill and there is still a question as to whether the bill is valid or not. But with this amendment here, it

would validate what the legislature has done, and I think if this amendment passes and nothing is said about the law which is now in effect, that law will continue and the per diem will still be paid.

PORTEUS: May I point out to the concern of some of those from the outside islands that if the next legislature anticipating statehood doubles the ante, when the first state legislature meets they'll get double what it is today. It'll be a nice incentive for some of those that desire to see what pay is established when the first state legislature meets. Actually if there is a session of the territorial legislature before a session of the state legislature such laws as are in effect will continue over. I think the former attorney general, the delegate from the fourth district, is quite correct in his opinion. But don't let's make the assumption that it's $15 and $5. It might be nothing if it's repealed and it might be something else if a different law is passed.

HEEN: If the Republicans are still in control of the legislature that might happen.

NIELSEN: That's the reason I brought that up because we are certainly taking a beating these days from the outside islands in this Convention.

CHAIRMAN: The Chair will call the body's attention to Act 17 of the Session Laws of 1949, which provides:

> A member of the legislature of the territory, other than members residing on the Island of Oahu, while attending any session of the legislature, shall be allowed fifteen dollars a day, which amount is to cover all personal expenses, such as board, lodging and incidental expenses, but not traveling expenses, and a member of the legislature of the territory residing on the Island of Oahu, while attending any session of the legislature, shall be allowed five dollars a day.

Now under the continuity of law section that statute is continued; your amendment would not reach the vice, Delegate Ashford.

ASHFORD: Apparently I'm not supposed to speak on this subject.

CHAIRMAN: You certainly are, Delegate Ashford.

ASHFORD: The attitude of some of the delegates here seems to be that I am opposed to having the legislators properly paid. I'm not; I think they should be, I think that's the way you get good men, and particularly good men who have not private resources. But I think it is abominable for a legislature to vote money to itself.

PORTEUS: I'm sorry, but I feel that I can't let that pass unanswered. It's all right for some of the delegates to make remarks about the legislators. Legislators are used to being fair game by a great number of citizens. They would expect, however, that those that had had some concept of the duties and the difficulties would perhaps speak a little more kindly. I think I'm in a position to rise to this and speak on the matter because I was not one who ever voted for any increase in pay, for any retirement, or for any emoluments. There were others that did; I did not. I think, however, that the law as passed, while it was passed by a negative vote, has worked to the advantage of the outside island legislators; I think it has worked also to the advantage of the legislators here on the Island of Oahu. In fact I might add that when it was -- the law was passed giving Oahu $5 a day the outside islanders looked at those of us in Oahu and said smilingly, "You vote 'no,' but your hand is out." And I don't know that any of us who did oppose it then refused to accept the amount that was proffered.

However, I think it should be pointed out in the defense of the territorial legislature that had taken some of these actions that their pay has been set by Congress in the Organic Act, and I think there's been a legitimate effort to pay for some of the terrific expenses to which the outside legislators have been put by extended service in the territorial legislature, where in the last several sessions I don't think we have failed to have a short extension, if not two or three extensions of time. That has been, I think, very hard on those who have had to come here from the other islands and maintain, in effect, two homes.

CHAIRMAN: Chair will declare a short recess for the clerks.

ASHFORD: Before a short recess is declared, Mr. Chairman, I would like to withdraw the word I used. I think that was in very bad taste and I would like to substitute for the word "abominable," the words "bad taste."

C. RICE: Mr. Chairman, just one correction I want to make. I think it was the Organic Act started with $500 for the legislators, not a $1000. It was increased, I think, in 1921.

CHAIRMAN: Recess for five minutes.

(RECESS)

CHAIRMAN: The Committee of the Whole will please come to order. Will the delegates please take their seats.

ASHFORD: With the consent of the delegate who seconded my amendment, I would like to --

CHAIRMAN: Will the delegate hold just a minute? Will the delegates please take their seats. Proceed, Delegate Ashford.

ASHFORD: I would like to offer as a revised amendment, the second paragraph of the amendment, also substituting for the word "emoluments" the word "compensation."

WIRTZ: I'll accept the amendment.

FUKUSHIMA: I'd like to further amend the amendment by inserting the word "minimum" in the second sentence before the word "salary."

CHAIRMAN: There is no word "salary" in the amendment, Delegate Fukushima. The Chair understands --

FUKUSHIMA: There is; the second sentence, Mr. Chairman. I mean the second line in the first sentence.

CHAIRMAN: Wait. Will you hold that just a second. Does the Chair understand that the first paragraph of Delegate Ashford's amendment has been deleted in its entirety?

ASHFORD: Yes.

CHAIRMAN: So there is no language there relating to salary.

FUKUSHIMA: In that event, Mr. Chairman, I'd like to amend Section 11.

CHAIRMAN: What we have before us is Delegate Ashford's amendment which is the last paragraph of the printed amendment before the -- distributed among the members, and the word "emoluments" has been stricken orally by the delegate and the word "compensation" inserted. That is what is before the house now.

FUKUSHIMA: In that event, I'll wait until disposition of that is made.

FONG: I think it's a good amendment.

TAVARES: In connection with voting on the amendment or the amended amendment proposed by Delegate Ashford - -

CHAIRMAN: No, it's just on the amendment of Delegate Ashford. She has changed that and the second has accepted the change.

TAVARES: I move that it is the sense of this Convention that in so doing, we are not by implication holding that the per diem now paid under existing law would be invalid under the first part of the section. I think that should be clearly understood.

CHAIRMAN: This would have a prospective operation when and if we become a state, as the Chair understands it.

TAVARES: Yes, Mr. Chairman, but the deletion of the word "emoluments" from Delegate Ashford's first amendment might now lead to an implication that we didn't want anything else brought in. I think it should be clear that we're carrying over the existing construction of our Organic Act, that the prescription of the compensation as salary does not prevent the legislature from putting up additional per diem for expenses, a reasonable amount to cover living expenses.

CHAIRMAN: I don't think that this Convention can pass on the propriety of that act of the legislature, Delegate Tavares.

TAVARES: I think that this Convention can place a construction on any words that it wishes; and I believe that it's perfectly in order for us to say that it is the sense of this Convention that we mean thus and so, at least as far as the Constitution is concerned.

HEEN: I rise to a point of information, Mr. Chairman. Do I understand the first part of the amendment, first proposed by Delegate Ashford, has been deleted?

CHAIRMAN: That's correct. The Chair will restate the status of the amendment because the delegates have been moving about from place to place. Delegate Ashford has offered an amendment to Section 11, the first paragraph of which she has now deleted, and offered an amendment which reads as follows; this is an amendment to Section 11; "No law directly or indirectly increasing the compensation of the members shall be effective for a period of two years subsequent to its enactment."

H. RICE: I'd like to see this amendment in the reverse. This is one time when I don't agree with Delegate Ashford. I think the way it's set up it is an expense account. I'm in the same category as Delegate Porteus. I did not vote for this but I think it's a very fair thing because this is an expense account and it can be deducted from your taxes. This $1500 they're going to get, the first deduction is going to be 20 per cent for the Federal Government and then two per cent of the whole amount for the Territory. So you take 22 per cent off and I think it's only fair. I'd like to write it into the Constitution that there should be a $10 expense account for the legislators.

CHAIRMAN: The Chair may call your attention, Delegate Rice, that in the section establishing a salary it would be perfectly competent to propose an amendment, a salary plus expenses not to exceed blank dollars per annum. That, of course, would be fully tax exempt.

WHITE: I'd like to ask the movant of this motion, what do you mean by "directly or indirectly increasing compensation"?

ASHFORD: Well, if it—I was going to say, if it please the court, Mr. Chairman. I think an indirect compensation is when you, in addition—you notice I didn't use the word "salary," I used the word "compensation"—and I think that that includes any financial contribution to the office, and I think it would unquestionably cover this ten or fifteen dollars a day. Not this, but I mean if they start to increase it, I think that would be increasing their compensation as distinguished from increasing their salary.

WHITE: I'm not an attorney, but I wouldn't interpret it that way because I would think that the compensation would apply to a salary, not to an allowance made for traveling or living expenses of that nature.

CHAIRMAN: That would be the Chair's interpretation of the language.

WHITE: I would like to go back. Personally, I think that the amendment that Delegate Ashford offered, the first paragraph, is a good one. I see no reason why we shouldn't put in there that the legislature shall be entitled to other emoluments as may be prescribed by law. There's no reason why - - there's no magic in having to continue it as an ordinance. There's no reason why it can't go right into this provision so that there is no misunderstanding about it.

FONG: After taking a look at this amendment, I have a question. Now you will note that the amendment says, "No law directly or indirectly increasing the compensation of members shall be effective for a period of two years." I think it impliedly means that the legislature could increase the salaries of the members by that amendment.

CHAIRMAN: That's right, but that would have to be effective two years hence.

FONG: So if the legislature says the salary of the members shall be $5000, then the subsequent legislature can come in and get $5000. I don't think that was the intent of Miss Ashford.

ASHFORD: That absolutely was, and I think the people who return to the legislature would be an entirely different group.

FONG: Now, Mr. Chairman, under those circumstances I don't think that this is such a good amendment.

CHAIRMAN: Do you change your vote?

FONG: I change my vote if that is the intent. Now I think that if you give the legislature the power to set their salaries from time to time and only to be effective two years hence, it's not the thing to be desired. I think that this Convention should set the amount of salary and then they should stick on to that salary.

H. RICE: I move we defer action on this and go on to - -

CHAIRMAN: We are now on Section 11. This is a proposed amendment to Section 11.

H. RICE: I would like to offer another amendment in place of Miss Ashford's amendment and I'd like to have time to get it written up. I'm not a lawyer myself.

ASHFORD: I will second the motion having full confidence that I will agree with Mr. Rice even though he doesn't agree with me.

CHAIRMAN: The question then is on the amendment of Delegate Ashford. All in favor of deferring Delegate Ashford's amendment signify by saying "aye." Contrary. Carried.

WIRTZ: I understood the motion to defer went to the entire section, not only the amendment.

CHAIRMAN: That wasn't the Chair's understanding.

KING: Mr. Rice made the motion to defer action on the section.

PORTEUS: Section 11.

CHAIRMAN: The Chair will reverse itself then.

WOOLAWAY: I believe Section 13 has been adopted, so I now move for the adoption of Section 14.

NODA: I second the motion.

HEEN: I don't know what the status of Section 13 is?

CHAIRMAN: Has been adopted, on July 1, 1950.

ASHFORD: May I ask a question of the chairman of the committee in regard to Section 14? Inasmuch as there is a provision in another section for the judging of elections, would the chairman of the committee feel that this is desirable to say, "Not withstanding any other provision of the Constitution"?

HEEN: I believe what the delegate just stated refers to some provision in the article on suffrage and elections which provides for contested elections by a court of competent jurisdiction. Mr. Chairman, I must state that that provision there gave the Committee on Style some concern and maybe that provision should be eliminated altogether. But, if it is going to be there, remain there, then the suggestion made by Delegate Ashford I think is in order. "Notwithstanding any other provision in this Constitution, each house shall be the judge of elections and returns and qualifications of its own members."

CHAIRMAN: With the understanding that the Style Committee will reconcile any difference, will that be satisfactory to Delegate Ashford?

ASHFORD: Yes. In my opinion perhaps the exception -- two exceptions should be written into the article on suffrage and elections, that is, with the exception of any constitutional convention or the legislature.

BRYAN: The last time that this question came up, I pointed out that it may not have been exactly pertinent. This covers cases where there is no contest. Judges of elections in the other case, covered under the article on suffrage and elections, there would have to be a contest before it could be determined.

CHAIRMAN: This only applies to the legislature; it does not apply to the executive officers of government that may be elected. Any further discussion? If not, the Chair will put the question.

ROBERTS: I'm not quite clear as to the disposition you are making of this. In Committee Proposal No. 8 on suffrage and elections, there is a sentence which reads, "Contested elections shall be determined by a court of competent jurisdiction in such manner as shall be provided by law." Unless you are going to make some exception in the case of constitutional convention elections and elections involving members of the legislature, those two sections are in conflict. I think that the Committee on Style should be directed by this committee to resolve the conflict in some specific way, either change the article on suffrage and elections or make some provision in the present article with regard to that.

CHAIRMAN: This language is a common provision, that each house shall be the judge of the election returns and qualifications of its members. The section to which you have reference has to do with the contested election, which is a very different problem.

ROBERTS: Well, there may be a contest of election in connection with the legislature.

CHAIRMAN: Then the legislature is the sole judge.

ROBERTS: Well, unless you construe Section 5 to apply only to those areas other than the legislature and the constitutional convention elections, otherwise there is a conflict.

CORBETT: I don't see how you can make the legislature judge in a contested election of its own members. It seems to me that the point in putting that section in suffrage and elections was to have a body entirely objective in its approach to the problem. You have a group of people sitting in judgment on each other, and it is going to make a very difficult situation. In a contested election where there are facts to go on, it is quite a different story.

CHAIRMAN: That's a provision contained in our constitutional history from its very beginning. Whether or not a person is qualified to sit in the legislature each house determines; it's a political question with which the courts cannot interfere.

Are you ready for the question? All those in favor signify by saying "aye." Contrary. Carried.

TAVARES: I now move that it is the sense of this Convention that any conflict in the article on suffrage and elections should be controlled insofar as inconsistent with the sections just adopted by this section.

CHAIRMAN: Is there a second?

C. RICE: I second the motion.

CHAIRMAN: You heard the motion. All those in favor signify by saying "aye." Contrary. Carried.

WOOLAWAY: Section 15 having been adopted, I now move for the adoption of Section 16.

NODA: I second the motion.

CHAIRMAN: Any discussion? If not, the Chair will put the question. All in favor signify by saying "aye." Contrary. It's adopted.

WOOLAWAY: I now move for the adoption of Section 17.

NODA: I second the motion.

CHAIRMAN: It has been moved and seconded that Section 17 be adopted. Any discussion? Chair will put the question, all those in favor --

TAVARES: I just wanted to refresh the memories of those present. I am not going to argue too much one way or the other. There is a possibility of a need sometimes for faster action than one reading on each day. However, I am not going to labor the point. If the delegation still feels that as we have operated for 50 years we can safely operate in the future, why that's all right. There are some constitutions that allow by a two-thirds vote or some other special manner, the legislature or each house of the legislature can waive that separate reading on each day for emergency measures.

CHAIRMAN: Chair will put the question? All those in favor --

BRYAN: I'd like to put Delegate Tavares at ease. If the legislature were to pass a bill [by] three readings in one day, the only objection could be on the grounds of unconsti-

tutionality. While that was being labored in the courts they could repass the same law and take three days to do it.

CHAIRMAN: That doesn't make him too happy.

ROBERTS: I don't think that statement should be left in our record uncontested. I think the intention of this section is quite clear. The purpose is to see to it that no legislation is passed hurriedly and without due and careful consideration by the legislature. The intention is to provide three separate readings. I for one would not suggest that we look aside at this thing and say make it a constitutional section and violate our Constitution. I think the language is clear and ought to stay that way.

CHAIRMAN: The language is perfectly clear. Are you ready for the question? All those in favor signify by saying "aye." Contrary. Carried.

WOOLAWAY: I now move for the adoption of Section 18.

NODA: I second the motion.

CHAIRMAN: It has been moved and seconded that Section 18 be adopted.

FUKUSHIMA: I have an amendment to offer to the second paragraph of Section 18. The amendment has been distributed to the delegates. At this time I would like to move the adoption of this amendment. Amend the second paragraph of Section 18 to read as follows:

> If any bill is neither signed nor returned by the governor within ten days, Sundays and holidays excepted, after having been presented to him, it shall become a law in like manner as if he had signed it, unless the legislature by its adjournment prevents its return. If on the tenth day the legislature is in adjournment sine die, the bill shall become a law if the governor shall sign it within twenty days, Sundays and holidays excepted, after such adjournment. On the said twentieth day the bill shall become a law, notwithstanding the failure of the governor to sign it within the period last stated, unless at or before noon of that day he shall return it with his objections to the house of origin at a special session of the legislature which shall convene on that day, without petition or call, for the sole purpose of acting pursuant to this paragraph upon bills returned by the governor. A bill reconsidered at such special session, if approved upon reconsideration by two-thirds of all the members of each house, shall become a law.
>
> No salary shall be payable when the legislature is convened for this purpose.

CHAIRMAN: Does this relate to the second paragraph only?

FUKUSHIMA: Yes, it does.

J. TRASK: I second the motion.

FUKUSHIMA: This amendment has to do with the subject matter of the pocket veto. We have in this Convention set up an executive with very strong powers. Here, as proposed in Committee Proposal No. 29, the governor has the power to veto bills when the legislature adjourns sine die, without signing the bill certified to the governor. My amendment permits the legislature to reconvene for the purpose of reconsidering bills that are not passed by the governor. If he should fail to sign a bill within 20 days from the date of adjournment the bill automatically becomes law, unless he shall return the bill to the legislature for reconsideration. This will take away some of the powers which the governor now has. I feel that the governor's power to pocket veto a bill is a very strong power. He possesses legislative powers as well as executive powers. Many a time we have a bill passed after much deliberation in both houses, passed unanimously; and then the bill is certified to the governor, the legislature adjourns sine die, the governor doesn't do a thing within ten days and the bill is killed. This will prevent that and I think much of that power we have given to the governor may now be taken away from him as far as legislative matters are concerned.

CHAIRMAN: How would the legislature reconvene under your amendment, Delegate Fukushima, just automatically or by proclamation?

FUKUSHIMA: Automatically, Mr. Chairman.

CHAIRMAN: I don't think you've said enough in here to do that.

FUKUSHIMA: This follows the New Jersey Constitution and I believe that is done automatically in New Jersey. It says without petition or call, 20 days from the date of adjournment sine die.

CROSSLEY: I would like to speak in favor of the amendment. I think it is a good amendment and serves a very useful purpose. There has been a lot said here about giving the governor too much power and I think this is one way in which we can take what would very well be a legislative power away from him. It accomplishes one more thing in that it makes everyone take a position on every piece of legislation that has been passed by the legislature, and I think that is worthwhile and I would be in favor of this amendment.

TAVARES: Mr. Chairman, may I ask a question of the experienced legislators here? This sets an absolute time of 20 days after adjournment within which the governor must consider all bills. At the present time, the requirement is that the governor has ten working days or ten days exclusive of certain days, like Sundays and so forth, in which to consider a bill after he receives it. Experience has shown that sometimes at the end of a session the legislature passes say 100 or 150 bills or more and some of them are very long and it takes them quite a number of days to even write those up and engross them, so that the time of ten days doesn't start running until the governor receives them. This will require that your clerks engross all of those bills and get them up to the governor in that 20 day period. The query in my mind is, will that 20 days be sufficient to give the typists and so forth in the houses of the legislature time to engross the bills and at the same time give the governor adequate time to consider them? From my recollection those bills come dribbling into the Secretary's office now at the rate of a few a day, and it sometimes goes on for ten or 15 days before the last bill is received by the Secretary's office and transmitted to the governor.

FUKUSHIMA: The Constitution of New Jersey provides 45 days. I thought perhaps 45 days was a little too long. Therefore, after consultation with some of the delegates, we changed it to 20 days.

CHAIRMAN: Delegate Fukushima, are you referring to the executive article on page 14 of the New Jersey Constitution?

FUKUSHIMA: That is correct.

CHAIRMAN: The delegates have that before them.

FUKUSHIMA: If the period of 20 days is too short, I feel that the New Jersey language of 45 days could be sub-

stituted for 20 days and I shall now so amend my amendment to delete "20" and insert in lieu thereof, "30."

HEEN: Point of information. What was the last statement?

CHAIRMAN: Change the twentieth day to the thirtieth day, about the middle of the paragraph of Delegate Fukushima's amendment.

AKAU: I second that.

WIRTZ: There are two places. In the ninth line the "20 days" should be changed to "30 days," and the next sentence the "thirtieth day." Is that where you want to make the changes?

HEEN: I would suggest 45 days. That would give ample time for the clerks to engross those bills and give ample time for the governor to ponder over them. He has to send those bills over to the attorney general's office for the opinion of the attorney general's office and adequate time should be given the governor for that purpose.

H. RICE: I think that Delegate Heen is quite right. If we are going to have this in the Constitution we ought to have 45 days. As you know the last legislature of '49, they appropriated $100,000 for Manulani Hospital and $100,000 for the Hilo Hospital and both of them were pocket vetoed by the governor. Of course, now with the appropriation bills going through early in the session, the appropriation bill won't be affected so much by this veto power of the governor, and there may be other legislation but it is legislation that would take time for the attorney general's office to go over thoroughly and I think if you will accept the amendment of 45 days, I will go along with it.

FUKUSHIMA: The amendment is accepted.

CHAIRMAN: Will the delegates make the appropriate changes: "45" in lieu of "20" in the two places where they appear.

KING: The only reason I rose, Mr. Chairman, is that Delegate Fukushima was ready to accept 45 days in the first instance and we sang out 30 to him, so I think he is quite willing to have the 45 days if those who are experienced in the legislature think the longer period is desirable.

CHAIRMAN: Any further discussion on the proposed amendment? If not, the Chair will put the question.

TAVARES: One more question. I wonder if there is any construction of this provision as to this situation. The governor vetoes a bill, the legislature reconsiders it and the veto message has a good point in it and the legislature amends that bill to conform to the governor's objection. Must they pass the bill as is or can they on reconsideration make amendments to that bill? I think that point ought to be cleared up.

CHAIRMAN: Can you enlighten us on that, Delegate Fukushima?

FUKUSHIMA: I believe any bill returned for reconsideration will follow the same procedure, and that is Section 19 -- as provided in Section 19 of this Proposal.

CHAIRMAN: May the Chair ask whether or not this is an exact duplication of the section of the New Jersey Constitution? It seems greatly simplified as against the New Jersey provision.

FUKUSHIMA: I think it has been simplified. I asked the Legislative Reference Bureau to prepare this in line with the New Jersey Constitution.

CHAIRMAN: But the substance of it is the same, is that correct?

FUKUSHIMA: That is correct.

HEEN: I think Delegate Tavares has a point there. I think the only action that the legislature may perform after the bill is returned to the legislature is to either override the veto or sustain the veto. I don't think it has power to reconsider that bill at all under the language used here in this proposed amendment.

SILVA: That is right, or introduce a new bill to comply.

HEEN: They can't even do that.

CHAIRMAN: The Chair will call the attention of the body to the omission from Delegate Fukushima's amendment of the following language in the New Jersey Constitution. "At such special session a bill may be reconsidered beginning on the first day in the manner provided in this paragraph for the reconsideration of the bills and if approved upon reconsideration by two-thirds of all the members, it shall become law." That would meet, I assume, what Delegate Tavares is raising here.

SHIMAMURA: Isn't there similar language contained in Delegate Fukushima's proposed amendment in the last sentence?

CHAIRMAN: That is correct; the Chair is in error.

TAVARES: I still think that unless we adopt Delegate Heen's interpretation that they must only pass it as is over the governor's veto or sustain the veto, I think you are going to get into some more trouble. Then you have another pocket veto coming up if the legislature makes an amendment, so what do we do in that case, go on ad infinitum? I think unless we adopt Delegate Heen's interpretation that they must pass it as is without amendment, then we should have further language to show the circumstances under which they can pass it or to make sure that if they amend it and the governor then doesn't approve it, why then it is pocket vetoed permanently this time.

SILVA: The usual procedure, if the governor finds fault in a bill before the ten days are up, he calls the introducer of the bill and makes some suggestions. Then the Senate may recall the bill from the governor's office for reconsideration before the final veto period. That's the usual procedure, you recall -- to have the bill recalled.

HEEN: That is correct if the legislature is still in session. But this is at a time when the legislature adjourns sine die.

TAVARES: I think this amendment is important enough and I am in favor that if it can be worked out that we should defer and see if we can work out that problem by research or otherwise in the meantime. I move we defer until tomorrow this section. In the meantime, we will try to do a little research on it.

HEEN: Second the motion to defer action.

CHAIRMAN: Motion is on the question of deferment. Are you ready for the question? All those in favor signify by saying "aye." Contrary. It is deferred.

WOOLAWAY: I move for the adoption of Section 19.

NODA: I second the motion.

CHAIRMAN: It has been moved and seconded that Section 19 be adopted. Any discussion? If not, the Chair will put

the question. All in favor signify by saying "aye." Contrary. Carried.

WOOLAWAY: I now move for the adoption of Section 20, I believe as amended.

NODA: I second the motion.

WOOLAWAY: Was the amendment made by Delegate Roberts carried? Or was it defeated? Then I change my motion to adopt Section 20 as is.

CHAIRMAN: That was deferred. My notes do not show that Delegate Roberts' motion was carried. Am I in error on that?

ROBERTS: We discussed the matter and it was felt that it was controversial and we deferred action until today.

CHAIRMAN: The Chair thought it wasn't controversial and it turned out to be very controversial.

ROBERTS: I know the delegates are tired and it is almost five o'clock.

CHAIRMAN: We have lots of time.

ROBERTS: I have too. I think we ought to give pretty close attention to this particular one. My batting average has not been very good this afternoon.

HEEN: I would suggest that Mr. Roberts have his amendment typed and mimeographed because it will require some study before we can act.

ROBERTS: The amendment is very simple. May I defer this then to prepare - -

CHAIRMAN: Will you please address the Chair?

ROBERTS: In line with the suggestion made by the senator, may I ask that this section be deferred until tomorrow?

SAKAKIHARA: I second the motion.

CHAIRMAN: Do you move that it be deferred?

ROBERTS: If that is the consensus of the Convention. The amendment is quite simple.

CHAIRMAN: What is the amendment?

ROBERTS: The amendment is to delete the words "be guilty" and substitute the words "have been convicted." So the sentence would read: "Each house may summarily punish by fine, not exceeding $100.00, or by imprisonment, not exceeding 30 days, any person not a member of the legislature who shall have been convicted of contempt of such house or of any committee thereof."

CHAIRMAN: Is there any second? What do you mean by the word "convicted"? Convicted where?

ROBERTS: Convicted by competent authority to pass on the question.

CHAIRMAN: That would defeat the entire section. The word "convicted" as you use it refers to the conviction in court.

ROBERTS: That's correct.

CHAIRMAN: This has to do with finding guilty within the body itself.

WIRTZ: Has there been a second to the amendment?

CHAIRMAN: There was a half-hearted one on my left, but I don't know who made it.

WIRTZ: Then I would like to speak against the amendment for this reason. I don't see how the house, a member of the legislative branch, can punish a person who is convicted in court. They could provide, they could delegate to the court by law a certain punishment and allow the court to punish them.

CHAIRMAN: That is correct. That is what the Chair tried to point out to Delegate Roberts in the last hearing on this.

TAVARES: I wonder if Delegate Roberts' words were - - the first words he used were not necessarily such as to require only a court to convict; he said an authority or some competent authority. Now as I read it, I would like to move to amend that to substitute for the word Delegate Roberts had, the word "found," "who shall be found guilty." Then the finding can be by the legislative body. I thought that was what was intended. There must be a finding of guilt. Unless we are going to eliminate the power to punish for contempt altogether from a house, we ought to leave it in something like this. If we want only a court to punish, then we should delete this provision entirely about the power to punish and leave it to laws to be passed.

CHAIRMAN: The Chair would suggest that that would be a desirable amendment. That is exactly the situation in the Federal Constitution.

ROBERTS: I move to delete Section 20.

KAGE: I second the motion.

CHAIRMAN: Moved and seconded that Section 20 be deleted.

TAVARES: In saying that we should do one or the other I certainly didn't want to imply that I was in favor of deleting the section. There is a certain amount of force, a great deal of force in the contention that a body like the legislature should be able to protect itself against contumacious conduct in its presence, and if you require them to go each time to the courts to bear that out you are placing the body in the power of the courts to that extent. The legislative body when it is deliberating, deliberates for only a short time. If anybody gets in there and starts being contemptuous and delays its proceedings, he is performing a great disservice to the community. If they don't have the power to make summary punishment for contempt—and this is small, it's only 30 days at the most, it's not a large penalty—why then you force them to go into court, and then by the time you are through with court the session is over. I think they should have some summary powers.

KING: I understood that this section was condensed from the section in the Organic Act, but the Organic Act very specifically says what Delegate Tavares mentioned a moment ago but what is not in this section, that it has to be in the presence. So the Organic Act says, "That each house may punish by fine, or by imprisonment not exceeding 30 days, any person not a member of either house who shall be guilty of disrespect of such house by any disorderly or contemptuous behavior in its presence or that of any committee thereof," and so forth. Now this section doesn't say that. It says that "Each house may summarily punish, by fine not exceeding $100 or by imprisonment not exceeding 30 days, any person not a member of the legislature who shall be guilty of contempt." They may be guilty of contempt not in the presence of the legislature. I feel that some language more closely approximating the language of the Organic Act would be more appropriate.

CHAIRMAN: The question is on the motion to delete.

SHIMAMURA: I agree with the last speaker. The Organic Act also provides for notice and opportunity to be heard which this does not. In fact - -

CHAIRMAN: We are not debating this section, we are debating the question of deleting it.

HEEN: I move we defer action upon this section.

CHAIRMAN: We did that once before.

HEEN: Until this point can be ironed out.

CHAIRMAN: The Chair doesn't feel that it should be deferred. However, if there is a motion. Is there a motion to that effect? Is there a second that we defer?

C. RICE: I'll second that motion to defer. I happen to have been one of those chosen while in the Senate to try a case before the Senate. It was the Desha Bathing Suit Act, do you remember? It happened to be a California firm that Senator Desha was very outraged that the advertisement that this particular firm had, and that party happened to be down here visiting us. We got him up before the legislature and made a Christian out of him. I think you could make a Christian out of quite a few people here if you bring them before the body.

CHAIRMAN: What was the judgment, guilty or not guilty?

C. RICE: Guilty.

CHAIRMAN: What was the sentence?

HEEN: Question is on the motion to defer.

CHAIRMAN: Question is on the motion to defer. All in favor signify by saying "aye." Contrary. It's deferred.

WOOLAWAY: Let's try Section 21, so I now move that Section 21 be adopted.

NODA: I second the motion.

OKINO: I should like to offer an amendment to Section 21. Before making a formal offer of my amendment I should like to remove some doubt or confusion, confusion which might have resulted by reason of the fact that I had circulated a proposed amendment yesterday. Will you discard my amendment dated July 5?

CHAIRMAN: The one relating to judiciary?

OKINO: No, Mr. Chairman, it refers to Section 21 of Committee Proposal - - yes, that is correct, I understand what you mean now. Now before I make the offer of this amendment which I have circulated among you, will you please make the following addition. You will note in the fourth line a mark inserted after the word "require." Will you insert the following: "excepting justices of the supreme court and judges of the circuit court" comma. And I would like to insert further, in the second paragraph following the word "manner" which is the last word in that line, insertion: "and procedure of removal by impeachment," delete the preposition "of" appearing before the word "impeachment." I move at this time, Mr. Chairman, to offer that amendment to Section 21 of Committee Proposal No. 29.

> Section 21. Removal of officers. The governor, other elective executive officers, and any appointive officers for whose removal the consent of the senate is required, excepting justices of the supreme court and judges of the circuit courts, may be removed from office on impeachment for such causes, as may be provided by law, and upon conviction of the charges against such officers.
>
> The legislature shall by law provide for the manner of procedure of removal by impeachment.
>
> Judgments in cases of removal from office shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust or profit under the state; but the person convicted may nevertheless be liable and subject to indictment, trial, judgment and punishment according to law.

CHAIRMAN: Will you read that second sentence as you have amended it, Delegate Okino?

OKINO: Second paragraph. "The legislature shall by law provide for the manner and procedure of removal by impeachment."

DELEGATE: I second the motion.

HEEN: I move that action on this amendment be deferred so that we can give it some study. I have no particular objection to it but I would like to give some study before voting on the amendment.

OKINO: I have no objection to defer action on the amendment which I have just offered.

CHAIRMAN: Chair suggests that you get a reprint of it with your corrections.

OKINO: I shall do that.

WIRTZ: I move that we defer action on the entire Section 21.

WOOLAWAY: I second the motion.

CHAIRMAN: Moved and seconded that we defer action on the entire Section 21. All those in favor signify by saying "aye." Contrary. Carried. Deferred.

WOOLAWAY: Last but not least, Section 22, I now move for its adoption.

NODA: I second that motion.

CHAIRMAN: Moved and second that Section 22 be adopted. Any discussion?

WIRTZ: I should like to at this time move to defer for this reason: Dr. Larsen is interested in this particular section, having been one of those who signed the original proposal, and I have been informed that he would like to, or intends to make an amendment to the section as contained in the committee proposal. For those reasons, I move to defer.

C. RICE: I second the motion.

CHAIRMAN: All in favor signify by saying "aye." Contrary. Carried.

J. TRASK: I move that we rise and report progress and beg leave to sit again.

PORTEUS: May I point out that this afternoon we had a conference where - - at least we tried to agree that a week from this Saturday we would wind up the affairs of this Convention. A good deal of time has been spent, properly so, in exploring many of these sections. I don't want to imply that it is my desire to cut anyone out from full exploration, but nonetheless after debating sometimes 15 or 20 minutes or half an hour we have had these matters deferred until tomorrow. Now that means that tomorrow, if we come up having already deferred each of these matters once already, it is to be hoped that those who wish deferment will be prepared at that time to present any amendments they may have. There have been others of us who have not spoken this after-

noon on these sections, some because we thought the ideas were good and wanted to hear it out, but some of us because we were prepared to vote. We didn't want to take the time and stand up and say, we were ready to vote and we were for the matter. But I hope that tomorrow, at any event, all those that have perfecting amendments to those matters being presented will be prepared to adopt them, I mean present them, because I think we've got to go forward with the article and further deferment will only postpone coming to grips with these particular problems.

CHAIRMAN: Chair would like to ask the President whether or not we would be able to go forward with this and wind it up tomorrow morning, Mr. President.

KING: That will be the first order of business, other than any third or second readings on the Clerk's tables.

CHAIRMAN: Otherwise, if we have a delay, the arguments won't be fresh in the minds of the delegates.

KING: I would like to second what Delegate Porteus has just said, that those who have amendments not thoroughly ready to present them in final form would work on them tonight and be ready to present them tomorrow morning so that we may adopt or reject them, as the case may be.

CHAIRMAN: Motion is that we rise and report progress. All those in favor signify by saying "aye." Contrary. Carried.

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CHAIRMAN: The Committee will please come to order. Will the delegates take their seats? We have deferred the consideration of Section 11 relating to the salaries and compensation of members of the legislature. There was an amendment proposed by Delegate Ashford. Delegate Rice at the close of the last session requested time in which to prepare an amendment to Delegate Ashford's amendment. The Chair recognizes Delegate Rice.

H. RICE: On the delegates' desk is Section 11 amended to read as follows. It's in two paragraphs. If you take the one in two paragraphs, that's the amendment that I would offer at this time.

CHAIRMAN: Do I hear a second?

WIRTZ: Second that motion.

H. RICE: Section 11 to read:

> The members of the legislature shall receive a salary of $1,500 for each general session and $1,000 for each budget session and $750 for each special session, and in addition thereto an allowance which shall be fixed by law not to exceed a per diem of five dollars for members from the island of Oahu and fifteen dollars for members from the other islands, which sums shall be payable in such installments as may be prescribed by law. When the Senate is convened in special session alone the members shall receive no salary.

That's the first paragraph. The second paragraph reads:

> In no case shall the total expenses for officers and employees for each house exceed the sum of $1,000 per calendar day during any general session, nor the sum of $500 per calendar day during any budget or any special session.

I move the adoption of this amendment.

A. TRASK: I second that motion.

FUKUSHIMA: I have an amendment to the amendment.

CHAIRMAN: Will you hold that just a moment so we can get the parliamentary situation cleared?

KELLERMAN: May I suggest that we discuss this paragraph by paragraph. Take up the first paragraph and vote upon that separately from the second paragraph.

CHAIRMAN: That isn't the parliamentary situation. I would call that to Delegate Rice's attention. The vote on this amendment would defeat the entire amendment. They're tied up together. They would have to be offered separately.

H. RICE: I will so offer them separately.

CHAIRMAN: The motion is on the adoption of the first paragraph of the amendment proposed by Delegate Rice. Is there a second? Will the second accept that?

A. TRASK: I will.

CHAIRMAN: We are now dealing with the first paragraph of Delegate Rice's amendment -- proposed amendment to Section 11.

FUKUSHIMA: I have an amendment to offer to this amendment, the first paragraph of this amendment. In the second line after the word "a" --

ASHFORD: Point of order. Has it not been ruled that two amendments can't be made to an amendment?

CHAIRMAN: That is correct. That's why the Chair interrupted in the beginning and then the point escaped the Chair's mind. In order to clear the parliamentary situation I was wondering if the delegate from Molokai would be willing to withdraw her amendment at this time, so that we have one amendment before the house. If not, the Chair will have to rule Delegate Fukushima out of order. Is that agreeable to the delegate from Molokai?

ASHFORD: Yes.

CHAIRMAN: Then we have one amendment and you are in order. Proceed, Delegate Fukushima.

FUKUSHIMA: In the second line after the word "a" and before the word "salary" insert the word "minimum." In the same line delete "$1,500" and insert in lieu thereof "$2,500"; in the third line delete "$1,000" and insert in lieu thereof "$1,500." I move the adoption of the amendment to the amendment.

DOI: I second the motion.

CHAIRMAN: Delegate Fukushima, the Chair would like to ask you a question. By the insertion of the word "minimum," did you intend that the legislature would have power to increase the salary over and above the minimum?

FUKUSHIMA: That is correct, Mr. Chairman.

CHAIRMAN: In other words, this would not be fixing of the salary, but simply leave it to the legislature with a floor on the salary of $2,500.

FUKUSHIMA: That is correct.

CHAIRMAN: Any discussion on the amendment?

ROBERTS: I have a question on that first -- on that paragraph. As I read the paragraph, there's a minimum salary set in the Constitution and the legislature may change the per diem as prescribed by law.

CHAIRMAN: That's what the Chair was calling attention to, Delegate Roberts. I believe there would have to be further language to conform to the intention of the movant of the

amendment. In other words, you would have to have a grant of legislative power to permit an increase over and above the $2,500 in this section, I believe.

ROBERTS: Are we going to vote on an imperfect amendment?

CHAIRMAN: That's the parliamentary situation unless Delegate Fukushima wishes to amplify his amendment.

FUKUSHIMA: I didn't get the question.

CHAIRMAN: It has been directed to the attention of the movant the same point the Chair called to your attention, that this purports to fix a minimum salary and yet it does fix a salary and there is no grant to the legislature to exceed the minimum.

FUKUSHIMA: No grant to the legislature?

CHAIRMAN: No grant of legislative power to pass a law to exceed the minimum.

FUKUSHIMA: Is that necessary in a constitution? The legislature has that power to increase the salary of any office. What we're trying to prevent here is for the legislature not to go below a certain amount. The legislature may always increase the amount if it saw fit without any legislative grant in the Constitution.

CHAIRMAN: In other words, [as] you read it this would constitute no prohibition. I think that is correct, Delegate Roberts. The question is on the amendment.

H. RICE: Why I didn't vote for the allowance originally in the legislature is because the salary of the legislators were fixed by the Organic Act, and I felt that in passing this per diem for the legislators, they were in fact increasing their own salaries. That's why I feel that if we're going to have a per diem allowance it should be a part of the Constitution, and if it reads as an allowance for expenses as I say then that could be a deduction from taxes.

CHAIRMAN: Are you ready for the question? The question is on the amendment.

ROBERTS: I would like to speak in opposition to the amendment. We put a section in the executive article providing for a salary in the Constitution. The purpose of putting that salary in was to fix a salary. I argued at that time that there was no place in the Constitution for the setting of fixed figures in terms of any salary. There is a problem in terms of the first governor and there is a problem in terms of the first legislature, but that figure ought to go into the schedule and ought not be a part of your basic Constitution. Once you place a figure in the Constitution, that does not then make it open for the legislature to change it. The purpose of putting it in the Constitution is to fix the salary, and I assume that the basis for putting this in is to fix the salary at a specified number, $2,500.

CHAIRMAN: No, the purpose of the proposed amendment is to fix a minimum and permit the legislature to exceed the minimum. Are you ready for the question?

ROBERTS: Mr. Chairman, I haven't finished.

CHAIRMAN: Well, you stopped talking.

ROBERTS: Just to give the Chair a chance to interrupt.

CHAIRMAN: Proceed, Delegate Roberts.

ROBERTS: Thank you, Mr. Chairman. I believe that this section ought to be defeated. I certainly favor as high a salary as possible for the legislators to attract as many competent men as possible for the job. I have no objection to the $2,500, although I think it's a little high. I have no objection to the $1,500 for the budget session or for $750 for the special session. I think, however, that the matter of the amount to be received ought to go into the schedule for the first legislature. The legislature then should be free to raise the salary as it sees fit but no raise shall go into effect for that particular session. If the legislators think the salary is too low, when conditions change they ought to be permitted to make the adjustment. They will not act in violence against public opinion and public opinion will see to it that no undue salary increases are to go into effect and it will apply only in subsequent sessions, and therefore, Mr. Chairman, I think we ought to defeat the amendment.

FONG: I'd like to speak in opposition to this amendment. You will note that the figure proposed for the legislative session is $2,500, and five dollars per day for members on on Oahu will be $300 for sixty working days, giving us a total of $2,800 for the general session. The budget session is to be paid $1,500. Assuming that the budget session will take thirty days, at five dollars a day it will be $150. If you add all that up, it will give us a total of $4,450, that is for a legislator from the island of Oahu. We go to the outside islands and we have $15 per diem for sixty days giving a total of $900. Add that to $2,500 you get a total of $3,400 for one session. You add $1,500 for the budget session. Another thirty days at $15, you get a total of $450. You add all of that, the outside islanders will get a total of $5,350 for two years. By this amendment and by giving the legislators these sums of money we will be creating a legislature of professional legislators and housewives. Now when I say that, I don't want the housewives to be sore with me.

It will boil down to this, that the men who are competent to run for office will not have the time to go from house to house and buttonhole the candidates [sic]. The only persons that will have the time to buttonhole the candidate [sic] in the district will be the housewives who will not be employed but who will be able to spend their time for the sum of $4,450 a year. Now $4,450 a year is almost 200 per month and I am beginning to think that we will create here in the Territory of Hawaii a bunch of professional legislators who will do nothing or who will have so little employment that they could afford to spend the time going from house to house to buttonhole the electors.

Many people will say the electors are smart; they will vote for a man who has ability. Now, you will note that in most of our district, the districts are cut down so that we elect either three or four people in the district. I would admit that if there were only one person running probably the elector will exercise his opinion and give the best man the vote, but when you have three or four people running then the votes are scattered all over the place and the man who buttonholed the electorate will be the one that will have sufficient edge in the election to get elected.

Now, I am saying that we are paying too much to our legislators here from the standpoint of the public interest. I believe that if a man runs for public office that he should devote some of his time for the public interest and not expect that he be reimbursed for everything, for the time that he has put in. The amount should not be too low so that it will prohibit the man who hasn't got the means to run. The sum of $1,500 for one session, for the general session, and $1,000 for the budget session is plenty enough; $2,500 for two years. At the present time your legislators are only getting $1,000 plus the per diem. In this case here we are increasing it $1,500 for the biennium and I think that is plenty enough money for your legislators.

We are limiting the session to sixty days only, and special session, that is extra session–the governor can call extra sessions for a few days–and I think if we pass this amendment we will be creating here in the territory something we will be very sorry for. We will be creating a group of political politicians, that is professional politicians, and a group probably of women who will be able to devote their time in going from house to house to canvas -- to buttonhole the candidates [sic].

Now one thought, another thought and I will quit. When I talk about professional legislators I'd like to liken him to a professional gambler. Many of us look at the professional gambler from the standpoint that he is a man who goes out and gambles professionally and makes a lot of money. Now I have talked to a lot of professional gamblers in my life and they go out with the idea that by playing percentage in a crap game, by playing for seven or eight hours they will be able to make eight or ten dollars a day, and if they make eight or ten dollars a day they will be satisfied in making that amount of money because it is a day's work. Now, you will be creating here the same type of political thought -- same type of thought by giving them $200 per month. A man will go out and say, "I have done my day's work. I have seen my constituents and I think that this is my employment and I feel that this employment pays me enough so that I can stick to it."

GILLILAND: I don't think this amendment goes far enough.

CHAIRMAN: Can't hear you.

GILLILAND: I don't know why the authors don't add a pension after one session of the legislature.

SILVA: I can see that. Representative Fong probably is scared of those housewives, a little afraid of them, but that's all right. The point I'd like to press at this time is it's the longest motion I have ever heard mentioned on this floor by Fong and I take pleasure in seconding that motion, that is $1,000 for the budget session and $1,500 for a regular session. So I second that motion. It's about the longest motion I ever heard.

CHAIRMAN: The Chair understood that the motion was moved and seconded by Delegate Fukushima. There was a second to his motion and Delegate Fong was speaking in opposition to Delegate Fukushima's motion. Is the Chair not correct in that?

FONG: I didn't hear what Senator Silva said.

CHAIRMAN: He was saying some very bad things about you, Delegate Fong.

DELEGATE: He said we husbands are opposed to your remarks.

CROSSLEY: I would like to speak in opposition to the amendment, not because I'm afraid of housewives. I think that the women in this Convention have been helpful, for the most part.

CHAIRMAN: Careful, careful.

CROSSLEY: I still think I'm on safe ground. I think most of the people here have been helpful, for the most part.

I'd like to speak in opposition to it because I feel -- in part at least I don't agree entirely with the delegate from the fifth, but I, too, am afraid of professional politicians. I think that if you examined a lot of people who have run for office in the past, you would find that many of them have stood for office on the basis that whatever they got out of the job–and it would certainly be a more lucrative one under this amendment–has been as good as they could do under any form of work they might choose.

I don't think that's the purpose behind the increase in salaries. I believe that Delegate Fukushima is honestly trying to get a better type of person to serve and there's no question that there are many very competent people who just can't afford to serve because the remuneration is not great enough. However, I don't think that this accomplishes that. I don't think that it's enough money to get the highest type of man. I think it's still an in-between-the-road figure. On the other hand, I'm not sure that the Territory can pay the figure at this time that it would be necessary to pay to get the highest type of man to leave. For instance, men in the professions who make such a sacrifice to go into this type of work.

But I think we're all losing sight of the fact that the work we're doing here is community service. It should be, as it is on many of us, a sacrifice, a personal sacrifice to serve the Territory or the State of Hawaii. Now, you don't make a sacrifice if you make more money or as much money or if there is no sacrifice. To me a sacrifice is when you actually lose something in order to serve, and I think that if this amendment were allowed to go through that it would defeat the very purpose for which it is intended and therefore I am against the amendment.

CHAIRMAN: The Chair will put the question.

MAU: I'd like to ask the delegate from the fourth district, Delegate Roberts, if I follow his argument correctly, he also would be against Section 11 in the committee proposal itself because that section in the committee proposal does set a salary for the legislators. Am I correct in that impression?

ROBERTS: That is correct. I have an amendment which is being printed which will provide for the salary of the legislators in a schedule and then have a provision in the Constitution giving the legislature the power to fix the salary as conditions change, but the salaries cannot go into effect for the people who vote on the salary.

CHAIRMAN: The Chair will put the question. Delegate Fukushima, do you desire to close the debate?

FUKUSHIMA: As the movant of the amendment, I'd like to say a few words. The statement made by Delegate Fong is certainly amazing to me, that he's afraid of housewives and professional politicians. I'd like to see a government, in fact we all spoke of a representative government here. If you have your salary as low as he and the others would like the salary to be, we will have only certain types of individuals running–lawyers who can come out for couple of months, go back to their practice and pick up the way they left off; businessmen who do not give any services, but sell merchandise which others can do for him. That's the type of men you will get. You will also get the poor men who are financed and controlled by some others. That's not the type of legislators that we want. We want all, be they small or rich, to run for office if he is capable. We talk about representative form of government, then we come here and say we are afraid of housewives. They're the people; if they can get in buttonholing voters, more power to them.

As far as the figures are concerned, the statement was made that the State may not be able to meet these payments. I don't think that's well founded. The salaries of the legislators at this amount will not increase the expenses of the legislature very much. Second paragraph of Section 11 will cut down the expenses of the legislature. That's what is the

trouble with the legislature today. We have too much patronage. The janitors get much more than the legislators, the doorman gets more than the legislators, and so does the sergeant-at-arms and all the officers and the employees down to the lowest level. That's the ridiculous situation that we have today, and anyone who says that we have professional politicians coming into the horizon if we lift the salaries a little further up is certainly afraid of the type of government we should have.

DOI: Mr. Chairman.

CHAIRMAN: The question is on the amendment. The Chair asked if there was anybody to speak and then permitted Delegate Fukushima to close the debate.

DOI: I happened to be the one who seconded the motion of Delegate Fukushima.

CHAIRMAN: Very well.

DOI: I would like to speak in favor of the motion to amend. If we look at the motion to amend we will note that it reads, about the middle of the paragraph, " in addition thereto an allowance which shall be fixed by law not to exceed a per diem of $5." The words " not to exceed" I believe means that the legislature has discretion as to whether they can give any per diem or not. That would mean that the salaries of the legislators could be left at $2,500 and $1,500 respectively as regards the different kind of sessions. Now the point is I do not believe a salary -- the fixing of a salary at $1,500 in the future might do justice to the legislators. There is a possibility that the value of the dollar might change and that the salary must be changed again and I think the amendment provides for that and leaves it to the discretion of the legislators. The argument advanced that the change in the value of the dollar can be met by changing the amount of the per diem allowance, I think, is weak in that suppose the dollar value drops right in half. I cannot conceive the legislators -- legislature rather, changing the per diem allowance to $30, and which is definitely prevented in this amendment here. Therefore, I believe the amendment as proposed by Delegate Fukushima should be carried.

Another point I would like to point out is that we should not confuse the cost of running the legislature and that of the salary of the respective legislators. Salaries are paid to attract good and able men. I am in agreement with the last paragraph, and that is to cut the expenses of the legislature.

CHAIRMAN: The Chair will now put the question. The motion is on the amendment -- Delegate Fukushima's amendment.

FUKUSHIMA: I'd like to delete the word " minimum" that I included in the second line.

CHAIRMAN: Will the second accept that deletion?

DOI: Yes, Mr. Chairman.

CHAIRMAN: The effect of that amendment would be to fix the salary at $2,500, have the per diem as stated and the rest of the amendment.

DELEGATE: Roll call.

CHAIRMAN: The Chair will now put the question.

DELEGATE: Roll call, Mr. Chairman.

CHAIRMAN: Is there a demand for roll call? The Chair only sees three hands. The Clerk will call the roll.

Ayes, 33. Noes, 27 (Bryan, Castro, Corbett, Crossley, Fong, Gilliland, Heen, Holroyde, Kam, Kellerman, King, Lai, Larsen, Lyman, Okino, Porteus, H. Rice, Richards, Roberts, Sakakihara, Smith, A. Trask, J. Trask, White, Wirtz, Woolaway, Anthony). Not voting, 3 (Lee, Phillips, Wist).

The motion is carried.

APOLIONA: I move for the tentative adoption of the first paragraph of Section 11.

CHAIRMAN: We're still on the amendment. The second paragraph of the amendment is now before the house, Delegate Apoliona.

A. TRASK: I ask that, and I so move, that on the fourth line of the amendment after the word " and," strike all of that until the words " other islands," so that the next words would be " which sum shall be payable in such installments as may be prescribed by law."

CHAIRMAN: Would you mind repeating that? The Chair is in doubt as to your amendment.

A. TRASK: After the word " session," which is the first word on the fourth line, put a period and strike the balance of the sentence.

CHAIRMAN: In other words, you want to eliminate the per diem in its entirety. Your purpose is to eliminate the per diem for expenses in its entirety?

A. TRASK: That is correct, but retaining the last sentence which reads: "When the Senate is convened in special session alone the members shall receive no salary."

CHAIRMAN: Is there a second? There's nothing before the house.

H. RICE: I'll second the motion.

SAKAKIHARA: May I ask the movant as to how he proposed under the Constitution to pay the legislators, in lump sum or installment payments, by deleting the sentence, " which sums shall be payable in such installments as may be prescribed by law," if that is deleted under his amendment?

NIELSEN: Can I have the amendment again?

CHAIRMAN: The amendment would place a period after the word " session" on the fourth line of the first paragraph and strike out the rest of the language down to the words " installments as may be prescribed by law," leaving intact the last sentence, " When the Senate is convened in special session alone the members shall receive no salary."

A. TRASK: There has been a suggestion by the President and I'd like to withdraw my amendment.

CHAIRMAN: You withdraw your amendment? The amendment is withdrawn.

A. TRASK: I have a new motion. Strike out the following words, beginning with the second word on the fourth line, these being words, strike " and in addition thereto an allowance which shall be fixed by law not to exceed a per diem of $5 for members from the island of Oahu and $15 for members from other islands." That be stricken, and retaining the words which continue, " which sums shall be payable in such installments as may be prescribed by law."

CHAIRMAN: May the Chair inquire if you appreciated that the purpose of the original movant was to permit the allowance of a per diem which would not be treated as taxable income?

A. TRASK: That is correct.

CHAIRMAN: Your amendment would defeat that purpose.

A. TRASK: That is correct.

J. TRASK: I second the motion, Mr. Chairman.

A. TRASK: Point of information. Would an acceptance by Delegate Rice, the original movant of this amendment, if he accepts this amendment, would there be a necessity for a vote on this motion?

CHAIRMAN: I think there would. That goes to the heart of Delegate Rice's motion.

Are you ready for the question? The Chair will put the question.

HOLROYDE: Our discussion yesterday brought out the fact that the per diem allowance now carried on the statute would still be in effect if the laws are continued as such. Now, taking it out of here, of course, removes it from the Constitution but it still remains a statute, does it not?

CHAIRMAN: There would still be some question about the validity of it and that's the purpose of clearing this up, as the Chair understands it.

WIRTZ: Likewise there'd be a question as to the taxability.

CHAIRMAN: That is true. Whether or not it's income or - -

HEEN: If this amendment is voted for, then it will open up the first part of this sentence for the reason that then the members of the legislature will have to pay their expenses out of their salaries and that is not tax free.

CHAIRMAN: That's what the Chair endeavored to point out to Delegate Trask. Evidently it's his purpose to cut down the emoluments of the legislators.

A. TRASK: That is correct, Mr. Chairman.

PORTEUS: I'm sorry to say that I differ completely with the gentlemen who have debated the question of the elimination of this clause from the Constitution. As submitted by the committee there was no reference to emoluments. In my opinion, one man, I think the legislature can pass a bill with respect to emoluments, and if you delete this it leaves it in the same position it was when the committee brought out its report. Under ordinances and continuity of laws, the laws will be continued in effect, and if the law is in effect with respect to per diem, the per diem will stay in effect. If you eliminate this you will not eliminate in my opinion, the ability of the legislature to provide for a per diem. The only way you can do that is by specifically forbidding it in a Constitution. And by leaving all rightful subjects of legislation to the legislature, the legislature can provide for it.

I might add, Mr. Chairman, that while I was not one who voted for the $2,500 and the $1,500, however I do want to point out to the outside islanders and to the people here that for those of us who have been in the legislature, it would seem to us that it was better to give to those people who come down from the outside island money in the way of per diem. It is a fairer way of treating them than it is to give the Oahu legislators exactly the same salary as those people get who come down from the other island. They are put to certain expenses. They are not making money on this. It is not really a salary to them. They are maintaining homes on the other islands and they are maintaining residences here in Honolulu. In most cases they don't have an opportunity to stay at the home of a friend for two and a half months, which is just what a sixty day session means. It goes from the middle or early part of February until the beginning of May. It's a full two and a half months.

In addition to that they are put to the expense of going back to their islands to consult with their constituents and certainly occasionally they are justified in going back to see their families. There's no traveling expenses that is allowed for those trips back to the islands. They are put to vastly more expenses than the people are who are living here on Oahu. It is true that many of us who live here on Oahu spend some money on various incidental matters. That, however, is their option. It may be an enforced option where we feel it is necessary to do it, but nonetheless if we don't want to do it, actually we don't have to.

I think that when a man comes from the other islands and he finds that he's staying at a hotel and costs him $12 a day to stay and it costs him so much for his meals here, that it is fairer to give him an amount such as $15 not subject to taxes. Otherwise what are you going to do? You're going to try to find out what it is that will give the man any salary, sufficient salary to compensate him for his services and at the same time give him sufficient money for his living expenses after deducting taxes, and I don't know how you're going to do this, how you're going to work that out. It always seemed to me from the point of view of those others who came down from the other islands that the fairest thing to do is to find out how much it costs him a day to live here in Honolulu and then give them exactly that amount of money. So far it has been determined to be $15 a day. It is not taxed. You say it's $15 a day; the man spends more than $15 a day; it's his option. But I think it's a very much better system than trying to incorporate the increase in his salary.

I have no objection particularly to the deletion of this phraseology from the section of the Constitution, but I do wish to register an opinion adverse to those who have given it so far, that by taking it out you will prevent the legislature from covering this point, because I believe this to be a particular subject of legislation. An embarrassing subject - -

A. TRASK: Will the gentlemen yield a question?

PORTEUS: Yes, indeed.

A. TRASK: The per diem allowed legislators covers at least a minimum, usually of one hundred days, so that at $15 - -

PORTEUS: I don't think you're correct in that.

A. TRASK: What is per diem considered, just the legislative pay?

PORTEUS: Do you mean now or do you mean in the future?

CHAIRMAN: Let's have a little order here. Will you please address the Chair.

A. TRASK: Thank you. What is the meaning of the word "per diem" as has been considered heretofore. Does it mean a legislative day which excludes holidays and Sundays, or the period of the time?

PORTEUS: The per diem will depend upon exactly the way the statute is written. At the moment it is written so that it covers the period in which they're here. In other words, it covers the Saturdays and the Sundays, even though the legislature cannot sit on a Saturday [sic]. I might point out, as the gentleman knows, that on a Sunday when the legislature can't sit nonetheless there are many legislative activities and great number of the committees meet. I might

point out that this, while an embarrassing subject for the legislators to deal with, of per diem and salary, it is nonetheless, however, in my opinion a fairer way of compensating for out of pocket expenses those that come from the outer islands than it is to try to increase their salaries and to put the Oahu members on exactly the same plane.

LARSEN: [Inaudible] -- to leave out the one thing that it seems to me we have all learned, which is don't put into the Constitution any sums and no specific numbers.

CHAIRMAN: It has been already voted on, Delegate Larsen.

LARSEN: But I'm just calling attention. There is another --

CHAIRMAN: You want to move to reconsider?

LARSEN: -- amendment here that seems to me covers that and that's the one of Roberts. I would like to move to reconsider this idea of considering sums because we'll talk all morning on this.

ROBERTS: I planned to offer my amendment after the amendment is now acted on. So there's no need to reconsider, the section is still before us.

CHAIRMAN: The question is on Delegate Trask's amendment. Is there any further discussion?

H. RICE: I note that Illinois, Massachusetts, New York and Ohio are the only four states that will pay more than the State of Hawaii for a session, and that twenty-seven states provide the salaries. They fix them by Constitution, and twenty-one states fix it by statute. You turn to pages 16 and 17, [*Manual of State Constitutional Provisions*] you get all of them. Probably the committee has been all through it, but I think as long as you have raised the salary to that high maximum you can forget the per diem, and I want to see it written into the Constitution that they can't get a per diem if they're going to get a salary that size.

TAVARES: I've been quiet here for a while. I think it's about time I was heard. As the attorney general who is the culprit who advised the legislature that in his opinion this per diem was valid I do not subscribe to any of the statements that have been made that this is an illegal contribution at this time. We looked up that matter conscientiously. It was my --

CHAIRMAN: I don't think anybody said that, Delegate Tavares.

TAVARES: Yes, Mr. Chairman, but I don't want the records to show that that has not been questioned. It is my humble opinion, but very strong opinion that there is sound and strong authority to sustain what the legislature has done, and I agree with Delegate Porteus that if this is deleted the legislature under its legislative powers will have the power to enact a per diem statute and that it will not have the effect of eliminating that power.

CHAIRMAN: Unless it's taken away in this Constitution. That's your point, is it not?

TAVARES: Yes, Mr. Chairman.

GILLILAND: I heartily endorse the statement made by the delegate from Maui. Presently, the representatives and the senators are getting $1,000 a session of sixty days, that means an average of about $500 a month. By the amendment of the delegate of the fifth district it would raise this to $2,500 or $1,250 a month, and on top of that they want per diem pay. I think that's the height of imposter. I don't know the word that will fit the case.

CHAIRMAN: What is that word, Delegate Gilliland?

GILLILAND: I'm sorry, I'm excited. The idea of paying $1,250 a month to these men and then on top of that they want per diem pay. That's too much already, Mr. Chairman.

NIELSEN: I'd like to call attention to the fact that this $2,500 is not net, that's gross. You got to take 20 per cent off for federal and 2 per cent for territorial, so your net figure is only really $1,950.

CHAIRMAN: In other words, legislators, like everybody else, got to pay taxes.

SILVA: I think some of the remarks passed by Gilliland are not really accounted for. When he says that the legislators would like to get $2,500 plus the per diem, he mentioned the legislators very distinctly. I want him to know that Mr. Fukushima is not a legislator, that none of the legislators I believe are in accord. In fact I was going to move for reconsideration of Fukushima's amendment. I voted "no" and they had the majority and I was going to move for a reconsideration of the action. I do say that the $2,500 and the $15 is really too much, and I believe that most members of the legislature from the outside island would prefer a smaller salary compensation and a fair per diem allowance, tax free. That is really what fits the rentals and the food expenses, etc., allowed us under the law.

GILLILAND: The members of the legislature in other states like New York, Illinois, they pay taxes too. Yet there's only four states where members of the legislature are going to receive more than what we receive here if this amendment is adopted.

HEEN: I might point out Pennsylvania pays $3,000 a session and $1,200 a year expense account.

DOI: The fact that other states pay salaries that are very low is no reason for us to follow that practice. I think students of government could say that that is the reason why many of the legislatures in the states are so -- the caliber of them are so low. In fact the arguments advanced for the unicameral system of legislation was that the government can pay better salaries and thereby attract better men.

Now what is this $2,500 for each general session and $1,500 for each budget session based on? The governor in this Constitution has been allowed a minimum salary of $18,000 a year, that would be about $1,500 a month. Should we look at this $2,500 it would come out that each legislator will get a salary of about $1,000 a month. I think the legislature is one of the three important branches of the government. It should be given the eminence that the governor has, but the individual members of the legislature should not be given the same salary but should be given something that approaches it and would thereby attract good men.

Should we ask this question of all the legislators in this Convention, I think they would say -- should we ask the legislators of this Convention a question somewhat to this effect, that wasn't the per diem passed in the '47 or '49 sessions of the legislature really made, agreed to the amount of $15 because the individual legislators felt that the salary of $1,000 was inadequate and therefore they increased it, without much reason or comparative study as to the cost of living, to the amount of $15 per day? In fact I got one answer right now from Dr. Silva who says that's right. That kind of a thing I think should not be permitted. The amendment as it stands now, will allow the legislature

to make a study of the cost of living and give the legislators the proper amount they need to live.

Look at the other government officials of the government. Today when they travel they are allowed I believe twenty cents per mile traveling expenses and I believe under the State government the individual legislators will be allowed traveling expenses. The legislators from the outside islands, however, will not be allowed traveling expenses after or between - - during the session. Now as to the cost of living in Honolulu for the outside legislators, I believe that should be paid by the government also as is done with other government officials. Should the governor travel from the seat of government on Oahu to the island of Hawaii to do some official business he will be paid traveling expenses plus his expenses of lodging and board and I don't see why the individual legislators from the outside islands should not be paid that amount.

CHAIRMAN: The Chair will permit Delegate Trask to close the debate. It seems to me - -

FONG: May I ask the movant of the amendment, what was his intention in deleting that section?

CHAIRMAN: He has already expressed that. He thought that the salary was too high and therefore if they're going to get $2,500 they ought to pay their own per diem.

FONG: If that is so then he should amend to say there shouldn't be any per diem paid.

CHAIRMAN: That can be taken care of in later amendments but that was his express purpose, as the Chair understood it.

FONG: He should do it now.

A. TRASK: Well, I have written in here, in view of what has been said by Delegate Porteus and concurred in by Delegate Tavares, as the amendment as suggested by me stands, the legislature is still empowered to go ahead and write in any further emoluments that it desires. In view of that and in view of the invitation from the delegate from the fifth district, I'd like to further provide that at the end of the first paragraph there will be included this expression, " No other compensation shall be provided."

CHAIRMAN: That wouldn't do it, Delegate Trask. We're talking about expenses.

A. TRASK: With respect to emoluments.

CHAIRMAN: You said " compensation." The Chair suggests that we vote on the amendment and then a subsequent amendment can be entertained.

KAUHANE: Point of information. Since you are somewhat confused on this matter wouldn't it be proper to suggest that we take a recess so that the legal heads can get together to get the proper words?

CHAIRMAN: The Chair is not confused in this matter.

A. TRASK: I move for the previous question. I think we're all prepared to vote.

MIZUHA: I'd like to speak in opposition to the amendment of Delegate Trask. It seems as though our brother attorneys from the fifth district feel that the compensation is too high. As an attorney who practices on an outside island I would like to inform the delegates that every time I have to try a case on Kauai while this Convention is in session I have to go home and it costs $19.55 for me to get back to Kauai by plane, plus taxes.

HEEN: Will the gentleman yield - -

CHAIRMAN: That's a deductible expense.

HEEN: Will the gentleman yield to a question? Don't you make your clients pay for that?

MIZUHA: No, but every time Delegate Gilliland goes down to the Circuit Court to have a divorce case he doesn't pay any travel fare, and he goes down there and does it all the time too. The same with Brother Fong and Brother Trask. Now, let us be fair about this question.

CHAIRMAN: Let's dispense with personal remarks. I don't think that's in order here.

MIZUHA: But if Delegate Trask feels that the compensation is too high then perhaps a level of compensation for the outer island delegates should be set in a salary schedule, and a lower level for the Oahu members of the legislature. Then it would be fair, then eliminate per diem. Let us be fair about this thing. I think people like us who come to the Constitutional Convention or to the legislature are not rich men. We have to pay the price for public service, and every one of us who are in public service makes great sacrifices, and I think by the elimination of the per diem expense it's striking at the heart of representative government for people who desire to serve in the public interest.

CHAIRMAN: The Chair will put the question.

J. TRASK: The amendment as proposed by the delegate here from the fifth district does not preclude the legislature from setting a per diem amount, but I do not believe that the per diem amount should be a part of the Constitution. It should be left to the legislature, so that if it should be $10 or $20 for the outside islands it's up to the legislature to set, but I do not believe that the particular amount for the per diem should be set in the Constitution.

SHIMAMURA: The present laws provide for per diem for the members of the legislature. Now that law will be continued under the section on ordinances and continuity which continues all existing laws. If this is allowed to be left in, this clause is allowed to be left in, that will mean that the per diem will be frozen at this rate, and even if say twenty-five years from now the cost of living goes up the legislature cannot increase it without a constitutional amendment.

CHAIRMAN: We have a revision every ten years, of course.

The Chair will put the question. All those in favor of the amendment offered by Delegate Trask, and it would delete the words " and in addition thereto an allowance which shall be fixed by law not to exceed a per diem of $5.00 for members from the island of Oahu and $15.00 for members from other islands," be deleted. All those in favor of the amendment signify by saying " aye." Contrary. The amendment is lost.

ROBERTS: I have an amendment which is on the desk of the delegates. The amendment provides for the compensation of members of the legislature, both salary and emoluments, as may be prescribed by law, but the amount thereof shall neither be increased nor diminished during the term for which they are elected. No salary shall be payable when the Senate alone is convened in a special session.

I then propose to put in the schedule the actual amounts set for the first legislature. If it be the sense of the Convention that the amounts should be as in the amendment presented by Mr. Fukushima, in the amounts of $2,500, $1,500 and $750 instead of $1,500, $1,000 and $750, that's a matter for the Convention to decide. It seems to me, however, that

the problem of writing specific amounts of money in a Constitution—even though some states have done it, much to their regret because they've had to have constitutional amendments to change the amounts—it seems to me that the proposal as we adopted it makes it rather difficult in case of changes in prices and changes in the cost of living to give adequate consideration to the appropriate salary for the legislators. The amendment to Section 11 now says that the amount shall not exceed $5 per diem for members of the Island of Oahu.

CHAIRMAN: Excuse me, Delegate Roberts. Have you moved an amendment?

ROBERTS: Mr. Chairman, I was explaining. I would like to move this amendment. Amend Section 11 to read as follows:

> Section 11. Compensation of members. The members of the legislature shall receive such salary and emoluments as may be prescribed by law, but the amount thereof shall neither be increased nor diminished during the term for which they are elected. No salary shall be payable when the senate alone is convened in special sessions.

The following to appear in the schedule:

> Until otherwise provided by law in accordance with Article ____ section 11, the salary of members of the legislature shall be as follows: the sum of $1500 for each general session, the sum of $1000 for each budget session and the sum of $750 for each special session of the legislature.

CHAIRMAN: Well, before you debate, I'd like to get something before the house.

LARSEN: I second the motion.

CHAIRMAN: And that amendment is to what, Delegate Roberts?

ROBERTS: The amendment is to Section 11 as submitted by Delegate Rice, as amended by Delegate Fukushima's amendment.

CHAIRMAN: And you would leave in the second paragraph of Delegate Rice's amendment?

ROBERTS: I assume that the second paragraph, Mr. Chairman, could be taken care of by my second paragraph with regard to the schedule. So that if the amendment is adopted it takes care of both the section in the Constitution, the first paragraph, and a provision in the schedule in the second paragraph.

CHAIRMAN: The Chair will have to rule you're not in order there at all. That has nothing to do with the second paragraph.

KELLERMAN: The second paragraph is not before the house as yet.

ROBERTS: Oh, I'm sorry, Mr. Chairman. I was looking at my second paragraph. I'm sorry. It applies only to the first paragraph.

CHAIRMAN: Delegate Roberts' amendment then is an amendment to the first paragraph of the amendment offered by Delegate Rice, which has already been amended, to insert the words $2,500 and $1,500 for sessions. Are you finished, Delegate Roberts? Delegate King is recognized.

KING: If Delegate Roberts has finished, I would like to speak in favor of his amendment. I have a good deal of sympathy with the amendment offered by Delegate Fukushima. In my opinion the business of being a legislator is becoming more expensive and more difficult all the time and a substantial raise in pay might be considered necessary. You may note Congress has recently raised the pay of a member of the House of Representatives and of the Senate from $10,000 to $12,500 and then granted each member of the United States Congress a $2,500 expense account which is tax free. They do not, however, get a per diem.

I am also in considerable sympathy with the efforts to secure a reasonable per diem which might even be increased over the $5 minimum and the $15 minimum if the future requires it. But I don't think these things ought to be written into the law. Delegate Roberts' amendment would provide that the rate of pay of the members of the legislature and the emolument may be prescribed by law, and then later in the schedule would fix the rate of pay as fifteen, one thousand and seven-fifty, or twenty-five and fifteen if the Convention so wishes.

But I do feel that the amendment submitted by Delegate Rice, and as already amended, is not a very good constitutional provision. The illustration made of those states that have very small rates of pay are not very good because the states are very unhappy about it. The members of the California legislature are very poorly paid and recently in Colliers Magazine it was written up that the lobbyists for large interests in the State of California almost dominate the legislature through various means of aiding these legislators to meet their expenses.

So it seems to me that we should in the Constitution adopt the general law and leave it to the judgment of the legislature in the future to raise the pay if it's necessary.

There's only one little item here, that the "amount thereof shall neither be increased nor diminished during the terms for which they are elected." If this amendment is passed, the holdover senators would continue at the same rate of pay until their holdover terms were expired, and we would have the situation where the members of the new legislature, the newly elected senators, would get the increase in pay and the holdover senators wouldn't, but that's rather a minor difficulty. I certainly do feel that the amendment offered by Delegate Roberts is in line with good constitutional drafting.

BRYAN: I would like to say that the committee had under consideration a proposal very similar to this, and the only reason we changed to what the committee reported to the Convention was that in discussion it was felt that the members of the legislature at times were a little bit embarrassed at increasing their own compensation. For that reason we finally hit upon the scheme of putting it in as a constitutional provision with the amount fixed, and in hopes that as constitutional amendments were made every ten years or approximately every ten years, that that adjustment could be made to go up and down with the cost of living. Therefore, I don't think any of the members of the committee are greatly opposed to the amendment offered by Dr. Roberts.

I have one suggestion, however. The last three words in the first paragraph, "when the Senate alone is convened in special sessions," I think might well be deleted because the words "special sessions" is used in the Constitution referring to the entire legislature, and I think perhaps if the period were placed after the word "convened" it would be an improvement.

ROBERTS: That's acceptable, Mr. Chairman.

CHAIRMAN: As I understand Delegate Roberts' amendment as it now is, the last sentence would read "No salary shall be payable when the senate alone is convened" period. Is that correct, Delegate Roberts?

ROBERTS: That's acceptable unless some problem might be created - -

CHAIRMAN: Well, the Chair wants to know if it's acceptable.

ROBERTS: I accepted the amendment.

TAVARES: I'd like to speak in support of the Roberts' amendment. I hope that there will be economy in the legislature, but we must remember first the legislature is one of the major branches of government; we must not lose sight of that. And in deciding what we are going to pay them or what arrangements we are going to make to pay them we must never lose sight of the fact that they are a major branch of government, and therefore there is some justification in paying a substantial amount to that major branch of government.

Secondly, there is the question of fixing dollar amounts which, ordinarily, is unwise. The dollar, as we know, fluctuates.

Thirdly, I think if one looks at the history of Congress, one will find that the congressmen have been very very reluctant indeed to increase their salaries. That reluctance is borne of the fact that no matter how reasonable the increases may be, the first reaction of voters is usually against any increase at all. That fear itself is sufficient deterrent I think to prevent the legislature from running away too much.

Finally, the provision here is very salutory in this amendment. That the increase anyway shall not take effect until after their term will also have a deterring effect for two reasons. First, they'll have to run again if they want to be re-elected and will have to explain that amendment. Secondly, they won't get the benefit of it themselves anyway for that term and I think there will have to be some sound principle, some pretty strong principle to induce them to vote for it when there is no immediate prospect and no certainty that they will enjoy the increase, because there's no absolute certainty that any man will be re-elected.

Under all those circumstances, I feel that this amendment is preferable to the others that have been proposed.

CHAIRMAN: I think there has been enough debate on this.

LOPER: I'm speaking in favor of the Roberts' amendment and to the slight defect noted by President King. I'd like to ask whether this amendment would cure the problem, to take the last sentence of the Ashford amendment, which was before us a day or two ago, so that the latter part of the first sentence which now reads, "but the amount thereof shall neither be increased nor diminished" would change and say, "but no law directly or indirectly increasing the emoluments of the members shall be effective for a period of two years subsequent to its enactment." I would like to move an amendment to the Roberts' amendment to incorporate that sentence.

CHAIRMAN: The Chair will have to rule that's out of order.

RICHARDS: I would have another suggestion to take care of that particular problem. If an amendment to the Roberts' amendment is out of order - -

CHAIRMAN: The reason for it being, Delegate Richards, is you're piling up the amendments here. Perhaps we might take a few minutes recess. The Chair will declare a few minutes recess.

(RECESS)

CHAIRMAN: Delegate Roberts, has your amendment been printed or do you have it written out?

ROBERTS: It has not been printed. It's been written out, and I'll read it slowly so that the delegates can get it.

CHAIRMAN: Just hold it a minute until the delegates take their seats, will you? Will the delegates please take their seats. Delegate Roberts, you have a proposed change in your amendment.

ROBERTS: That's correct.

CHAIRMAN: Read it, please.

ROBERTS: In line three after the comma after the word "law," first paragraph, delete from the word "but" down to the end of the sentence which ends with the word "elected," and substitute therefore the following language, "but any increase or decrease in the amount thereof shall not apply to the legislature which enacted the same." Mr. Chairman, while - -

CHAIRMAN: Just a minute please. As the Chair understands it, your amendment, after the words "prescribed by law" would delete the remainder of the sentence and insert the following: "but any increase or decrease thereof shall not apply to the legislature which enacted the same." Is that correct?

ROBERTS: "In the amount thereof," but that's a matter of style, Mr. Chairman.

CHAIRMAN: Does the second accept the amendment? It's accepted. Proceed, Delegate Roberts.

ROBERTS: I'd also like, in view of the discussion during the interim, that the amounts set forth in the second paragraph, $1,500, $1,000 and $750 - -

HEEN: Mr. Chairman, may I interrupt? It seems to me that the word "emoluments" in the second line of the first paragraph here should be changed to "allowances." The term "emoluments" might be regarded as additional compensation, whereas allowances would be in the nature of reimbursement for amounts spent for expenses.

CHAIRMAN: The Chair is inclined to agree with that, Delegate Roberts.

ROBERTS: That's acceptable.

CHAIRMAN: Strike out the word "emoluments" and insert the word "allowances." You were discussing the second paragraph of your amendment.

ROBERTS: That's correct. Since it's been the sense of the Committee of the Whole to increase the amounts for the various sessions, I'd like the second paragraph to conform to our previous action, which provides for the sum of $2,500 for the general session, $1,500 for the budget session and $750 for the special session. So that in line three of the second paragraph delete "$1,500" and substitute "$2,500," in the fourth line delete "$1,000" and substitute "$1,500."

CHAIRMAN: The Chair is ready to put the question or accept further debate.

DELEGATE: Question.

WIRTZ: Point of information. Do I still understand that this being an amendment to the amendment offered by Delegate Rice, that it does not affect the second paragraph?

CHAIRMAN: That is correct. That's correct, that's still open.

FONG: I think this amendment is worse than the previous amendment which was passed. You will note that this amendment goes beyond the other amendment. The other amendment just stops at $2,500, but this is going to get up to the sky. Now, if you set this schedule at $2,500, you don't expect the legislature to cut it down below $2,500. I think it's very -- Originally the way he had it at $1,500 I think was all right, but now you increase it to $2,500 and and let the legislature lift that lid over $2,500. Makes it worse.

ROBERTS: The purpose of putting those amounts in was to conform to the action of the Committee of the Whole. We voted on that. It was the sense of this committee that those amounts be fixed at that level. I therefore think that they're perfectly proper and perfectly in order.

WHITE: What are we voting on? The first paragraph?

CHAIRMAN: We're now voting on the Roberts' amendmend to the Rice amendment. The Rice amendment is the first paragraph of Section 11, relates to the compensation and expenses allowable -- paid and allowable for legislators. The proposed Roberts' amendment would have the compensation prescribed by law but the salary in the beginning fixed in the schedule.

WHITE: But in voting at this time we're just voting on the first paragraph, are we? And there would be a subsequent motion to adopt the second?

CHAIRMAN: We're voting on the first and second paragraphs of Delegate Roberts' motion. I would suggest to Delegate Roberts, for his consideration, that if you desire to have your motion acted upon in the absence of the figures, you could leave the figures blank and then they could be filled in. However, that's up to the delegate.

HEEN: I move that we take action on the first paragraph first, get that out of the way.

DELEGATE: I second that.

ROBERTS: The reason I suggested we act on both paragraphs is that there's some fear in the minds of some of the delegates that part of this is put in for one purpose and part for another purpose. This is a package deal to cover both the problems. I'd like it presented in that form to get the sense of the Convention.

HEEN: I might be in favor of the first paragraph and not in favor of the second paragraph and I say it's out of order to put two subjects for vote at the same time. Therefore it is out of order.

DELEGATE: I ask for a division of the question.

ROBERTS: I then move that the second paragraph be considered first, leave the amounts $2,500, $1,500 and $750.

LARSEN: Second the motion.

CHAIRMAN: That is not the suggestion, Delegate Roberts. The suggestion is we vote upon the first paragraph of your amendment, leaving to further action of the body the dealing with the paragraph relating to what goes in the schedule. If that is acceptable to you, the Chair will put that motion.

ROBERTS: I said it wasn't, Mr. Chairman.

CHAIRMAN: Was not?

ROBERTS: That's right.

HOLROYDE: Point of order.

CHAIRMAN: State your point of order.

HOLROYDE: The second paragraph would not be an amendment to the legislative article or to Section 11. It would be something to go into the schedule. I think we could vote only on the amendment to the section.

ROBERTS: That's not correct. We're dealing with article -- Section 11. We can amend that to put it in the schedule. It's perfectly proper. The section is before us.

HEEN: I move that we act on the first paragraph first.

WHITE: I'll second that motion.

BRYAN: I'd like to speak to that motion to clarify perhaps what Delegate Roberts is afraid of. If favorable action was taken on the second paragraph first and the first paragraph lost, what would you do? The whole thing would be out of order. The first paragraph provides the basis for the second paragraph. Unless the first paragraph is carried the second paragraph is meaningless.

CHAIRMAN: It seems to the Chair that that's the sensible disposition. However, what is the wishes of the delegate, Delegate Roberts?

ROBERTS: You can go ahead on the first paragraph, Mr. Chairman, but I want it quite clear that my amendment was in two parts, and I intend to put the $2,500, $1,500 and $750 back in again.

CHAIRMAN: The Chair so understands.
The Chair will put the question . The question is on the amendment which is the first paragraph of Delegate Roberts' amendment to Section 11.

ARASHIRO: Point of information. If we vote on the first paragraph of the proposed amendment, then does that mean that we are now substituting or making an amendment to Section 11 of the part that we have already adopted? "In addition thereto an allowance which shall be fixed by law not to exceed a per diem of $5 per member," and right down the line until "the other island"?

CHAIRMAN: There would still be open the question of what the allowances of the legislators would be. The reason for breaking it up was pointed out. There was no basis for the second paragraph unless the first paragraph is adopted.

ARASHIRO: The paragraph that we have adopted freezes that per diem?

CHAIRMAN: That's right.

ARASHIRO: But, this will be in contradiction to the --

CHAIRMAN: That's right. This will leave it as a matter of law for future legislators, but establish it for the first legislature in the schedule. Delegate Roberts has expressed his intention to insert the figures, and abide by what has already been indicated in the Fukushima amendment.

WIRTZ: To clarify that problem, I'd like to point out that we put the word "allowances" in the second line of the amendment offered by Delegate Roberts, which leaves the legislature to provide for these allowances, which in turn could be tax free.

CHAIRMAN: That's correct.

NIELSEN: I think that the two paragraphs very definitely tie in together because if we're going to vote on the first one first, why then I'm going to vote no, and yet I think it's very sound; but without the second paragraph in

the deal, why then I know what the play is here, I know politics. They're going to get the first one in and then kill the second one.

CHAIRMAN: The Chair will put the question.

BRYAN: Mr. Chairman, before you put the question, please. In discussing the matter of the small change I requested with the members of the committee, I find that I was in error. The words "in special sessions" should be retained as they are used in connection with the Senate in Section 12, which has been adopted.

CHAIRMAN: The Style Committee can take care of that. The Chair will put the question. All those in favor of the amendment signify by saying "aye." Contrary. It's carried.

We now have the second paragraph.

WHITE: Are we talking about the second paragraph of Mr. Roberts' amendment?

CHAIRMAN: That is correct.

WHITE: I have a question on the second paragraph of Delegate Rice's amendment that I'd like to --

CHAIRMAN: We haven't quite reached that, Delegate White.

WHITE: All right, I will withhold it then.

ROBERTS: I move that the second paragraph be adopted as proposed with the amendments suggested for the change in the amounts of $1,500 to $2,500, $1,000 to $1,500 and leaving $750 as it is.

CHAIRMAN: Is there a second?

AKAU: I second that.

HEEN: I move the amendment that the sum of $1,500 be substituted for $2,500, $1,000 substituted for the sum of $1,500 and --

FONG: I second that motion.

ROBERTS: I have some question about the propriety of that amendment.

CHAIRMAN: The Chair has no question about the propriety of it. You raising a question of order?

ROBERTS: Yes, I am.

CHAIRMAN: What is your point of order? State it.

ROBERTS: The point is we have acted on the question of amounts. The amounts were agreed on at $2,500, $1,500 and $750.

CHAIRMAN: The Chair will rule that it's a different thing to have a statutory provision and then have it fixed by law. Quite different.

ROBERTS: But the votes, Mr. Chairman, were on the amounts to be received by the legislators for specific sessions, whether they go into the schedule or are in the Constitution.

ASHFORD: When the first paragraph of Delegate Roberts' amendment was adopted, it knocked out the first paragraph of the other amendment which fixed the salaries?

CHAIRMAN: That is correct and the Chair will so rule. The question is on the amendment offered by Delegate Heen which would strike out $2,500 and insert $1,500 for a general session --

ROBERTS: May I have a roll call on that?

CHAIRMAN: -- strike out $1,500 and re-insert $1,000 for each budget session.

ROBERTS: Roll call, Mr. Chairman.

CHAIRMAN: The Clerk will call the roll. The vote is upon Delegate Heen's amendment which would cut down the salaries of the legislators from $2,500 to $1,500 and from $1,500 to $1,000 respectively.

KELLERMAN: May I ask the -- I understand it to be the case that the present per diem allowance permitted by statute will continue in effect unless specifically stated otherwise in the Constitution or the schedule.

CHAIRMAN: That is correct.

KELLERMAN: Therefore the adoption of either of these as proposed by Mr. Roberts or Judge Heen would have no effect upon the existing statutory per diem. Is that it?

CHAIRMAN: That's right. We've already adopted the provision that the legislature will fix the salary and allowances as may be prescribed by law. The Clerk will please call the roll.

Ayes, 24. Noes, 36 (Akau, Apoliona, Arashiro, Cockett, Doi, Dowson, Fukushima, Hayes, Ihara, Kage, Kanemaru, Kauhane, Kawahara, Kawakami, Kido, Kometani, Loper, Luiz, Lyman, Mau, Mizuha, Nielsen, Noda, Ohrt, Okino, C. Rice, Roberts, Sakai, Sakakihara, Serizawa, Shimamura, Smith, St. Sure, Wist, Yamamoto, Yamauchi). Not voting, 3 (Lee, Phillips, Silva).

The motion is lost.

ROBERTS: I move the adoption of the amendment.

FUKUSHIMA: I second the motion.

CHAIRMAN: Any further discussion? Are you ready for the question? All in favor signify by saying "aye." Contrary. The ayes have it, it's carried.

We're now on the second paragraph of Delegate Rice's amendment. The Chair will recognize Delegate Kellerman.

KELLERMAN: I move the adoption of the second paragraph of Mr. Rice's amendment.

J. TRASK: Second the motion.

CHAIRMAN: It's been moved and seconded that the second paragraph of Delegate Rice's amendment to Section 11 relating to total expenses of officers and employees of each house be adopted.

KELLERMAN: May I read the full amendment, Mr. Chairman?

CHAIRMAN: Proceed.

KELLERMAN:

> In no case shall the total expenses for officers and employees for each house exceed the sum of $1,000 per calendar day during any general session, nor the sum of $500 per calendar day during any budget or any special session.

May I speak to the amendment?

CHAIRMAN: Proceed.

DELEGATE: There is no second.

CHAIRMAN: There has been a second. Proceed, Delegate Kellerman.

KELLERMAN: We have just voted for the adoption of a salary schedule of $2,500 for a general session and $1,500 for the budget session to present to the Territory the bill of $364,000 per legislature for salaries, not counting per diem. I think a great many of us are very much in favor of a per diem. At the present rate of per diem that would go up to approximately $430,000 per legislative session. This is of course based upon a 25 member Senate and a 51 member House.

If the members will turn to this mimeographed material which was distributed on the desks this morning --

CHAIRMAN: That bears the caption, "Comparison of legislative expenses 1929, 1945, 1947 and 1949." Is that what you have reference to?

KELLERMAN: That's the one. You will find that the total cost of officers and employees, and may I clarify any possible misconception, that does not include the salaries of the legislators. Officers are such as the sergeant at arms, chief clerk and others who hold positions, they are the officers of the legislature. The 1929 session, the cost per legislative day—and remember the proposed amendment is calendar day, which means for every day during which the session is in existence counting holidays and Sundays, but you will note that you will have to make a comparison in your mind with the figures on this form which relates to legislative days, which means working days only—the cost per working day was $666 per day, working day, for both houses of the legislature. Now that sum spread over the calendar days would, of course, be reduced to less than that by approximately one-sixth of a sixty day session. If you turn to the 1945 session, you will find the total had increased to $2,547 for both houses for a sixty-three day session. That has been figured; it comes to $2,006 if spread over the number of calendar days. If you'll turn to the '47 session you'll find that the total cost of personnel for both houses for a sixty-two day session was $3,271. On a calendar day basis that ran $2,535. The 1949 session --

CHAIRMAN: Is that for '47, Delegate Kellerman?

KELLERMAN: That was for '47. For the '49 session, you will find that the cost of employees and officers ran for the legislative session of sixty-two days to $4,835 for both houses, that is jointly. Broken down on a calendar day basis that comes to $3,747 for the two houses.

May I read briefly from your Manual of Constitutional Provisions on page 41. "The temptation to reward the politically faithful and to repay political favors through appointment to legislative office or employment has resulted in the establishing of both constitutional and statutory limitations on the legislature's power to choose its officers and employees." Further in that paragraph you will find the statement, "The California Constitution. Article 4, Section 23A fixes the maximum total expenses for officers and employees and attaches at $300 per day at regular sessions and $200 per day at special sessions for both houses of the legislature." That is jointly.

The proposal which Mr. Rice has introduced has fixed the amount at a maximum of $1,000 per calendar day during any general session for each house. On the basis then of a sixty day session that would run approximately $75,000 for each house. Calendar days include holidays, Sundays and weekends. The reason that we who have worked on this amendment have considered that a reasonable provision, rather than a legislative day, is because our committees do meet on weekends and holidays and employees do work on weekends and holidays. However, the sum effect of it merely is to increase from a possible $60,000 or a $62,000, depending upon the length of the legislative session from a total or a maximum of $62,000 or $63,000 to $75,000 or $80,000 for that session.

Of course this could be done by the legislature and there will be those who will consider there is no place in the Constitution for a provision which limits the legislature to a certain amount in money. There are several ways of handling this. This we considered the most feasible. Some constitutions limit the number of employees that can be engaged. For instance, the Constitution of Missouri, which has a thirty-four member Senate and a one hundred and fifty-four member House limits the number of employees to seventy-five for the Senate and one hundred and twenty-five for the House. You will notice on that basis with our existing legislature of fifteen in the Senate and thirty in the House, at the last 1949 session there were eighty-six employees of the Senate and one hundred and nine in the House. May I repeat, the Missouri Constitution where you have a thirty-four member Senate and a one hundred fifty-four member House, has a constitutional limit of seventy-five employees for the Senate and one hundred and twenty-five for the House. I've just read you the California provision which fixes a dollar maximum limit at $300 a day for each house in general session. The California legislature has a forty member Senate and an eighty member House.

Now, if you will turn your attention briefly to these other two mimeographed sheets which were distributed yesterday, headed "Partial breakdown of personnel cost for the House, regular sessions, and Senate, regular sessions." I'd like to call your attention to one or two points of clarification. You will find in the last column per diem pay. I have been questioned on the mathematics of these figures. I want to clear that up. That per diem pay relates only to the 1949 session. A survey of the salaries paid through the last -- through the '29, '45,'47 and '49 sessions shows that the salaries have been increased - the per diem that is - has been increased each session. We decided we'd complicate it to put in each time what the increase was, but in each of the respective sessions shown on your breakdown there has been a per diem increase. Therefore the per diem rate shown only relates to the '49 figures.

But there are several points there that I think should be brought to your attention. You will see that although the session -- let's take the '49, the 1949 session had sixty-two legislative days. That comes up to seventy-seven calendar days. However, you will note that a great many of the employees listed here and these are -- of course this is not the total list of employees obviously, this automatically lists a few as individuals because there is only one of each of certain of these offices. Of various others there were many, of course. But you will notice here for instance, the bottom line of the House, Regular Session 1949. The sergeant at arms of the House was paid for one hundred and forty-one days at the rate of $22.50 per day although the session, including the calendar days, lasted only seventy-seven days. You will note also that the secretary to the clerk and the assistant clerk were paid for one hundred and forty-one days although the session lasted, including calendar days, only seventy-seven days. The chief clerk was paid for one hundred and thirty-seven days at the rate of $45 per day, although the session lasted seventy-seven days. Now may I add that those days for which that extra payment was received did not include the cost of preparing the journal. The journal obviously has to be prepared after the session is closed. But the journal costs are in addition to those payments. They are listed under employees and come in under your total quoted on your comparison of legislative expenses and cost as cost for employees. In my opinion

that could more reasonably be regarded as an independent contract and not as an employee, but it is so considered in the tabulation of expenses in the files filed by the Account Clerk of the Senate and House as employee pay. But these figures which I have given you here do not include the cost of the journal and do not include time spent on the journal, which obviously comes afterwards.

Now I know Mr. Fukushima brought up yesterday a proposed amendment that would imply at least that all bills would be engrossed and submitted to the governor in time for him to pass upon them within forty-five days after the session. Presumably they would be engrossed and passed up to the attorney general's office or the governor within twenty days. Yet we have the assistant clerk of the House, the secretary to the clerk, one hundred and forty-one days; the engrossing clerk, ninety-six days; the assistant engrossing clerk, one hundred and four days; and so forth.

Now I cannot but believe that the figures must indicate that we do not have sound financial administration of our legislative expenses. I cannot but believe that they indicate that were there someone there who was obviously serving in the position of a financial manager or administrative officer that many of these days would not have been regarded as necessary or as full time work justifying such pay. I cannot but think that part of this is due to the carelessness of not having any single responsible person looking to the economy of the legislature, as well as to the fact of the information that I read, the reward of the politically faithful.

I believe -- I've been told by several legislators who have indicated that they consider it impossible for the legislature to clean its own house, as impossible as it was for the legislature to reapportion itself, although it was under mandate for fifty years to do so and never did it. I therefore offer my suggestion, the amendment -- or rather Mr. Rice's amendment, I am speaking to it—in all friendliness and amity to aid them in clearing their house of unnecessary expenses and unnecessary employees. I would earnestly request the consideration of this body, if they're going to the people with a seventy-six member legislature—$400,000 for legislative salaries which now are no cost to the Territory whatever since, as we know, Congress pays the $45,000 now paid to the legislature—that they would be very wise to think to an enforced curtailment of what will undoubtedly be a tremendous increase over the legislative expenses for employees when all those extra people get in there, each claiming his patronage in addition to the patronage already well established.

CHAIRMAN: Delegate Kellerman, the Chair would like to ask you one question. Do these figures of the average cost per legislative day include the expenditures of the holdover committee? I notice under the Session Laws of 1949 there was $150,000 appropriated by the holdover committee.

KELLERMAN: No. The 1949 figures include the cost only of employees for the regular session.

Now there's one more point I'd like to bring out, which I intended to in the beginning. I don't want to talk too much but I think this is very pertinent. I'm advised by the chairman of the Accounts Committee that this body, with sixty-three members, has been working, including our salaries, our rent, our loud speaker system, all of our employees, all of our materials and supplies, we have been working on slightly under $1,200 per day, calendar day, including the salaries of the sixty-three legislators. For that reason I feel that the proposal of $1,000 per day maximum for employees of each house is more than generous. It will in no sense be where they will have to budget carefully to meet it.

WOOLAWAY: I'd like to ask a question concerning the generosity of allowing the Senate the same amount of money per day, although that body is half the size of the House.

CHAIRMAN: What is your question? Will you please address the Chair?

WOOLAWAY: Both houses are going to be allowed the sum of $1,000 a day for their expenses. I would like to ask the proposer of this amendment why the Senate is being allowed the same amount of money as the House although that body will be half the size of the House.

CHAIRMAN: Would you care to answer that, Delegate Kellerman?

KELLERMAN: Yes, Mr. Chairman. At present, our Senate is half the size of the House but if you will look across this line, "Average personal services per legislative day" on your comparison of legislative figures that we've been referring to, you will find 1929 Senate cost $337 per day, House $329. There the Senate cost more than the House. In 1945 you will find $1,197 for the Senate, $1,350 for the House, just a little bit over $150.

CHAIRMAN: In other words, you followed the historic pattern.

KELLERMAN: Following historically they come within $200 or $300 of each other right across the line. I have not had the opportunity to ascertain why that should be, but that follows the pattern apparently through a period of twenty-five or thirty years.

TAVARES: I would like to have that amendment read over again because I would like to make a further amendment to it.

CHAIRMAN: The amendment is on your desk, Delegate Tavares. The Chair will read it.

TAVARES: It's the second paragraph of Delegate Rice's amendment?

CHAIRMAN: That's correct.

TAVARES: Then, Mr. Chairman, I move to further amend by substituting a comma for the period at the end of that paragraph and adding thereafter the following words, "based upon the average purchasing power of the dollar upon admission of this State to the Union."

COCKETT: Second the motion.

CHAIRMAN: What would that accomplish, Delegate Tavares? Is there a second?

TAVARES: Was it seconded?

CHAIRMAN: Yes. Delegate Cockett.

TAVARES: We have seen in the last few years a tremendous fluctuation in the purchasing power of the dollar. Before the last World War $10 a day was allowed by law as per diem for trips to the mainland and it was ample. Today $20 a day doesn't get you as far as $10 did in those days. If we get into another large scale war, inflation may come further. The purchasing power of the dollar may go down further, and this will allow us to keep up with the purchasing power of the dollar.

CHAIRMAN: Pardon me. I don't think your amendment would, though. There's still a prohibition on the limit, is there not?

TAVARES: I think, Mr. Chairman, that word "based upon the present purchasing power of the dollar" would lend mean-

ing to the $1,000 and $500. I think it would mean that whatever the purchasing power of the dollar was at that time, we could go up or down depending on the way the dollar fluctuates, within reason.

ROBERTS: If we could use the words "to be adjusted in accordance with" - -

CHAIRMAN: The Bureau of Labor Statistics figures or something like that?

ROBERTS: The purchasing power figures, I assume, would be the figures of the Bureau of Labor Statistics or our own Territorial Employment department because the only figures we have on changes in purchasing power are changes in actual prices. I am in accord with the amendment proposed by Delegate Tavares. I think the language ought to read, "to be adjusted to the changes in the cost of living index of the Territory of Hawaii," which would provide an actual base upon which to make the changes.

TAVARES: I'm willing to accept any amendment within reason, if someone has a better one in words. I think that we should bear in mind that there is a possibility of a very rapid fluctuation of the dollar from now on. I think since we're going to put this tight rein, which I'm in favor of, on legislative expenditures, we ought to allow at least enough leeway to take care of at least substantial fluctuation in the dollar purchasing power.

H. RICE: I'll accept that amendment.

WHITE: I'd like to ask them why they picked on one particular item and tied it to the purchasing power of the dollar. We fixed salary, we're fixing the compensation for legislators. You going to do the same thing for them? What is this tied to? Is it to be tied to the cost of living? Is it tied to the wholesale commodity price index, or what is it tied to? I wouldn't know what kind of index to tie legislative expenses to.

CHAIRMAN: The Chair has difficulty with that too. It would have to be redrafted, the amendment.

ST. SURE: I'd like to call the body's attention to the word "expenses." Could that be construed to be other than compensation?

CHAIRMAN: That has nothing to do with compensation of legislators.

ST. SURE: It states "expenses for."

CHAIRMAN: That means the pay.

TAVARES: I realize, although I am not a financial expert, that there is some indefiniteness in the words "purchasing power of the dollar." However, I believe that under those circumstances if the legislature make a determination based upon some reasonable grounds that the purchasing power of the dollar has gone down and they exceed their expenses within that limit, I believe the courts will honor their finding. I don't think you can absolutely tie it down in any event, but I think it leaves enough leeway so that the courts, if the legislature in good faith finds with good reason that the purchasing power of the dollar has gone down a certain amount and the court cannot find absolutely, almost unimpeachable reasons against that, the court will honor the findings of the legislature.

CHAIRMAN: It appears to the Chair that the amendment would leave the discretion entirely to the legislature and it would not be a reviewable question based on that.

AKAU: I rather agree with Delegate White when he says we haven't this clause on many other statements we have made regarding our finances and salaries and what have you. Would it be possible then to put this statement in the report, in the explanation of the report of this committee, rather than put it on right here in the proposal?

CHAIRMAN: I'm afraid not, Delegate Akau. This is a limitation on the total expenditures. If there's got to be any leeway some language has to be inserted here to permit the leeway.

WHITE: I'd like to say that while I'm in sympathy with the objective of this second paragraph, it seems to me we're writing something into the Constitution that we don't have the faintest idea how it will ever work. We haven't even had a State legislature in session and we don't know what problems we're going to be confronted with, and it is my opinion that to try to put a limitation like this on, that is going to govern for all time, is just trying to do crystal gazing. It just isn't possible. I don't think any of us can tell what kind of conditions we are going to be confronted with. I am sympathetic with the objective but I just don't think it is a practical provision.

CASTRO: I think that this probably deserves a little more thought between the gentlemen who have expressed their sympathy with it. I suggest that this committee recess until 1:30 as it approaches the noon hour, and possibly at that time we can come up with the positive suggestion of whether we will incorporate this or not at all. So I so move at this time for a recess.

SMITH: Second the motion.

RICHARDS: If the movant will hold his motion, I would like to offer one other suggestion that the delegates can think about. Is it the purpose of this amendment to have the clerks walk out along with the meeting of the legislature? There's certainly clean-up work to be done, and how is that going to be done if the clerks all walk off the floor the day the legislators leave?

CHAIRMAN: The purpose of the amendment is to enable the legislature to budget its expenses within reasonable limits. That's the purpose of it as the Chair understands it.

WIRTZ: As long as we're - -

CASTRO: I withdraw my motion.

CHAIRMAN: Excuse me. There has been a motion and I believe it was seconded. Is this motion to recess until 1:30?

CASTRO: To permit the gentlemen to get this off their minds, I withdraw my motion to recess temporarily.

WIRTZ: I just want to pass on one further suggestion for the consideration of the delegates during the noon recess. I am heartily in accord with the objectives of this proposition. I feel that here is a very valuable contribution made by a housewife. Housewives have so much money to deal with in their household expenses and they have to make it fit.

CHAIRMAN: And a member of the bar, you might add.

FONG: I am in accord with the sentiments expressed by Delegate Kellerman, but I'm afraid that we are delving into something which we know very little about. You will note in setting forth the expenses of $1,000, Delegate Kellerman is cutting the legislative expenses down to around 38 per cent of what the legislature has spent for the year 1949.

Now the delegate has set a figure of $500 for a budget session. I don't know whether the delegate understands the working of the legislature. In the budget session the only committee that I can conceive of that will be operating will be the Finance Committee and the Printing Committee, the Printing Committee just to print the financial report of the Finance Committee. In the regular session you have probably from twelve to eighteen committees, each of them almost as big as the other. In each of the committees we have our clerks, we have our typists, and then we have a Printing Committee which is very large. Now, if you're going to set a figure of $500 for a special session, that is for a session in which the budget is only going to be taken care of and which only one committee will work, and you set a sum of $1,000 for a general session, I believe you are way off the mark. Now I don't know whether $500 will do the trick for the budget session. If $500 will do the trick for a budget session, then I believe the sum of $2,000 probably is more in accord than the sum of $1,000.

Another problem to be considered is the question of the number of employees in the House as well as in the Senate. In the House we had a lot of bills that were introduced as compared to the number of bills that were introduced in the Senate. You will note that the total measures of bills introduced in the 1949 House was 1,479, as compared to the total in the Senate of 905, the difference of almost 600 measures introduced in the House. The introduction of bills takes a lot of work of the legislators, work of the members, of the working staff. They type the bills, they see they're engrossed, they have them printed and delivered and the messengers put them in the books and the amendments are made and the committee has to discuss all the bills.

Now I don't know whether Delegate Kellerman has made an exhaustive study of this problem as to the number of workmen that is necessarily needed for the expeditious work of the legislature. Certainly I know there is nothing here to show that the thing has been worked out to compare the special session, the budget session, with that of the general session, and I feel that the setting of an amount here is going to be difficult. I am in accord with the objective of the delegates to hold down the expense of the legislature so that our tax revenue need not be so high, but we must consider that there are problems here which we have to foresee.

Now another question which has come to my mind is the question as to whether -- I'll continue after the recess.

CHAIRMAN: The Chair will entertain a motion to recess to 1:30.

CASTRO: I so move, Mr. Chairman.

CHAIRMAN: Second?

SMITH: Second.

CHAIRMAN: All in favor signify by saying "aye." Carried.

Afternoon Session

CHAIRMAN: The committee will please come to order. Will the delegates please take their seats. I direct the committee's attention to the fact that we still have some substantial work to get done, so let's get down to business.

We are now debating Delegate Rice's amendment and we closed with the discussion by Delegate Kellerman. The Chair will ask whether or not she has finished her remarks in supporting the amendment.

KELLERMAN: There's been one point which was called to my attention during recess for lunch which I made this morning but apparently was not entirely clear. The proposal limits expenditures to $1,000 per day for each house per calendar day during the general session. In other words, a basis say on a sixty day session would run about seventy-five calendar days. That would be $75,000 for each house or $150,000. The figure quoted on your "Comparison of Legislative Expenses" tabulation, to which we referred this morning, for the 1949 session of $4,835 as the average personnel cost per legislative day is on the basis, as you note, of legislative day. Now that figure translated in terms of calendar day, which would make it comparable to the proposed amendment, drops to $3,747; so the proposal is to limit to $2,000 per day as against $3,747 in the 1949 session, $2,535 in the 1947 session—you see, there's only a $500 difference there—and in your 1945 session it was exactly $2,006. Is that clear to the delegates that the figures -- Beg your pardon.

CHAIRMAN: It's not clear to the Chair. The proposal that you have suggested or you're advocating would fix the per diem at $1,000.

KELLERMAN: Per calendar day which includes holidays, Sundays. It's every day from the date the session convenes until it adjourns finally.

CHAIRMAN: What would that be in a legislative day?

KELLERMAN: In a legislative day that would come down to -- it would go up to about $1,200 per legislative day. Or if you want to turn it around and take this at $1,000 calendar day and transpose the figures on your "Comparison of Legislative Expenses," it transposes the $4,835 which was the '49 daily total—do you get that, the 1949 session—it takes that figure down to $3,747. It takes the '47 figures down to $2,535 and it takes the '45 session down to $2,006 per day. So you see, it is not as much a cut as some people had concluded, and because they brought up that point during recess and did not understand the difference between the calendar day and the legislative day, I wanted to make that point clear.

CHAIRMAN: That's a reduction of what percentage, Delegate Kellerman? Can you figure that out?

KELLERMAN: A sixty day session runs approximately seventy-three or four days. It depends upon the day it convenes. For instance—I can get it exactly—the 1949 session was a sixty-two day session. It convened on February 16th and it adjourned, I think it was May 2nd or 3rd—the Legislative Reference Bureau has the date—and that came up to a total of seventy-seven calendar days. The sixty-two day legislative session of '49 constituted seventy-seven calendar days, so it's a difference of about one-sixth.

WHITE: As I interpret Delegate Kellerman's thing then, what is proposed on this thing would represent just about a fifty per cent reduction? Is that right, Delegate Kellerman?

CHAIRMAN: That's what the Chair was trying to get at.

WHITE: About $150,000 as against $300,000 shown for this year?

KELLERMAN: The suggestion would be $2,000 per calendar day as against the '49 session of $3,747 per calendar day.

CHAIRMAN: About a ninety per cent reduction.

KELLERMAN: That's not right.

CHAIRMAN: About a forty per cent reduction roughly.

KELLERMAN: On the basis of the 1947 legislature it's a reduction of only $500, that is $2,000 as against $2,500.

WHITE: Well, if you figure roughly seventy-five working days at $2,000 a day that would be $150,000.

KELLERMAN: Yes, it would be $150,000 for employees.

WHITE: Well, that's just about a fifty per cent cut of your $299,788 then which is the figure right above your - -

KELLERMAN: Yes, yes, I was looking at the daily cut. I beg your pardon.

WHITE: That's what I meant. Could I ask one more question? This paragraph now reads: "In no case shall the total expense for officers and employees for each house exceed $1,000." How would you take care of - - supposing the legislature went out and contracted a lot of the work outside, that wouldn't be covered by this, would it?

KELLERMAN: No, it would not, not independent contract. This would be just officers and employees.

WHITE: For instance if work done by the Printing Committee, printing now done by the legislative employees, supposing it was contracted out to one of the printing houses. Then you would have no control on that expense at all.

KELLERMAN: That's right. You have no control over that expense. For instance, the final printing of the session laws, as you know, is done by a printing concern, that's done by independent contract. The journal, under the present procedure, the journal is done by members of the legislature, that is, one member of the Senate and one of the House and it's listed under employees' pay, although in my opinion that is more in the nature of an independent contract because it is not on a per diem or salary but on so much per page basis.

WHITE: The point I'm trying to get at is this, that much of the work that is presently done by the employees of the legislature today could be contracted during the session and circumvent what you're trying to control here.

KELLERMAN: There is no doubt that the printing, I presume, could be done on a contract basis. You mean the mimeographed printing in the legislature? Yes, that probably could.

WHITE: Many of those functions - -

KELLERMAN: It probably could and I don't know any way of fixing that as far as the Constitution is concerned other than the good faith of the legislature in carrying out a constitutional mandate with the intent to cover employees, attaches and officers.

CHAIRMAN: The Chair might suggest that such a contract probably would have to be let in accordance with the general statutes. You would have the assurance that there wouldn't be a lot of water in the contract. I think that is what the delegate has in mind.

HOLROYDE: One other question on the same subject. Say your total number of days was seventy-five; that would allow them $75,000, but there is considerable work usually left over for the employees to do, maybe a week or three weeks or four weeks. Now that work, as I understand it, must be done within the $75,000 range.

CHAIRMAN: That's right. This is a legislative day. They've got to cut their cloth accordingly.

KELLERMAN: The $75,000 would be the maximum, the maximum determined by the length of the session, but that does not mean that all the $75,000 is going to be spent or must be spent and can only be spent by the end of the legislative session. It simply gives them a total sum available for employees' services, and those that must continue, by nature of their work after the session is over, would have to come out of that total.

HEEN: Under this language it would seem to me that the amount allotted is to be for the general session. When the general session adjourns sine die there's no longer any session, then how can you pay those clerks who have to continue engrossing these bills to be sent to the governor?

CHAIRMAN: I think the idea would be so much would be allowed and then the payment could be deferred; it could be computed on the per calendar day. I think that's the intent of the amendment.

KELLERMAN: If the language is not clear to indicate that it's intended to be a maximum available for the expenses of the session based upon this rate of $1,000—that's the idea, it is a way of arriving at a maximum, it is not intended to mean that it can only be paid $1,000 each day within the session—if the language isn't clear, maybe it should be cleared by amendment or cleared in the report. But the intent of it—it's worded as the California constitution is worded and I gather they have the same questions of engrossing as we do and some employees must continue for a few days after the session, it was taken from that language—but the intent of it is that it simply fixes a maximum based upon that method of arriving at the maximum for the full expenses of the session, that is the compensation of employees and officers.

HEEN: Another question. In the first line of that paragraph, the word "expenses" is used.

CHAIRMAN: May the Chair invite your attention to the fact that what is before the house is Delegate Tavares' amendment which adds the sentence, "based upon the average purchasing power of the dollar." I think that is the precise issue that is before the house.

TAVARES: I should like to move a further amendment or rather have my amendment read as follows, in addition to the language which I have proposed, as an addition at the end of the paragraph which reads as follows:

> based upon the average purchasing power of the dollar upon admission of this state to the Union, as measured by the consumer's price index prepared by the Department of Labor and Industrial Relations of this state or the department hereafter performing such function.

SAKAKIHARA: Will the delegate please reread the addition.

TAVARES: "As measured by the consumer's price index prepared by the Department of Labor and Industrial Relations - -"

CHAIRMAN: May the Chair invite your attention to the fact that they do not keep indices, that they take their indices from the Bureau of Labor Statistics? It might be a more ascertainable standard. I don't believe they keep indices themselves. They in turn have a few indices not as comprehensive as the Bureau of Labor Statistics.

ROBERTS: The Territorial Department of Labor does issue quarterly figures.

CHAIRMAN: Yes, but they do not keep statistics like the Bureau of Labor Statistics does.

ROBERTS: Not quite the same way but they do issue publicly on a quarterly basis these data.

CHAIRMAN: Only a few commodities. However, that's up to the delegate.

TAVARES: May I finish reading this as I was requested? "As measured by the consumer's price index prepared by the Department of Labor and Industrial Relations of this State or the department hereafter performing such function."

CHAIRMAN: I assume the second accepts that. Is that correct, whoever seconded it? Does the second accept Delegate Tavares' re-statement? Just a moment until I find out whether I have a second here.

TAVARES: I have another suggestion, Mr. Chairman. I'm sorry. Another delegate has suggested improving language. I'm very willing. Instead of the first part of my amendment, "based upon the average," substitute "to be adjusted in accordance with the average purchasing power."

KELLERMAN: I think Mr. Rice accepted that original amendment to the amendment and therefore -- I don't know about the second, but he accepted that amendment.

CHAIRMAN: Well, the Chair will ask if this proposed amendment has a second.

ROBERTS: I'll second.

CHAIRMAN: Delegate Roberts seconded. Ready for the question? The question is on the amendment. The substance of the amendment as the Chair understands it would be to fix a limit but to put a permissable leeway based upon the price indices from which the legislature could from time to time depart. All those in favor --

WHITE: I'd like to raise a question about this. I think we are just jumping into something that we may well regret. I think it's a very unusual provision to have worked into your Constitution. Just to take one particular part of government expenses and try to tie it to the purchasing power of the dollar, I don't see that there's anything to support it. I think we ought to review this thing very carefully.

CHAIRMAN: The Chair is of that view, too, but the amendment is pressed.

WHITE: In other words there is no relationship between the index that we select and the type of legislative expense that we're talking about. I'm opposed to it but if you want to put it to a vote --

CHAIRMAN: Chair is obliged to put it to a vote.

APOLIONA: I shall address myself to this amendment and speak against this amendment. In principle it sounds very, very good but it sure belittles the intelligence and integrity of the legislature. Just yesterday we passed that section whereby we say that each house shall choose its own officers, determine the rules of its proceedings and keep a journal. In the procedure of that business, Mr. Chairman, the two houses of your legislature are free to do what they think is in the best interests of the people. This amendment, as I see it, Mr. Chairman, is very much out of order and very much inconsistent with what we did yesterday, and so therefore, Mr. Chairman, at this time I move this amendment be deleted.

CHAIRMAN: The motion before the house is it's adoption; the Chair cannot put your request, Delegate Apoliona.

SAKAKIHARA: In analyzing the amendment, the word "expenses," I take it to mean compensations for officers and employees alone.

CHAIRMAN: That's right.

SAKAKIHARA: What is there, if we were to adopt this amendment, what is there for the legislators to commit subterfuge. There's nothing for the legislature to contract. There are the costs of the printing of the bills and resolutions which may be presented to the legislature, and I feel very strongly that this amendment would not serve this purpose.

CHAIRMAN: That's already been brought out.

CASTRO: Point of information. Are we voting or are we about to vote upon that portion of the amendment which has been added by Delegate Tavares?

CHAIRMAN: That's all we are voting on, the proposed amendment by Delegate Tavares which is an effort to gear the maximum expenditure to the price indices, in substance.

CASTRO: The printed section then will not --

CHAIRMAN: We're not voting on that.

CASTRO: Thank you.

FONG: Do I understand by that, that if the purchasing power of the dollar goes up that the legislature would be cut down to less than a $1,000?

CHAIRMAN: No, go up. You're quite right, it would go down. That is, it would be within the power of the legislature to reduce it.

FONG: Now I understand that is tied up with the purchasing power of the dollar. Now suppose the dollar buys two dollars worth of things. Does that mean the legislature will be restricted to $500?

CHAIRMAN: No, they could still spend $1,000.

FONG: I think that is what it means. It will have to come down to $500.

CHAIRMAN: Chair doesn't construe it that way.

TAVARES: I'm afraid it doesn't mean that. I'd like to point out that with a two hundred and fifty or sixty billion dollar national debt, if our dollar doesn't stay inflated, we'll jolly well suffer. I don't think it's within the realm of possibility that a dollar can start to purchase more from now on with the debt we have. It's got to stay inflated.

FUKUSHIMA: A point of information. Did not Delegate Rice accept the amendment as made by Delegate Tavares?

CHAIRMAN: No, he did not. He accepted a prior amendment and this has been changed and this is a direct amendment, Delegate Fukushima.

SHIMAMURA: May I please have Delegate Tavares' amendment.

CHAIRMAN: I will endeavor to read it to you. If you will examine the last paragraph of Delegate Rice's amendment, after the words "budget or any special session," the period is deleted and in substance the following is added: "to be adjusted in accordance with the average purchasing power of the dollar upon the admission of this State to the Union, as measured by the consumer's price index prepared by the Department of Labor or such other agencies performing such functions," or substantially that. It's rather crude, as the Chair has stated, but that's the substance of it, I believe.

TAVARES: I don't think it's quite as crude as that. May I read it?

CHAIRMAN: I said as the Chair stated it was crude, Delegate Tavares, not as you stated it.

TAVARES: I'll read it. "To be adjusted in accordance with the average purchasing power of the dollar upon admission of this State to the Union as measured by the consumer's price index prepared by the Department of Labor and Industrial Relations of this State or the department hereafter performing such functions."

CHAIRMAN: The Chair will put the question. All in favor signify by saying "aye." Contrary. The amendment is lost.

The questions is now on the second paragraph of Delegate Rice's amendment.

LOPER: May I direct a question to Delegate Kellerman who made this --

CHAIRMAN: Can't hear you, I'm sorry.

LOPER: I'd like to direct a question to Delegate Kellerman to this point. Is it assumed that this restriction cannot be circumvented? It seems to me that the legislature could meet two or three days a week, take off two or three days, and the calendar days could be two or three times as many days as the legislative session and circumvent the purpose of this amendment.

KELLERMAN: Yes, Mr. Chairman, I think they could. However, as I understand, they're being paid for a session themselves at a fixed amount. If they want to stay here for four or five months just to run in extra calendar days to pay their employees more money through those calendar days or give themselves a per diem through those calendar days, I think the public will be certainly pretty much aware of what is being done, and I don't think that that is the kind of runaround that we would expect from the legislature even in the interest of patronage.

CHAIRMAN: Delegate Akau. She rose before the recess and the Chair refused to recognize her.

AKAU: Thank you. Just a word in favor of the paragraph regarding the expenses. I speak in favor of it. Just before recess this afternoon, my good colleague from the fifth district made a statement which I would like to answer. He stated that there were a great many bills that came into the House of Representatives and therefore a great many people -- the implication was that a great many people were needed to take care of all this paper work. I'd just like to inject this. By the higher-paid calibered people who will be, we hope, elected to the House and the Senate—not to be casting any reflections on the people there now, but with more money we hope to get better people—the very fact that they will be people who will know what they are doing and not, shall we say, repeat some of the bills that are put in by themselves and repeat the bills that are on the statutes already, that the number of bills that will be presented, we hope, will be many, many fewer -- much fewer, I should say, than have appeared in the past in the legislature.

FONG: I do hope that my --

CHAIRMAN: Counsel for the defense.

FONG: Yes, I do hope that my good friend from the fifth district will see to it that a harness is placed upon the introduction of bills by the members of the legislature, but unfortunately there is nothing to prevent a member of the legislature from introducing bills.

Now I was quite surprised that our delegate, Mrs. Kellerman, brought this amendment up. She was one of the staunchest supporters of the annual session. And the only argument for an annual session is that a department head cannot budget three years in advance. Now when she sets the limit on the expenditure of the legislature, she is setting in advance ten years, twenty years, the budget which the legislature is going to operate by. Now if the argument for an annual session is strong enough to secure an annual session so that we could budget our expenditures and our appropriations for a year or two years in advance, certainly that argument is just as strong for the legislature as we have it here.

Now you will note that your government appropriated one hundred million dollars for the biennium, the appropriation bill I think around seventy million dollars and with the capital expenditures items it ran up to almost a hundred million dollars. You have three branches of government; you have the judiciary, you have the legislative and you have the executive. The judiciary is comprised of all the judges in the Territory of Hawaii, the expenditures of the jury, the expenditures of the juvenile court, the members of the probation office staff and all the clerks that work in the court room. Now that is quite an expenditure to take care of your judicial branch of government. And then your executive branch of government, everything that is not in the judicial branch is your executive branch of government, probably running up to almost seventy or eighty million dollars per biennium.

Your legislature, which is a sovereign branch of government, which is the third branch of government having the same dignity as that of the judiciary and that of the executive, is now going to be held down to an expenditure of $1,000 per day. In other words, heretofore they have appropriated for their own use in the legislature the sum of five hundred thousand dollars or approximately thereabouts. You are saying to the judiciary -- to the legislature, you can go ahead and appropriate millions, a hundred million of dollars to the other branches of government, that is to the executive and the judiciary, but we will not allow you to appropriate five hundred thousand dollars for your own purposes. Now you will note that your legislature expenditure is a very, very small fraction in this case where there is a hundred million dollars, and five hundred thousand dollars is 1/200 of the expenditure of government for the biennium; your five hundred thousand dollars as against your one hundred million dollars.

Now your government -- your legislature is supposed to be supreme in its own sphere. It is supposed to legislate for the whole Territory of Hawaii and it has the power to say to each department, your appropriation for the next biennium is so much, and yet you are denying to your legislature the right to say that we will appropriate the sum of five hundred thousand dollars to take care of the expenditures of the legislature.

Another discrepancy here in the amendment is the fact that you will give to the Senate and to the House, which are unequal in numbers, and unequal in number of employees, and unequal in number of work, unequal in the number of bills that are introduced and unequal in the number of things that are taken up in the legislature, the same amount of money which is allotted to each of the bodies, that is $1000 per day. Now if you set the amount of $500 per day for a budget session which only takes care of your appropriation bill—one bill out of 1400 bills which was introduced in the House of Representatives in the 1949 legislature and 900 bills that were introduced in the Senate, a total of 2300 bills introduced in the House of Representatives and in the Senate—one bill, the appropriation bill, and you say for that appropriation bill we will allot the sum of $500 per day. And yet you say in the general session, when you will be able to introduce 2300 or 2400 bills in the two houses of the legislature, that your amount is only $1,000 per day.

Now, I don't know under what rhyme or reason or under what figure the delegate picked this figure of one thousand and five hundred. If the figure of $500 is correct, which I do not know, and I have been in the legislature for over 10 years -- for 10 years, then I would say that the thousand dollars for each day of the session, for a general session, is far insufficient. If the $500 is enough, then I will say your $1,000 should be at least $2,000 per day. Now if the $1,000 is enough for the general session, then I say your appropriation per day for your budget session should be $250.

Now I leave this for the thought of all the delegates here. I'd like the objective to be accomplished. If we can save money, I am for it. I'd like to cut the expenditures of government as much as we can, but I am afraid we are tackling something which we don't know anything about, and I for one am not ready to vote for this amendment because I don't know what it's all about.

NIELSEN: I'm very favorable to such an amendment. To give you an instance of where the brakes were thrown away, in the last session when 20 Republicans took over, they created 20 committees and all hired clerks and some of the clerks twiddled their thumbs most of the session. Now we've got to put the brakes on the expenditure and this is really an anti-nepotism bill. I think that's the way you pronounce it.

CHAIRMAN: Didn't the Democrats come in for any of this patronage?

NIELSEN: We got one for ten members.

PORTEUS: No nepotism?

ARASHIRO: I am in favor of the intent of the amendment. I think it will take a non-political assembly of this sort to correct the political evil because the politician won't be able to correct their own political evil. I think this is a very good intention but I do not think that this amendment will meet the necessary needs to avoid these abuses, I might say at this time, of the expenditure because they may by some means be able to go beyond this expenditure.

CHAIRMAN: What would you suggest, Delegate Arashiro? Are you suggesting an amendment?

ARASHIRO: I'm coming to that. I think that this amendment should be drafted in a manner so that none of the politicians is entitled to employ any employee for the legislature, but we have a civil service department with a list of thousands of names who are qualified to do all kinds of work in the legislature, where the civil service department may be able to furnish the men, instead of the legislator getting the workers. So I feel that we are in agreement as far as the intent of this amendment is concerned, except that we do not agree in the amount that is set forth in the amendment, and to expedite the matter I move that we accept the principle of this amendment, I mean the intent of this amendment and then we proceed.

CHAIRMAN: Chair will rule you can't do that.

FUKUSHIMA: I believe the amendment as proposed by Delegate Kellerman has considerable merit. We've all brought that out, everyone that spoke here this morning and this afternoon agrees with Delegate Kellerman. Just before Delegate Arashiro got up, I thought I'd get up and make the same suggestion, that although the amendment carries much merit it will not cure the things that she is trying to cure. Certainly, I am just as much against the principle of nepotism which is practiced at all sessions of the legislature, and I venture to say that if the Democrats had 20 members they would have had 20 committees with 20 clerks of the Democratic party. You just can't get away from that. I believe that Delegate Arashiro's amendment, if he were to propose an amendment, would be a far better amendment than Delegate Kellerman's because in her amendment the legislature may by diverse -- devious methods get away from this amendment. Whatever we have in the Constitution will be of no avail, and this will be merely an abortive attempt to curb the legislature from spending the money which we don't want them to spend.

CHAIRMAN: Do you move an amendment?

FUKUSHIMA: I don't have it prepared, Mr. Chairman, but I'm speaking against the amendment as written here by Delegate Kellerman.

CHAIRMAN: If there is no further discussion, Chair will put the question.

HEEN: It seems to me that the use of the term "expenses" is a little confusing. I take it that this was supposed to be a limitation on the amount of compensation for the employees. Is that correct?

CHAIRMAN: That is the Chair's understanding.

HEEN: Then I move an amendment that deletes the words "expenses for" and insert in place thereof the words "compensation of."

KELLERMAN: As far as I'm concerned I'll be glad to accept the amendment. Mr. Rice hasn't picked up his microphone; he says he will accept the amendment of the word "compensation" in lieu of "expenses."

CHAIRMAN: I heard that. Question then is on the amendment, which will read, "In no case shall the total compensation of officers and employees for each house exceed the sum of $1,000 per calendar day during any general session nor the sum of $500 per calendar day during any budget or any special session."

KELLERMAN: May I close the debate on that with one answer to Mr. Fong's statement about the special session. I'm afraid he has unfortunately misled the body with respect to the number of bills that can be introduced in the budget session. There may be many independent bills introduced relating to capital improvements, many. There may be many introduced relating to some of the other phases of work that can be taken up in a budget session. There may be some introduced independently which may go into the general appropriation bill.

Besides, as long as you have two houses sitting, you have to have personnel required for two houses. They have nothing to do with the volume of bills introduced. If you need a lawyer for the House and a lawyer for the Senate, and I understand in some cases we have two lawyers for each, the fact that there may be one bill, five, fifteen or a thousand, your lawyers do not come a dime a dozen. You will have to have the pay for the legal advisors for the two houses. Frankly, it was on the basis of legal advisors that we deliberately changed from $500 jointly for the two houses in budget session to $500 for each house in the budget session. The California Constitution does put the smaller amount jointly for the two houses. I presume their legal services come from the attorney general's office. I'm told in our legislature the attorney general's office being so overworked, and I say that not facetiously, that we are required to engage additional attorney services for each house on a per diem.

CROSSLEY: I haven't spoken on this subject yet. I would like to concern myself with the remarks that were made directed towards needing this legislation because the Republican party having been in power had practiced nepotism.

CHAIRMAN: Mr. Crossley, I don't think anyone took that very seriously.

CROSSLEY: I did.

CHAIRMAN: I didn't.

CROSSLEY: Well, the Chair and I - -

CHAIRMAN: Proceed.

CROSSLEY: I'd like to point out in the '47 session, the House was evenly divided, the committees were evenly divided. I think that in itself answers the question. However, in the '49 session it was stated that the Republicans had 20 members and 20 committees. The question was asked, how many did the Democrats have and the answer was one. Now nepotism, as I understand it, means employing one's own family, and I think the speaker was probably on dangerous ground when he made that point, because in the first place I believe that it was a member of his own family that was employed and I believe that there was more than one Democrat who had a committee.

I think that from these debates that we have, if we try and break this down to personal politics that we lose a lot of the merit of the bill itself, and that is why I took exception to it. Not because I am a Republican or a Democrat, but because I hate to see these things broken down to the basis of where we're taking personal exceptions to things instead of looking at a bill objectively.

I think there's a great deal of merit to such an amendment. I think that the people in office themselves for the most part would welcome it as it is an automatic answer to a lot of people who are trying to work on the political fringes, and to that point I'm very much in favor of the amendment. I agree with the delegate from the fifth, Delegate Fukushima, who says that it might not cure everything. I think we've passed a lot of legislation here that is - - or constitutional matter that is legislative perhaps, that is aimed at curing things that the legislators themselves cannot cure or find it very difficult to cure. The very question of compensation was one which they expressed some reluctance to deal on. There are lots of other things. I hope that the delegates will look at this objectively, and if they do I'm sure that they will recognize perhaps not a cure-all, and I doubt that we can write a cure-all without being too restrictive, but at least it is in the right direction and I hope it will be supported.

NIELSEN: I want to take exception to the remark that in the '49 session that any member of my family worked in that session. There was no member of my family, wife, cousin, sweetheart, or a side-kick worked in that session.

CHAIRMAN: I think we can keep this debate on the level of the merits of the bill.

NIELSEN: And what I said about the Democrats getting one is true.

ROBERTS: I'd like to suggest that the problem which we have before us, although an extremely vital and important one in terms of an objective of expenditures by the legislature apart from salaries of the legislators, is vital and important and has been fairly high and has been rising rapidly. I personally have some doubt as to whether we, as a matter of writing a constitution, ought to place in that section specific figures which may have no meaning within a period of time, within the next ten or twenty years.

I believe that there is room for progress, and there is room for progress in every legislature dealing with matters of expenditure. I think the problem properly belongs as a matter of public action, as a matter of public interest, as a matter of adequate publicity in the press, on the radio and elsewhere. I think, although the problem appeals to me and the approach is quite valuable, I think we would make a mistake by placing a figure in the Constitution. We are thinking basically, I think, in terms of immediate problems and not thinking of this in terms of a Constitution for years and years to come.

I, for example, followed the similar data for the State of Nebraska, and I compared the figures for 1929 where our total expenditures per legislative day, apart from salaries of legislators, ran approximately $1000 and the State of Nebraska ran $2100. In the 1949 legislature, the average cost per legislative day in the State of Nebraska dropped from $2100, dropped to $1200 in 1949. Our costs rose from $1000 to $7,600. Those figures are high, but I think it would be a mistake to try and write something in our Constitution to remedy a specific evil which ought to be remedied by appropriate action of the community and by a proper understanding of the problem and treatment thereby.

I might have supported this particular proposal if there was some provision made which provided for some flexibility, but that was voted down and no flexibility exists in there now. I therefore can't see how I can support a proposal of this type.

CHAIRMAN: Delegate Kellerman, do you wish to close the debate finally? The Chair will put the question. The question is upon the Rice amendment to Section 11 which would fix a ceiling on the sum to be expended for compensation of officers and employees of each house.

KELLERMAN: May I ask a roll call vote?

CHAIRMAN: Roll call demanded? The Chair does not see sufficient hands. Clerk will call the roll.

Ayes, 29. Noes, 27 (Apoliona, Ashford, Corbett, Doi, Fong, Fukushima, Hayes, Heen, Kage, Kauhane, King, Kometani, Lai, Larsen, Loper, Lyman, Noda, Ohrt, Porteus, Roberts, Sakai, Sakakihara, St. Sure, White, Yamamoto, Yamauchi, Anthony). Not voting, 7 (Kawahara, Lee, Mau, Mizuha, Phillips, Richards, Silva).

CHAIRMAN: The amendment is carried.

J. TRASK: I move that Section 11 be adopted as amended.

A. TRASK: I second the motion.

CHAIRMAN: It has been moved and seconded that Section 11 as amended be adopted. All in favor signify by saying "aye." Contrary. It's carried, it's adopted.

We'll proceed to a discussion of Section 20. As the Chair understands it, it has been moved and seconded that that be adopted and thereafter it has been deferred.

HEEN: I believe that there is an amendment here which was proposed by Delegate Sakakihara.

CHAIRMAN: That's correct. Has that been printed, Delegate Sakakihara?

SAKAKIHARA: Yes, Mr. Chairman, it has been distributed to the members.

CHAIRMAN: You offer your amendment?

SAKAKIHARA: At this time, I offer my amendment to Section 20 to read as follows:

Section 20. Punishments of persons not members. That each house may punish by fine, or by imprisonment not exceeding thirty days, any person not a member of either house who shall be guilty of disrespect of such house by any disorderly or contemptuous behavior in its presence or that of any committee thereof; or who shall, on account of the exercise of any legislative function, threaten harm to the body or estate of any of the members of such house; or who shall assault, arrest, or detain any witness or other person ordered to attend such house, on his way going to or returning therefrom; or who shall rescue any person arrested by order of such house.

But the person charged with the offense shall be informed, in writing, of the charge made against him, and have an opportunity to present evidence and be heard in his own defense.

CHAIRMAN: Is there a second?

ROBERTS: I'll second it.

CHAIRMAN: The Chair understands that the amendment of Delegate Sakakihara substantially incorporates a section of the Hawaiian Organic Act.

SAKAKIHARA: Section 25 of the Organic Act, correct, sir.

CHAIRMAN: Any discussion? If not, the Chair will put the question.

HEEN: There is one situation that is not covered by this amendment and that is one where the two houses may sit in joint session. I believe that there is some such provision now in one of the articles where the two houses may sit in joint session; for instance, in the election of or rather the appointment of the post-auditor, that requires action on the part of the two houses sitting in joint session. This provision provides for punishment by each house for any act of direct contempt or indirect contempt as against each house or the committee of each house or by the house. There is nothing to cover the situation where the two houses sit together in joint session.

CHAIRMAN: You're thinking of the situation in the event a contempt should occur in that particular instance?

HEEN: That is correct.

CHAIRMAN: Well, possibly the sergeant at arms could take care of that.

Any further discussion? If not, the Chair will put the question. The question is on the amendment of Delegate Sakakihara, printed and on the desks. All those in favor signify by saying "aye." Contrary. Carried.

FUKUSHIMA: I believe the Chair has gone ahead with Section 20 when Section 18 was also deferred.

WIRTZ: Point of order. My understanding [is] we have not yet voted on the section as amended, Section 20, have we?

CHAIRMAN: We have just voted on the amendment.

WIRTZ: Not the section as amended?

CHAIRMAN: That is correct; it is a complete substitution of Section 20.

WIRTZ: I move the previous question.

CHAIRMAN: The Chair will then put the question on section as amended. All those in favor signify by saying "aye." Contrary. Carried.

HEEN: My vote was "no." I am going to move for reconsideration later on.

CHAIRMAN: Of this Section 20, Delegate Heen?

HEEN: That is correct.

CHAIRMAN: You vote "aye" on this, then.

FUKUSHIMA: I believe yesterday we deferred Section 18 also.

CHAIRMAN: That is correct. Section 18 is now before the house. It has been moved and seconded that that be adopted.

FUKUSHIMA: The amendment to Section 18 was moved and seconded.

CHAIRMAN: That was your amendment, Delegate Fukushima?

FUKUSHIMA: That is correct. If the Convention recalls when discussing this amendment the question was asked, what would happen to a bill returned by the governor with suggestions of amendments, and it was not too clear whether this section covered it or not. Therefore, this morning I conferred with Delegate Tavares, who made this observation, and we included in the amendment which is now before the Convention and distributed to each delegate and inserted this sentence to cover that situation. That sentence is the last sentence of the first paragraph of my amendment. It reads, "If such a bill is amended and reenacted at such special session, it shall be presented again to the governor but shall become law only if he shall sign it within ten days after presentation, Sundays and holidays excluded." I feel, and I believe the person that made the observation also feels, that this amendment here will cover that situation adequately.

CHAIRMAN: The purpose of your amendment is to avoid the evils of the so called "pocket veto," is that correct?

FUKUSHIMA: That is correct.

CHAIRMAN: The basic purpose of your amendment.

TAVARES: I agree with the last speaker and I think this last sentence cures the small hole I found about a bill which might be sent back with the governor's objections, and the legislature might agree and pass the amendment the governor suggested. Or if they didn't do that the governor would then have a pocket veto on that second try.

CHAIRMAN: Delegate Fukushima, how many readings would be required in the event the special session is reconvened under your amendment?

FUKUSHIMA: I believe that would be taken care of under Section 19, Mr. Chairman.

CHAIRMAN: The same number, three readings?

FUKUSHIMA: I don't believe that's the procedure outlined in Section 19 for a regular veto when the legislature is still in session.

CHAIRMAN: In other words, Section 19 would be applicable to your amendment as well?

FUKUSHIMA: That is correct.

HEEN: About the middle of this proposed amendment you will find the words at the end of the line there, "house of origin at a special session of the legislature." Now in the

other parts of the article and in the Organic Act the governor is required to return the bill to the legislature itself, and that has been the practice, where he sends his message together with the bill to both houses. So I would move the deletion of the words "house of origin at" and then in the next line "special session of the," so that that clause will read, "shall return it with his objections to the legislature, which shall convene," etc. Then later on, after the words "that day" -- "legislature which shall convene on that day," delete the words "without call" and insert in place thereof the words "in special session." "In special session without call," deleting the words "petition or."

CHAIRMAN: "Without call" inserted after the word "convene"; "shall convene without call"?

HEEN: "Shall convene on that day in special session without call."

FUKUSHIMA: That amendment is acceptable.

HEEN: Then later on following the word "call," and reading on, "for the sole purpose of acting," then delete the words "pursuant to this paragraph," so that phrase following the word "call" shall read "for the sole purpose of acting upon bills returned by the governor."

CHAIRMAN: So the Chair can understand your amendment, Delegate Heen, would you go over that again beginning with "shall return it with his objections to the legislature."

HEEN: With those amendments the clause will then read: "shall return it with his objections to the legislature which shall convene on that day, in special session without call, for the sole purpose of acting upon bills returned by the governor."

CHAIRMAN: Is that acceptable, Delegate Fukushima?

FUKUSHIMA: Yes, Mr. Chairman.

CHAIRMAN: Chair is still a little bit puzzled as to how the legislature convenes. How is the legislature going to find out about it under your amendment?

FUKUSHIMA: It convenes without call on the forty-fifth day, Mr. Chairman, if the bill is returned. If the bill is not returned, then it becomes law.

HEEN: May I continue with some amendments? At the end of that clause, the last word being "governor," delete all of the next sentence. The provisions in other parts of the article will take care of the required two-thirds vote to over-ride the governor's veto.

CHAIRMAN: You think that's surplus?

HEEN: That's surplus.

CHAIRMAN: Do you accept that, Delegate Fukushima?

FUKUSHIMA: Yes, Mr. Chairman.

CHAIRMAN: Any further amendments?

TAVARES: I'm in doubt about just what portion the delegate wishes to delete.

CHAIRMAN: That sentence: "A bill reconsidered at such special session, if approved upon reconsideration by two-thirds of all the members of each house, shall become a law." In other words, you go back to the original veto provision.

TAVARES: Which would control then and allow just the one reading?

CHAIRMAN: That's right.

ASHFORD: May I ask a question of the proponent? "No salary shall be payable when the legislature is convened for this purpose." That means I assume, no salaries shall be paid the legislators.

FUKUSHIMA: That is correct.

C. RICE: Does the proponent of this amendment think they should be paid mileage when they come from the other islands?

CHAIRMAN: I assume the statute would take care of that.

C. RICE: I just wanted to say that in a 25 Senate, nine members have to stay away, and they can't over-ride the governor's veto. It takes two-thirds.

CHAIRMAN: The statute would take care of the mileage problem.

PORTEUS: Who pays the employees? What does the legislature do, convene, and then what does it do, spend its money?

FUKUSHIMA: This provision, the last sentence, merely prohibits the legislators from getting any salary.

CHAIRMAN: In other words that could be changed by the Style Committee to make that clear, if there is any ambiguity.

PORTEUS: I'm not attacking the amendment. What I have in mind is some previous action taken this afternoon where we budget the amount of money and the employees, whom I would like to put in a good word for, spend a great deal of time working very hard. In perhaps the last two weeks of the legislature, there are no people in the territory who get as little rest and sleep as do the key employees of the legislature. The legislature has budgeted that sum, it is certainly not going to hold out a reserve for this additional session. As a matter of fact, right now --

KELLERMAN: I can answer that very question.

PORTEUS: May I continue my remarks. As a matter of fact, right now our clerks are working 'til after mid-night every night. The expenses of this session were referred to as a good indication of what could be done in the legislature. I'd like to point out that we are very fortunate in having a chief clerk and assistant-chief clerk who are willing to work for the money they are getting now for as many hours as they are working. I've been down here from 11 and 11:30 at night and checked with them and been told --

CHAIRMAN: Are you speaking for or against the amendment?

PORTEUS: I am speaking as to a defect.

CHAIRMAN: We have already debated the question of the costs of a legislative day.

PORTEUS: I see, then what do you suggest that I do, Mr. Chairman, when I feel there is a defect with respect to this insofar as employees are concerned?

CHAIRMAN: I would suggest an amendment.

HEEN: I don't think you need any amendment because the provision about paying compensation for the officers and employees applies. It applies for each house, "shall not exceed the sum of $1000 per calendar day during any general session nor the sum of $500 per calendar day during any budget or any special session." So you have $500 for that purpose.

PORTEUS: Is this to be a special session which would otherwise compensate the members at $750 if this other provision were not inserted? Is that your idea, Mr. Chairman?

HEEN: There shall be no compensation, as I understand it, for the members of the legislature.

PORTEUS: But it does rate as a special session?

CHAIRMAN: As the Chair understands it, this would be counted a legislative day for which they could expend funds for employees.

PORTEUS: This would be a special session.

CHAIRMAN: A legislative day, that is correct, but there would be no compensation to the legislators for that particular occasion.

ASHFORD: By implication at least, does not this amendment restrict the legislature in that special session to reconsideration of the bill sent back? Can they pass an appropriation bill to pay their employees?

WIRTZ: Wouldn't the proper construction be that this is an extension of whatever session it was that the bill that was vetoed by the governor, and if it happened to be at a special session that same allowance would continue on $500; if it happened to be in a regular session, $1,000 a day would continue on.

HEEN: It is not an extension of the regular or the general session or any other session. It would be a special session and the provision that was agreed to this afternoon would cover the compensation of employees or other officers of the legislature.

WIRTZ: Then may I ask the chairman of the Legislative Committee the reason why in his amendment he struck the words "a special session."

HEEN: No, the words "special session" are still there.

WIRTZ: The way I read it, your amendment was "house of origin" - - you struck "house of origin," you struck "a special session" - -

CHAIRMAN: No. The amendment reads as follows: "Return it with his objections to the legislature which shall convene on that day, in special session without call."

FUKUSHIMA: It doesn't matter what we call it—special session. We all know what this is for, the primary purpose is merely to reconsider bills that have been turned over to the governor after the legislature had adjourned sine die. If you want to call it a supplementary session, we can do so, or a supplemental session. I think that it's a matter of style. I said "special session" for the lack of a better word.

HEEN: I think the term "special session" is correct and it would carry with it the payment of compensation of employees and other officers serving the two houses.

Now, if that is a closed issue I would move an amendment, that the word "legislature" be deleted and the word "legislators" be substituted for that word. "No salaries shall be payable to the legislators when the legislature is convened for this purpose." In other words, after the word "payable" insert the words "to the legislators," that's all.

CHAIRMAN: The Chair would suggest, "No salaries shall be paid to members of the legislature convened for this purpose." Does that meet with your suggestion?

HEEN: "No salaries shall be paid to the members of the legislature - -"

CHAIRMAN: That's what the Chair said.

HEEN: " - - when - - "

CHAIRMAN: "Convened for this purpose."

HEEN: " - - convened for this purpose." That's correct.

CHAIRMAN: Did Delegate Fukushima hear that proposed amendment to his amendment, suggested amendment? It was to obviate the question raised by Delegate Porteus. "No salaries shall be payable when the legislature," and the suggestion was, "No salaries shall be paid to members of the legislature when convened for this purpose." Is that acceptable?

FUKUSHIMA: That is acceptable, but I see no difference from the second sentence of that paragraph.

CHAIRMAN: Well, Delegate Porteus thought that might preclude the payment of the employees. "No salary shall be paid when the legislature is convened for this purpose."

FUKUSHIMA: Very well, I'll accept the amendment.

CHAIRMAN: That will put his mind at rest.

HAYES: This is an important amendment and I feel that we should have a recess so that it would give them a chance to go over the amendments that have been entertained. So I therefore move for a very short recess.

WHITE: Before you put that, could I ask the chairman of the Legislative Committee a question. Whether, if his interpretation is right that this would be considered a special session, wouldn't it be necessary then to go back and make an exception where we fix a compensation, to provide that "except as otherwise provided in this Constitution"?

CHAIRMAN: That's right, that's the last sentence that we're discussing, Delegate White. "No salary shall be paid - -"

WHITE: Well, I think you'd have to go back and make an exception to Section 11 then because if it is a special session it provides that the legislator shall receive $750 for a special session.

CHAIRMAN: Would you be satisfied if the Style Committee would solve that apparent difficulty?

WHITE: Well, I raise the question because I'm inclined to agree with the chairman of the Legislative Committee that this is a special session, and if it is, then I think that in order to be consistent that there should be an exception made in Section 11.

HEEN: Section 11 is general in terms, and this is a special provision which would control as a matter of construction.

CHAIRMAN: Chair will put the question. The question is on - -

ASHFORD: May I ask either the proponent or the chairman of the Legislative Committee whether it is not true that under this amendment that is now proposed, that legislature in special session could not appropriate the necessary moneys for the staff which would be obliged to work for them if they were to get their work done?

HEEN: I think that's absolutely correct.

TAVARES: For all these 50 years, the legislature hasn't had any trouble appropriating money for a session, and then for two years for a hold-over committee. If they can appropriate money for two years for a hold-over committee—and

I am one of the people who have been for hold-over committees, I think they have done good—they can certainly appropriate money to carry over 45 days to a special session.

CHAIRMAN: Chair will put the question, question is on the amendment.

SHIMAMURA: On the last sentence of the first paragraph it reads, "if such a bill is amended and reenacted." I wonder, for clarity's sake, although this is a minor matter, if it would be better to say "enacted" instead of "reenacted," because if a bill is amended it would not be reenacted, but enacted for the first time.

CHAIRMAN: What is the appropriate language?

FUKUSHIMA: This word has been taken from the New Jersey Constitution. If the Style Committee sees fit to use the word "enacted," it's perfectly all right.

CHAIRMAN: It's all right with you. The Chair will put the question.

HEEN: I think that word "reenacted" might be changed to "passed," "if such a bill is amended and passed."

CHAIRMAN: It's a matter of style, I think, Delegate Heen.

ROBERTS: As I read this article, and I have some sympathy for it, there seems to be a requirement in the article that on the forty-fifth day after the session has ended, the legislature reconvene on its own if the governor hasn't signed all of the bills. Now you've got to make some provision in there for the governor to inform the members of the legislature to bring them in session. This thing would automatically require that they come back at 45 days after they end the session. Now you've got to make some provision for letting the legislators know whether he plans to veto, whether he plans to put those into effect, or if he plans to return some of them.

CHAIRMAN: That is the question that the Chair propounded to Delegate Fukushima three times.

WIRTZ: I renew the motion to recess to ponder that question.

CHAIRMAN: Take a five-minute recess.

(RECESS)

CHAIRMAN: Will the delegates please take their seats.

H. RICE: Is the Fukushima amendment still before the body?

CHAIRMAN: The Chair will recognize either Delegate Fukushima or Delegate Roberts. I believe they have amendments.

ROBERTS: The following language I think will meet the question which we raised before the short recess. After the word "governor," line 16 in the paragraph, it reads: "For the sole purpose of acting upon bills returned by the governor." Change the period there to a comma and add the following language, "unless he shall have failed to give notice hereinafter provided" or "mentioned."

CHAIRMAN: A little bit slower, please. Can we have that again?

ROBERTS: "Unless he shall have failed to give notice hereinafter mentioned," or "hereinafter provided." Then add the following sentence after that. "The governor by proclamation shall give five days' notice to the members of the legislature if he plans to return any bills with his objections on the forty-fifth day."

CHAIRMAN: Are you finished, Delegate Roberts? Is that your amendment?

ROBERTS: That's correct.

TAVARES: I'll second the amendment.

SAKAKIHARA: I would like to have the movant reread his amendment so that we will understand the purport of the amendment.

CHAIRMAN: "The governor by proclamation shall give five days' notice to the members of the legislature if he plans to return any bills with his objections on the forty-fifth day."

H. RICE: Yesterday I thought that I would support Delegate Fukushima's amendment but in thinking it over, we're not going to give as much power to an elected governor as we are giving now to an appointed governor and lots of times—it will work both ways—lots of times a bill just gets a fair majority in both houses. It isn't carefully considered and I think that a governor should in lots of instances pocket veto it if he doesn't think it's right. Don't forget the governor, if he is in politics, he'll have to run again, and if he has vetoed some item for say Wahiawa High School, why he is going to run in that district and he will have to get the votes in that district. So I think we are trying to do a lot of funny business and the present law, they should stand as it's written.

CHAIRMAN: The Chair would suggest that a simplification of this could be had by just giving a legislative grant of power to legislate in the field of a pocket veto without this long amendment. However, the Chair will put the question.

HEEN: Before that sentence that was recited by the chairman, there was another clause added after the word "governor" in the sixteenth line.

CHAIRMAN: After the word "governor," the line beginning with "shall return it with his objections" has been changed to read, "shall return it with his objections to the legislature which shall convene on that day, in special session without call, for the sole purpose of acting pursuant to this paragraph upon bills returned by the governor, unless he shall have failed to give - - " This is the insert.

HEEN: The words "pursuant to this paragraph" were deleted in a previous amendment that was made by me and accepted by the proponent of the amendment.

CHAIRMAN: The Chair would appreciate it then if you would restate that amendment, Delegate Heen. The Chair's got it wrong apparently.

HEEN: Starting with the word "shall," "shall return it with his objections to the legislature which shall convene on that day, in special session without call, for the sole purpose of acting upon bills returned by the governor."

CHAIRMAN: Then was there not an insert, "unless he shall have failed to give the notice hereinafter provided"?

FUKUSHIMA: I'll accept all amendments so that we will vote upon only one amendment.

CHAIRMAN: Does the body understand the amendment now?

KING: Following the language read by Delegate Heen, Mr. Chairman, would come the amendment offered by Delegate Roberts which has been accepted, and there was a sentence

deleted. "A bill reconsidered by such legislature" and so forth was deleted by Delegate Heen and accepted by Delegate Fukushima.

CHAIRMAN: That's the way the Chair has it. I'll read it again. Beginning with that line in the original print, "shall return it with his objections to the legislature which shall convene on that day, in special session without call"; the rest of the sentence goes down to the word "acting," and the words "pursuant of this paragraph" are deleted.

Are you ready for the question? The Chair will then put the question. All those in favor of the amendment signify by saying "aye." Contrary. The Chair will call for a rising vote. All those in favor. Contrary. Amendment carried.

KING: This amendment replaced the second paragraph of the original Section 18. I now move for the adoption of Section 18 as amended.

TAVARES: I second the motion. In so doing I should like to have it understood the committee report will state what was said here in explanation of that second paragraph as amended, that it does not take three readings in this special type of special session to reconsider a bill and pass it over the veto by a two-thirds vote or to amend it and send it back to the governor, that it only requires one reading in each house.

CHAIRMAN: There is a motion before the house that Section 18 as amended be now adopted. Is there a second? Delegate Tavares seconded the motion. Are you ready for the question? All those in favor signify by saying "aye." Contrary. The ayes have it. Section as amended is adopted.

HEEN: There was some discussion in considering Section 18, as amended, as to the payment of expenses of this particular special session. In order to take care of that situation, I will now move that this committee reconsider its action taken in connection with the second paragraph of Section 12 of the same article.

J. TRASK: I second the motion.

CHAIRMAN: All those in favor of reconsideration of Section 12 signify by saying "aye." Contrary. Carried.

HEEN: I take it that the delegates have before them the second paragraph of Section 12 of Committee Proposal No. 29.

CHAIRMAN: Beginning with "At a budget session"?

HEEN: That's right. In line seven of that paragraph, delete the period after the word "session" and insert after the word "session" the following words: "and the special session to be convened thereafter in accordance with the provisions of Section 18 of this article."

CHAIRMAN: Are you ready for the question? All those in favor of the amendment will signify by saying "aye." Contrary. Carried.

HEEN: I now move that that paragraph be adopted as amended.

SERIZAWA: I second that motion.

CHAIRMAN: Moved and seconded that the paragraph just amended of Section 12 be adopted as amended. All in favor signify by saying "aye." Contrary. Adopted.

KELLERMAN: Is there anything before the house?

CHAIRMAN: Section 20 is the next item of business.

CROSSLEY: Point of information. I believe we have amended a part of Section 12 and therefore it would be in order now to adopt the entire section.

CHAIRMAN: You're quite right, Mr. Crossley. Do you so move?

CROSSLEY: I so move.

C. RICE: I second the motion.

CHAIRMAN: It has been moved and seconded that the entire Section 12 as amended now be adopted. All those in favor signify by saying "aye." Contrary. Carried.

KING: Section 20 was adopted.

CHAIRMAN: That's correct.

KING: Section 21 is now before the Convention. Delegate Sakakihara had a proposed amendment to Section 21.

SAKAKIHARA: Section 21? Delegate Okino's amendment, I believe.

CHAIRMAN: Section 21 is before the house. It has been moved and seconded that it be adopted. Delegate Okino has a motion which he may offer at that time.

OKINO: Thank you, Mr. Chairman. I believe all you delegates have - -

CHAIRMAN: Do you offer the amendment?

OKINO: I do offer an amendment. Amend Section 21 of Committee Proposal No. 29 to read as follows:

> Section 21. Removal of officers. The governor, other elective executive officers, and any appointive officers for whose removal the consent of the Senate is required, may be removed from office on impeachment for such causes, as may be provided by law, and upon conviction of the charges against such officers.
>
> The legislature shall by law provide for the manner and procedure of removal by impeachment.
>
> Judgments in cases of removal from office shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust or profit under the state; but the person convicted may nevertheless be liable and subject to indictment, trial, judgment and punishment according to law.

CHAIRMAN: Is there a second?

SILVA: I second the motion.

CHAIRMAN: State the amendment, Delegate Okino.

OKINO: You will note from the amendment which I have offered that the first correction made to paragraph one of the committee proposal is the insertion of the words, "any appointive officers for whose removal the consent of the Senate is required." I believe all of you know, many of you did fear that the governor of the State of Hawaii was being built up to be a superman because he was given too much power. You will also note that when Delegate Tavares made an amendment to the executive article, Proposal No. 22, the governor was to be given further power to make removal of his appointees. There is no provision in the Constitution with reference to popular recall of any officers of the State. The only way of removing officers is by impeachment, with the exception of that special provision contained in the judiciary article. It was for that reason that I have not included justices of the supreme court and circuit court judges in this proposed amendment.

By this amendment you will note that the legislature is being given the power to remove not only the governor and

other elective executive officers but other officers appointed by the governor himself. It is limited to those appointees whose removal can be done only with the consent of the Senate, but if the governor does not exercise this power to remove his appointee, no matter how bad and inefficient he may be, because of the reason that this particular appointee may be his very good bosom friend or perhaps this particular appointee may have a toe-hold or something on the governor, the governor certainly will not remove this particular appointee, but by giving the legislature this power of impeachment there is that check and balance. The governor realizes that if he takes no action, he would be compelled to do so by the legislature. By that I mean, if the governor should realize that the legislature also has the power to impeach any of the appointees made by him, the governor would be in the position to exercise and carry out his duties more efficiently. That should be done, in my opinion, by impeachment.

The next change I have made in paragraph one of the committee proposal concerns the grounds and causes of impeachment. You will note in paragraph one of the committee proposal that there is a specific enumeration of causes for the impeachment of the governor and elective executive officers. The grounds given are as follows: treason, bribery or other high crimes or misdemeanors. You will recall when the judiciary article was submitted before the Committee of the Whole for consideration, a similar enumeration was provided. The same was amended so that Section 4 of the judicial proposal reads as follows: "That the removal from office may be done upon the concurrence of two-thirds of the membership of each house of the legislature, sitting in joint session, for such causes and in such manner as may be provided by law." I feel that it would be better to follow the wording of the section contained in the judiciary article. If we do not do so, there seems to be a discrimination between the judges and other elective or appointive officers of the State of Hawaii. With reference to what may constitute sufficient causes, the same is to be left with the legislature, as qualified by my amendment, "as may be provided by law."

The next amendment -- the next change proposed by me in this amendment is the deletion of paragraph two of Section 1 of the committee proposal. You will note that paragraph two of the committee proposal is a reproduction of the Constitution of the United States. I believe it is realized by many students of political science that an impeachment proceeding is a very cumbersome procedure, and I believe it was for that reason that the chairman of the Judiciary Committee made the change regarding removal of justices from courts. Likewise, I feel that the power may be duly delegated to the legislature to enact proper legislation to expedite any removal proceeding by impeachment. The amendment offered is simply, "The legislature shall by law provide for the manner and procedure of removal by impeachment." I believe, Mr. Chairman, that this will expedite impeachment proceedings, it will be invoking the principle of check and balance, so that there is less fear about too much power being vested in the governor, and I think all in all it will result in good administration of government.

CHAIRMAN: Delegate Okino, the Chair would like to ask you a question. One of the vices of the Federal constitutional provision relating to impeachment is that you can't impeach an officer after he is gone out of office. On your proposed amendment, could impeachment proceedings be had after the officer's term had expired? I notice in some constitutions that is placed in order to get at the disqualification from the further holding of office. Did you consider that problem?

OKINO: No, I have not considered that problem, but from the wording contained herein, I believe that cannot be done unless the legislature perhaps may enact such specific provision.

CHAIRMAN: Well, that was my question.

OKINO: In providing for the manner and procedure of removal by impeachment.

CHAIRMAN: Couldn't that be fixed, "after the term of office had expired in accordance with law."

OKINO: I'm willing to accept your amendment.

CHAIRMAN: I'm just asking you what the language means.

OKINO: With reference to paragraph two? Is that with reference to paragraph two?

CHAIRMAN: That's right.

OKINO: I am inclined to the view that the language is broad enough so that it could be done.

CHAIRMAN: Any further debate on this?

KING: I have no opposition to the amendment. It does permit the impeachment of appointive officers whose appointments in the first instance have to be confirmed by the Senate and whose removal has to be approved by the Senate. But this amendment abolishes the rather standard practice of having the House of Representatives, which shall have the sole power of impeachment, the Senate shall preside as the court, and requiring the chief justice to preside in case the governor is impeached, and requiring a two-thirds vote. "No person shall be convicted without the concurrence of two-thirds of the members present." It seems to me the impeachment of the governor or the lieutenant governor should have those requirements. As to elective officers, I mean appointive officers, I'm not certain.

This substitutes for all of that language that was in the original committee proposal and which follows the usual form of the law governing the impeachment. One brief paragraph says, "The legislature shall by law provide for the manner and procedure of removal by impeachment." Now that would leave it to the legislature to enact a statute that would govern, and the statute may or may not require a two-thirds vote for the removal of the governor or lieutenant governor.

CHAIRMAN: You are quite right, Mr. President.

KING: I feel that that language should be amplified a little bit and then I would be in favor of the amendment.

CHAIRMAN: Delegate Okino, you stated that this was a counterpart of the judiciary article. Was there not a requirement of a two-thirds vote in the judiciary article?

OKINO: I felt that the legislature could include that particular provision.

CHAIRMAN: I'm asking you what was in the judiciary article.

OKINO: Yes, I've read that.

TAVARES: I don't know whether that motion was seconded for purposes of making it regular; if it wasn't, I second it.

CHAIRMAN: It was seconded.

TAVARES: But I do think that -- well, I had told the delegate I was in favor of this amendment. I believe Delegate

King has brought up a point which was overlooked, and I move to defer until the end of the consideration of this article and we'll try to work out a further amendment.

CHAIRMAN: The Chair would like to state we want to conclude this article very shortly, so I would suggest, Delegate Okino, that you get your amendment in shape.

ASHFORD: I second it.

WIRTZ: I move for a recess then, Mr. Chairman.

ST. SURE: I second the motion.

CHAIRMAN: Is there a motion for deferment?

KING: Mr. Chairman, I'm going to suggest that the chairman is unduly optimistic if he believes that we are going to complete Section 22 very shortly.

A. TRASK: Shouldn't we have an expression from the chairman of the committee before we recess?

CHAIRMAN: Was there a motion for recess? I suggest that we go on to the next article instead of a recess, wouldn't that be more expeditious?

CASTRO: Kokua.

DELEGATE: Next section, you mean. Next section.

CHAIRMAN: Next section. The Chair will entertain a motion to defer this section until the conclusion of this article.

MAU: I so move.

FONG: I second it.

CHAIRMAN: All in favor signify by saying "aye." Contrary. It's carried.

MAU: I wonder if I could ask the sponsor of the amendment to consider the fact that there's only one other elective officer that I can recall, the lieutenant governor. See if he can work out the wording there.

TAVARES: Mr. Chairman.

CHAIRMAN: We're now on the legislative council. Delegate Tavares.

TAVARES: Oh I'm sorry, I thought a question was asked about the one we just deferred. I just wanted to say that - -

CHAIRMAN: Delegate was out of order on that, Delegate Tavares.

Section 22, is there a motion it be adopted?

KELLERMAN: Before we go into Section 22, which I think will take quite some debate, so I understand, may I propose an amendment? It has no number; it would have to be fitted in by Style, wherever it should come. The amendment is on the desks. I'll read it and help you to identify it.

> SECTION _____. Committees. Fifteen days after a bill has been referred to a committee, one-third of the members of the house which has made the referral shall have power to relieve the committee of further consideration of the bill and place it on the calendar for consideration.

WIRTZ: I second the motion.

CHAIRMAN: Delegates have this amendment on their desks?

KELLERMAN: This was passed around just a few minutes ago.

GILLILAND: A question in my mind is whether "the members of the house" refer to the bill to the committee, or the speaker of the House, or the president of the Senate.

KELLERMAN: I think that's a technical point. By this is meant the body, that part of the legislature—I don't know, I think that's clear—rather than the particular clerk or office of the body.

This is known as the anti-iceboxing proposal. May I state first that this was introduced not with one-third but at a much lower percentage in the Legislative Committee of which I was a member. In that committee there was a vote taken eight to five to recommend to the Rules Committee of the legislature that it give serious consideration of this measure. I was told immediately after the meeting of the committee by three members of the committee who had voted to refer it to the legislature that they would favor this proposal on the floor with the increase from one-fifth as it had been introduced in the Legislative Committee to one-third. I therefore feel I am justified in saying that I'm bringing it to the floor with the approval of a majority of the Legislative Committee. However, it is not so listed in the committee report. I give that history of the proceedings to justify my statement.

I think the Committee on Initiative, Referendum and Recall will bear me out in my statement that one of the grounds on which that committee or the majority of that committee voted against recommending to this Convention provisions for initiative, referendum and recall was the ground of improving legislative process, of making it more, I shall say more representative, make it perform in a more representative nature to those who elected them and put them in office. It seems to me that it is a violation of the whole theory of democratic representative government that a committee, by virtue of its chairman, or even with a full consent of the majority of a committee, which I presume would be a minority of the house from which it was appointed, shall be able to keep from consideration of the majority of that body any controversial measure which it sees fit to keep from consideration. I think it only just and right that the members of the public who are by our own act of turning down initiative, referendum and recall, and on that I am in full agreement with this Convention, denying them the right to bring up a bill of their own accord and force its consideration by the public or the legislature, we should at least provide that by a vote of one-third of the members of the house of referral, any bill can be withdrawn from committee, therefore from any iceboxing by that committee, and at least present it to the floor for full consideration and debate.

Under our present rules, it takes a majority vote to bring any bill from committee. It's highly improbable that a majority vote could be so obtained unless there was a majority in favor of the bill which needs passage. I fully recognize that a one-third does not mean that you bring up a bill that would necessarily be passed. That is not the point. The point is to get it considered, ample discussion and debate, so that the public who have elected those representatives will know how they stand on controversial issues on which the public certainly has a right to be advised.

Any man now can go to any member of the public who has elected him and say, "I would have voted," as he knows that individual would have wanted him to vote, "but the bill never got out of committee." He can go to the next one on the next block and say the opposite. We have no knowledge of how our representatives vote in committee, and if it is kept in committee we have no knowledge on how they would stand on any issue which can be of a great deal of importance to the community.

I therefore propose that with one-third the figure is reasonable and adequate and justified. With a vote of one-third that eliminates the possible vote-trading of a smaller group than one-third who might agree to help each other get certain bills out for consideration. I think it's high enough to eliminate the abuse of it; I think it's low enough to bring before the body measures of real importance. I may add - -

CHAIRMAN: Is this included in any other constitution?

KELLERMAN: It is. I have here the constitution—just a moment, I'll report it to you—it's on page 51 of our compilation of constitutional provisions. The State of Kentucky, incidentally, allows any bill to be withdrawn by one member of the legislature, which I do think it would be definitely harmful. I don't propose that as you see. Missouri's Constitution has one-third, exactly the proposal which I have introduced. Their new Constitution adopted in 1945 provides for one-third vote. I think the provision adopted in the Model Constitution provides for a vote of one-fifth, and it was on the basis of the Model Constitution that the original proposal was introduced and referred to the Legislative Committee. However, I have agreed to, and see a great deal of reason to raising that to one-third which is the basis of the present amendment and that is in conformity with the new Missouri Constitution provision.

It is recognized, of course, that the rules can provide for such provisions for taking bills out of committee, but it is just like other things that the legislature has not seen fit to adopt and they find it difficult to bring themselves to the point of publicizing their votes on controversial questions by deliberately putting themselves in this position. I feel that it may be necessary to put this into our Constitution to assure for better representative government, that no bill can be iceboxed if one-third of the members of that house consider it of sufficient importance to bring it on the floor.

PORTEUS: On the theory that when certain matters are debated on the floor of the Convention with respect to the legislature, that I can't be wrong all the time, I now take the liberty of debating this particular matter. With respect to this proposal, the legislature can control the thing entirely by its rules. We are getting really into legislative procedure. I have on my desk the bills that were introduced in the House; there are over 1200 of them. Can you imagine what would happen in a 60 day session if you are trying to carry a program along, get bills worked over in the committee, have the committees hold hearings on them, notify the public about the time of the hearing, and then within 15 days of when the bill was introduced find that the matter had been forced on the floor? That's not the way to get the best legislation, in my opinion.

It seems to me that anyone who wants to know the status of a bill of a particular committee can go to the committee and find out from the members and from the chairman what consideration is going to be given. The legislature has always been willing to have the clerks notify those people that are interested in the bills when there will be a hearing on a particular bill, in order that those who are interested may be present.

It is true that things don't go always the way we plan them. As with meetings in this Convention, it sometimes happens that when we say that the committee will meet at a certain time the Convention will stay in session and you couldn't meet at that time. And so it's true with the legislature, too, that when you schedule a committee meeting it sometimes happens that the public is inconvenienced by coming to what it considered to be a hearing and find that the committee is unable to sit at that time because members are tied up in other committee meetings, or because - -

KELLERMAN: Point of order. This has nothing to do with the hearing. I don't think the speaker is speaking to the proposed amendment.

PORTEUS: May I point out to the delegate from the fourth district that when I discussed - -

CHAIRMAN: Just a minute, I'll have to rule on the point of order. What is your point of order, Delegate Kellerman? The Chair was not paying too strict attention.

KELLERMAN: I think the speaker was referring to getting a notice of hearings from the secretary of the committee and attending hearings on the bills. This amendment has nothing to do with the hearing. I did not think that he was speaking to the amendment.

CHAIRMAN: It does appear to the Chair that it has to do with the power of coercing bills out of the committee and I think that's what he is getting around to. Will you proceed, Delegate Porteus?

PORTEUS: Thank you. The point that I wish to make is that the public, while it is sometimes inconvenienced as to the time the committees meet, we try to give - - or the legislature tries to give them notice and you aren't always able to reach a bill within the limited period of time. In the first 30 days of the legislature there is a good deal of committee work. I think the members will tell you, as will those who have followed legislative sessions, that during that time there is a tremendous influx of bills. The problem of just trying to find out what's been introduced to the legislature is really tremendous. If you try to keep track of what's there, what bills are similar to others, to give the chairman of the committee a time to start groupings, to start laying out a program, 15 days, I think, would upset the orderly workings of the legislature. I think a longer time perhaps would be better.

Even if you have a longer time, however, I do think for a question of getting a matter through when you are so very busy, that perhaps it would be a little better to leave it to the rules of the house. At the moment, those rules require a majority vote. The person who's interested in getting it, he asks the other members if they are interested in seeing the matter come to the floor of the house. They sign a resolution, and it is not unknown for that to happen, it's happened several times as the various members that are here - - delegates that have been in the legislature can testify to.

Once the measure has been brought out, however, if it's brought out too soon, before the committee has been able to have adequate hearings on it, before they have been able to consider the amendment and work it over, I think that it would interfere, as I say, with the orderly operations of the legislative body. I feel writing this into the Constitution is not the place to tackle it.

If the public is anxious to find out where the people stand in these matters, I don't think it's very difficult to find out. I think that all legislators are delighted to find that there are people interested enough to come to them and to discuss measures with them and to find out what their position is. Not to read whether they said "yes" or "no" to a slogan or just to a bill but to have their attitude fairly, extensively explained. I've always been delighted to have groups invite me to appear before them or appear before groups to explain the matter in detail because many things which on the surface sound quite desirable, when you go into them you find that it

doesn't work out very well as a law. There are certain disadvantages. There are other matters, there's an overlap, and consequently these matters involve a great deal of study, study that not only involves one committee but the work of other committees as well.

The work of the legislature is handled a great deal in committee rather than on the floor. There's where most of the work is done on the bills and preparing them and having the amendments made, so that they are in as good shape as possible when they hit the floor for consideration.

And I think that we would do well not to put this in the Constitution if this Convention feels as it does in certain other matters that the matter should be directed to the attention of the legislature. The legislature certainly is -- can always find room for improvement, and I'm sure that they'd be very happy to listen to a respected body of opinion. As I say, I've been wrong on the vote on several of these legislative matters, and as they say, even a blind pig will find an acorn once in a while. So on that theory, I hope I've found an acorn on this one.

CHAIRMAN: Delegate Porteus, are you against the entire amendment or specifically the 15 day limitation?

PORTEUS: I'm against --

CHAIRMAN: The entire amendment, are you not?

PORTEUS: I'm against the amendment. I am not against the original discussion in the committee where it was proposed that the matter be referred to the legislature for its attention and for consideration, Mr. Chairman.

FONG: In this Convention here we've been sitting for over 60 days, we have had 195 proposals. I've asked the Clerk a little while ago how many proposals were introduced in this Convention, and she has just notified me that 195 proposals were introduced in this Convention. You will note in the 1949 Legislature there were 2,384 bills introduced in the legislature. Now, you can see how the Committee of the Whole works. Many of you are now sitting in the Committee of the Whole and you can see how Committee of the Whole works. Now if every one of the 195 proposals were brought before the Convention, I venture you will not go home for the next two or three months.

Now, what Delegate Kellerman is trying to do here is to force the legislature to discuss almost every bill in the Committee of the Whole. You will note that out of 2,384 bills introduced in both houses, and if we are to spend as much time on the bills as we have been spending on these proposals, you can imagine how long your legislature is going to sit.

Now, Mr. Chairman, if you haven't got the vote, if you haven't got the majority of the vote, it's no use talking. You may have one-third of the votes of the assembly to bring the bill out of committee for consideration. Now if the majority says O.K. you can bring it out, we'll send it back to the committee again, you have done the useless act and as we attorneys know, equity courts will not force you to do a useless act, and I think this amendment is trying to force the legislature to do a useless act. If you haven't got 15 votes there is no use talking.

All the bills that are introduced and are filed by the committee are brought before the house by committee reports. All the bills are reported back to the House or to the Senate. So there you have some semblance of what the committee has done. I feel that this is a useless amendment, it serves no purpose. If you haven't got 15 votes when you bring the bill out and discuss it on the floor, you'll wind up in the same old committee again. The majority can send the bill back to committee and you haven't got the discussion that you had planned. Now, the legislature certainly will be in an uproar if you had a Committee of the Whole almost every day to discuss 2300 bills.

WIRTZ: I'd like to speak in favor of this amendment. First, I, like the Chair, was somewhat puzzled by the delegate from the fourth district's argument. I thought what was bothering him was the 15 days. However, in answer to the request of the Chair, he indicated that that was not the whole problem. However, since there might be some doubts by the arguments used by him in the minds of the delegates, the 15 days in the first place was hit upon as being half way through a budget or special session. I would like to point this out too that there is nothing mandatory about the 15 days. It just says after 15 days one-third of the membership shall have the power. But I am sure that if a committee is diligently working on a bill they won't try to force that bill out within that time.

Now this other thing about the futile act, about having the majority, quite true, but sometimes how does the legislature know the merits or demerits of a bill unless it is brought out and thrashed out on the floor. This amendment is nothing more than to put democracy to work.

CHAIRMAN: I think Delegate Sakakihara had risen for recognition.

SAKAKIHARA: Thank you, Mr. Chairman. I wish to speak against the amendment. I was one of those members of the committee who voted down this amendment before the committee. I do feel this way, Mr. Chairman. When in a 51 member House any 17 member block can bargain and bring before the floor of the House all bills which have been pending before a committee, I feel very strongly in the face of the amendment proposed by the same movant of this amendment to curtail expenses of the legislature limiting the expenses of the legislature to $1,000 a day, what size of a journal would we be required to print?

It's going to be an expensive proposition in the first place and it will not serve the best interest of the public because, as you know, when a bill is brought before the house, it is going to entail considerable debate and argument on the floor, and consequently after the argument is held on the bill, the majority of the committee will again recommit the bill back to the same committee where the bill has been pending.

I regret very much that the movant has not had experience in the legislature. Some of us who have been there for many years do realize and appreciate this obligation, and it is not going to benefit the public at all, and I am against this amendment.

J. TRASK: As the junior member of the House of Representatives, and also a member of the minority group in the House, I can fully appreciate the amendment introduced by Delegate Kellerman. As it was pointed out by Delegate Wirtz, how are we going to weigh whether a bill is worthwhile or not unless we bring it out. Delegate Nielsen can bear me out that we have gone through some trying days in the legislature. So I urge, gentlemen and ladies, that deep consideration be given this amendment by Delegate Kellerman.

MAU: I think I can remind the delegate who last spoke that whenever he is in a minority he always goes through trying times. But I believe that this amendment is a very good amendment. If the history of our legislative sessions had been different, I believe that no such amendment would have been offered, but there have been times when meritorious bills have been iceboxed and there is no reason why the representatives of the people as members of this legislature

should be unwilling to discuss such bills on the floor of either the Senate or the House. If the minority can bring it out to the floor, it will give them an opportunity to express their views, and it seems to me that the people ought to know how the members of the legislature feel and stand on certain measures. I don't believe in any type of hidden form of government, I believe that everything should be out in the open, and I think that this amendment will provide for what Delegate Wirtz designated "putting democracy to work," and I believe that this amendment will help do it, and that is why I am in favor of it.

SMITH: I am speaking opposing this amendment, primarily for the fact that before a bill can be iceboxed in a house it will take the majority, and there's going to have to be a big majority from now on. Another thing is that if the amendment was more in the line where a bill having passed one house and then referred to another one, why then I can see that it has been considered by one and is very worthy of being considered by the other. I don't feel, as I know many a time, maybe one individual will put in a hundred bills which will be absolutely worthless, but they are using it for their propaganda purposes of going back to their citizenry and saying, "Look what I tried to put in but they wouldn't let me." Some of them, like right here in this Convention, have put in amendments in many instances knowing full well they wouldn't pass, but it would sound good to the public. I am in strong favor of the idea, but after it has passed one house then referred to the other house. I believe that say 40 per cent or round about of that other house, having a chance of bringing it out of the icebox and placing it on the calendar for consideration.

A. TRASK: I am partial to lady Delegate Kellerman and I am more partial to this amendment of hers. In Hawaii we call freezing legislation iceboxing a bill. I think where the lady comes from in North Carolina they call it anti-freeze. In Hawaii I think we are all against anti-freeze.

To me, and I appeal directly to all the delegates elected here in a non-partisan election, and believing in the two party system, that it is vital for all of us that we insert this provision into the Constitution as an improvement of the legislative process that Delegate Porteus says there should be room for improvement. I say this is the contribution to that improvement. It is for the preservation of the two party system. Let's not forget that it is not without surprise that the two leaders, the speaker and the vice speaker of the House of Representatives, leaders of the dominant party, would say, "Let us do what we want with all of our men in charge of the committees," and they are the dominant members. Let's have a little democratic action; let us preserve the two party system; and let us have some faith in the legislators—which I am surprised with their remarks because sometimes it is difficult to follow the logic. Sometimes this argument is all right in one way, and when you consider another provision it is not all right in the other direction.

The remarks by Delegate Porteus and Fong are that the members of the legislature are going to cause a lot of bills to come out when they shouldn't come out and cause a lot of confusion, and the arithmetic is brought out that the number of bills here - - proposals is 195. Let us not forget the amendments that have come into consideration on the floor. I think that number would exceed perhaps 1000 because equal consideration has been given to these thoughts and contributions.

But I do say that if we are really interested in the practical operation and preservation of the two party system we should not overlook and vote and kokua this solid amendment.

HEEN: I have an amendment to offer.

CHAIRMAN: Is it printed?

HEEN: Not yet. In the second line after the word "committee," delete the comma and delete all of the rest of the words thereafter, and substitute for the words deleted the following: "In either house, the same may be recalled from such committee by the affirmative vote of one-third of the members to which such house is entitled." So that the entire section will read - - these are the substituted words: "In either house, the same may be recalled from such committee by the affirmative vote of one-third of the members to which such house is entitled." So that the entire section will read as follows:

> Fifteen days after a bill has been referred to a committee in either house, the same may be recalled from such committee by the affirmative vote of one-third of the members to which such house is entitled.

KELLERMAN: I will accept the amendment, Mr. Chairman.

A. TRASK: May I ask a question of the movant?

CHAIRMAN: The amendment has been accepted.

A. TRASK: Does one-third of the members mean one-third of the members of either house then voting on the measure?

HEEN: "One-third of the members to which each house is entitled." If the house is entitled to 25 members, then you have to have one-third of 25.

Now the purpose of this amendment is this. If a resolution or a motion is made in a house to have a bill recalled, then that will give the members of the committee the opportunity to state why they haven't been able to act upon that particular bill. They may be considering it, have some difficulty in having hearings, calling witnesses, and so on, and with that explanation I am sure that no one-third of the membership of each house will insist upon such a recall of the bill.

WIRTZ: As a seconder of the motion, I will likewise accept the amendment. I think it's a very fair one.

HAYES: As a member of the legislature I should like to say a few words of my experience in regards to some of the measures that I have introduced that I wanted to get on the floor of the House because it would not come out of the committee.

CHAIRMAN: Is this iceboxing experience?

HAYES: Yes, iceboxing experience. So I introduced a resolution with one-third majority and it came out of the committee and it passed the House of Representatives. Now any member can do that. If some of the members are saying to some of the people that, "You can't get a bill out of the committee; I'd vote for it if it would come out of the committee," well, that member had that same privilege to bring it out on the floor of the House with one-third membership to vote for it, and I did the same thing and it passed.

I also have had experience as chairman of the Education Committee when many bills have been introduced. Some I felt were not very good measures and sometimes we had many, many letters from the public saying, "Please icebox bill so and so." Now you have the opportunity there, if people believe that you are a good member of the legislature, and the chairman of that committee is strong enough to know, if it is a good bill it should be brought out on the floor of the House, and I have not iceboxed a bill that they told me to icebox, because I brought it out on the floor of the House.

MAU: Might I ask the chairman of this committee a question on procedure? After it is recalled, if the bill is recalled from the committee, how does it get on the calendar?

HEEN: It is on the calendar after it is recalled. Then the members of the house, of that house, can act in such manner that they may deem wise.

CHAIRMAN: And send it back to committee again, if they choose. Is that it?

HEEN: It might be sent back to the committee if it is explained that owing to difficulties in having hearings, it should have further time to reconsider.

MAU: If that is the case, I see a defect in the amendment -- to the amendment. The original amendment automatically places this bill that is recalled on the calendar for consideration. If a bill is recalled to the house, then if the members vote to recommit, there is nothing that the one-third can do unless automatically it goes on the calendar for consideration on the floor so that it can be discussed and debated.

CHAIRMAN: Same thing could be done under the Kellerman amendment, unless there is subsequent language inserted, "and it shall not thereafter be sent to committee until a vote is taken."

MAU: That's why I'm against the amendment as proposed. It has been accepted though, hasn't it? I believe, Mr. Chairman, that the Kellerman amendment does the job. After it has been recalled, it is placed on the calendar for consideration, not to be sent back to any other committee or to the same committee.

TAVARES: I am opposed to the suggestion of Delegate Mau, and I believe that as long as the bill is brought back to the floor and the members have a chance to decide whether they want to pass it now or send it back to committee, it has served its purpose. I don't think we should go further than that. I do realize that iceboxing is a very convenient method, and in 75 per cent at least of the cases, if not more, the bills deserved to be iceboxed. Most of them are a general nuisance or they are a drug on the market. There are just too many bills. But every once in a while there is a bill which ought to be brought up, and if it is important enough to attract the attention and support of one-third of the total membership of a house to be brought back on to the floor after 15 days in committee, I agree with Delegate Heen that I don't see too much harm in that. I realize it may be a nuisance but I think there are other deterring influences.

It is an insult to a committee to take a bill away from them, and every member knows that when he does that, unless he's got strong minority support on that committee, he's going to make an enemy maybe of that whole committee. So that he is not going to do that all the time without thinking about what it is going to do to him. There's an esprit de corps among members of committees. If it can happen to my committee it can happen to yours, and if one-third of the members try to take it away from my committee, the rest of the committees are likely to stand together unless there is an unreasonable refusal to work on the bill. And I agree with Delegate Heen that if a committee has not had opportunity sufficiently to examine the bill and needs more time, I believe they won't be able to get one-third under those circumstances because of these other deterring influences.

A. TRASK: Just one brief remark with respect to what was said by Delegate Tavares. I think it should be brought strictly and very, very solidly to our minds that it was just this type of abuse by Senator Butler, the United States Senator, that prevented us getting statehood in 1947, and we want to correct such abuses. There might be a time when we will have a Butler in Hawaii and we want to put him where he belongs.

MAU: I would like to offer an amendment to the amendment by adding at the end thereof, the following words, "and shall be placed on the calendar for consideration."

A. TRASK: Second that.

H. RICE: I am against this amendment. I will give you a practical example of how it works. I agree with Delegate Tavares in this matter. There's an esprit de corps amongst committees. In 1947 they were very anxious to get an aeronautics commission formed and I was on the Ways and Means Committee. There were members in the Senate that tried to get that bill withdrawn from the Ways and Means Committee—Senator Heen will remember, I'm sorry Senator Silva isn't here—but when the Senate attempted to withdraw that bill from the Ways and Means Committee, although I was in favor of the aeronautics commission, I voted to leave it in the committee. The governor immediately sent for me and said, "Harold, you've killed the aeronautics commission bill." I said, "No, I think I helped pass it, because the boys in the committee know how I feel and I can go down and talk to them and we can get the bill out, but not in that way." And they did put it out on the floor in a few days and we got the bill finally through. That is the practical way it will work out.

I realize sometimes -- I think we old legislators have learned a lot in this Convention on the minutes kept of each committee. I think we should pass that on to the legislature. I think if they kept minutes of their meetings in the legislative committees so that those could be printed if necessary, so that everybody would know that every bill is being considered and they'd know how they stand, I think things would be a little different. I don't think this way; I don't go along with them. I think sometimes an icebox is a good thing.

WIRTZ: I would just like to point out that I think my good colleague from Maui has proved the point by the action that was taken on the example given on the aeronautics commission bill. Sufficient attention was focused so that the committee got busy.

Now my other colleague from Maui has also pointed out to you that there's going to be a tremendous majority in this new legislature we create. As I argued the other day, with so many members it's going to be very difficult for them to keep track of all the bills and keep working after the committees.

CHAIRMAN: Chair will put the question. It is on the amendment of Delegate Mau which would add to the amendment of Delegate Kellerman as revised by Delegate Heen, the words "and shall be placed on the calendar." Are you ready for the question? All those in favor signify by saying "aye." Contrary. Chair is in doubt. Chair will call for a standing vote. All those in favor of Delegate Mau's amendment. Against. Amendment is lost.

Chair will now put the amendment. For convenience we might number that 23, so we will know what we are talking about, I suggest.

NIELSEN: Can I talk on the bill now? Well, during the '47 and '49 session, at both sessions I introduced a bill so that it would require that the committees show a record of the vote on iceboxing or passing out bills. It died both times. The reason is because legislators don't like to go on record as to how they vote in committee.

Now another thing that happened in the '49 session was that we had a horse racing bill and Maui wanted it. It didn't make a bit of difference to me, there won't be a race track in Kona for the next thousand years probably, but Maui really wanted it and they need it because they are going to go broke on their horse racing if they don't. Their county fair is in the dumps. So that bill was in the Judiciary Committee and I found that I had what I thought was a vote to pass it out on a four to three vote, and we had discussed it for I don't know how many days. One day I demanded that we take a vote on it, figuring to get it on the floor and then let the floor have a chance at it because it was going to let each county say through their board of supervisors whether they want horse racing in that county or not. What happened when we took the vote? Mr. Fong and Mr. Porteus voted on the bill although they were not members of the committee. Chairman Marcellino, he says, "Well, Nielsen, there goes your horse racing bill; it's in the icebox." Well, I blew up, and started to leave the room. Well, the first thing I grabbed when I did leave was the rule book, and they had changed it in the past 50 years and instead of the speaker and vice-speaker being ex officio members without vote, they had left out those two little words "without vote" and that's how the horse racing bill got killed. That meant - - and I took it up with Paschoal who had 32 years in the legislature, Doc Hill and the rest, and never had the vice-speaker and the speaker been able to walk into a committee and either kill or pass a bill out of committee.

CHAIRMAN: Well, you learned something, then.

NIELSEN: I learned something.

Now, I think this is a good bill and it doesn't mean that if we introduce 2000 bills that every bill is going to be brought out by a one-third vote to the floor. It only means very important bills will be brought out. On the basis of majority, like it is at present, it is ridiculous because if you can get a majority vote on the floor why, the bill is passed, you can bring it out anytime. But in this way you do get an expression, a record of how the legislators voted on the bills that are introduced. I'm for it.

FUKUSHIMA: I think the delegate that last spoke gave ample reason why this amendment should be defeated.

ROBERTS: I'd like to amend this section by substituting the word "twenty" for "fifteen."

CHAIRMAN: Is that accepted by the movant, Delegate Kellerman? Otherwise, the Chair will put the question on the amendment.

KELLERMAN: Mr. Chairman, may I ask the last movant a question. In view of a 30 day session, Mr. Roberts, a budget, a special session - -

CHAIRMAN: I suggest we get back into order, Delegate Kellerman. Do you make that as an amendment?

ROBERTS: I'll make it as an amendment, and I'd like to indicate - -

CHAIRMAN: Is there a second?

CASTRO: Second it.

CHAIRMAN: Question is on the amendment.

ROBERTS: May I speak to the amendment. I believe that adequate opportunity ought to be given to the committee to study. The 20 day period would provide approximately three weeks in which to give consideration to the bill. I assume most of the major bills will come in your regular session and not your budget session, which will be at least a 60 day session and I think this will provide adequate time for basic consideration.

CHAIRMAN: Question is on the amendment.

KELLERMAN: I will accept the amendment in view of the explanation. I think Mr. Roberts is right.

CHAIRMAN: The amendment has been accepted. The main question will now be put. This is on the proposed amendment on Section 23.

KELLERMAN: May I ask for a roll call on this?

CHAIRMAN: Clerk will please call the roll.

Ayes, 33. Noes, 24 (Apoliona, Ashford, Bryan, Cockett, Fong, Fukushima, Hayes, Holroyde, Kauhane, Kido, King, Noda, Okino, Porteus, C. Rice, H. Rice, Richards, Sakai, Sakakihara, Smith, St. Sure, White, Yamamoto, Yamauchi). Not voting, 6 (Doi, Mizuha, Ohrt, Phillips, Silva, Woolaway).

CHAIRMAN: Amendment is carried.

PORTEUS: For the sake of the record, I'd like to point out that I sure missed that acorn an awful long way on that one.

CHAIRMAN: It's a bad day for the Secretary.

WIRTZ: Mr. Chairman, if we take a recess, I'll buy him a bag of peanuts.

J. TRASK: I move that Section 23 be adopted as amended.

CHAIRMAN: Is there a second?

FUKUSHIMA: I second the motion.

CHAIRMAN: It seems to the Chair that the section has been adopted, it is not an amendment to anything. Is that not correct, Delegate Trask?

J. TRASK: We haven't taken a vote on the section yet, Mr. Chairman.

PORTEUS: Mr. Chairman, as the Secretary, I'm sorry to inform the body that I've already lost on that. The motion was an amendment to the proposal itself and being carried, I think, that's it.

CHAIRMAN: That's the way it appeared to the Chair.

TAVARES: Mr. Chairman, I believe Section 10 was deferred.

CHAIRMAN: Chair will declare a five minute recess.

(RECESS)

CHAIRMAN: Will the delegates and the housewives please take their seats.

C. RICE: I believe the next section is 22, is that right?

CHAIRMAN: Thought we'd go to 21; there was a deferment of 21, Delegate Rice. I believe Delegate Okino has an amendment to 21. The Chair will recognize Delegate Okino. It has been moved and seconded that Section 21 be adopted. This has been deferred at the request of Delegate Okino to prepare an amendment.

OKINO: There have been several drafts circulated on the floor within the last 15 minutes. Apparently the judges here don't seem to agree. I'd like to refer the delegates' attention to the last draft. Now when I say the last draft, I suppose I will have to read a portion of it so that you all can intelligently follow. The first paragraph reads - -

CHAIRMAN: Is that the one dated July 7?

OKINO: I believe both are dated July 7.

CHAIRMAN: Both offered by yourself.

HEEN: One was 3:30 and the other 3:35 p.m.

OKINO: Will you refer to the draft of the single sentence which reads as follows: "The legislature shall by law provide for the manner and procedure of removal by impeachment." Do you have that draft? Now if you do have the draft I would like to make a further amendment on that by adding, remove the period, insert a semi-colon or comma and add the following words, "subject to the provisions of this section."

DELEGATE: May I ask if the delegate is referring to the long or short draft.

CHAIRMAN: The Chair is trying to identify two drafts of the same date offered by the same delegate, and the Chair is in doubt what he is talking about.

OKINO: I'm sorry, both drafts are just about the same length. I suppose the best thing to do is to read the whole thing.

CHAIRMAN: Will you read the one you want to offer?

OKINO: Yes, I shall do that.

SECTION 21. Removal of officers. All elective executive officers, and any appointive officers for whose removal the consent of the Senate is required, may be removed from office on impeachment for such causes as may be provided by law, and upon conviction of the charges against such officers.

The House of Representatives shall have the sole power of impeachment and the Senate the sole power to try all impeachments of all elective executive officers. No such elective executive officers shall be convicted without the concurrence of two-thirds of the members present.

The legislature shall by law provide for the manner and procedure of removal by impeachment, subject to the provisions of this section.

The rest, the fourth paragraph is the same, in both drafts.

Judgments in cases of removal from office shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust or profit under the state; but the person convicted may nevertheless be liable and subject to indictment, trial, judgment and punishment according to law.

NODA: I second the motion.

KING: Delegate Okino changed his original amendment to comply with the suggestion I made, that the procedure for the impeachment of the chief executive and the lieutenant governor might follow the usual form of having the House of Representatives authorized to prefer the charges and the Senate to act as the judges, and to have the conviction require a concurrence of two-thirds of the members present at the trial. So he has inserted that paragraph in there and then followed on to harmonize with the original section.

FUKUSHIMA: I have an amendment to offer. The first paragraph of Section 21 reads: "all elective executive officers." I move to delete those four words and insert therein: "the governor, the lieutenant governor." I don't think we should have any subterfuge, we have only two elective officers.

J. TRASK: I second the motion.

SHIMAMURA: May I ask if it is the intention of the proponent of this measure that there shall be conviction by only two-thirds of the members present instead of the two-thirds of the full house?

CHAIRMAN: It says two-thirds of the members present. That's perfectly clear.

SHIMAMURA: Well, I want to find out if that's his intention.

CHAIRMAN: That's correct. That is the same as the Federal Constitution.

OKINO: That is correct; that is the same as the judiciary article.

CHAIRMAN: Are you ready for the question? The question is on the amendment.

RICHARDS: The amendment speaks of two offices only. In what category is the auditor? He is elected by the House.

CHAIRMAN: No, he is appointed by the legislature.

RICHARDS: Appointed?

CHAIRMAN: Appointed. He stands no popular election.

HEEN: I would like to inquire whether or not there is any provision in the articles on the executive branch of government which would prevent the legislature from creating some office, elective office, other than those provided for in the Constitution itself.

CHAIRMAN: I think the answer is no to that, Delegate Heen.

FUKUSHIMA: I think the answer is very obviously no.

OKINO: To my recollection, the answer is no, but the reason why this particular expression was used is to meet with future condition in the event there is a revision and there should be any other elective officer.

CHAIRMAN: Meet with what condition?

OKINO: Future; no one knows; there may be some other elective officer. There have been several attempts made on the floor that we shall have some more elective officials.

TAVARES: It's my very distinct recollection from the Committee on Style that the legislature can provide for the election or appointment of officers for whose election or appointment the Constitution doesn't otherwise provide. However, as to those other elective officers, I presume the legislature could in the same law or by general law provide for a different method of removal, because they have general powers of creating the office and tenure. So that if it's agreeable to the movant to accept "the governor and lieutenant governor," I don't think any harm will be done except we've got to amend the rest of the section then to conform.

WHITE: There is one question I'd like to ask and that has to do with the auditor. This first paragraph reads: "and any appointive officer for whose removal the consent of the Senate is required." That isn't required in the case of the auditor; it's, "the legislature, by two-thirds majority vote of members in joint session." Is there a conflict there?

CHAIRMAN: I think this has to do with popularly elected officials, Delegate White.

TAVARES: It is my understanding and I'm sure the movant will agree with me that the purpose of this is not to include the auditor, that he is not considered as a person for whose removal the consent of the Senate is required. As a

matter of fact the consent of both houses is required in that case, and it wasn't intended to cover that particular type of officer.

PORTEUS: I wonder whether in the debate on this matter I heard correctly as to the two-thirds of those present. I think if the delegates will turn to Committee Proposal No. 7, being that of the judiciary article and being Section 3, it states there with respect to the various justices of the Supreme Court, "They shall be subject to removal from office upon the concurrence of two-thirds of the membership of each house of the legislature," and not just two-thirds of those present.

CHAIRMAN: That's correct. This follows the Federal Constitution and refers to those present.

A. TRASK: Point of information of the movant, Mr. Chairman. The Senate will impeach and - -

CHAIRMAN: No, no, the House will make the charge; the House will impeach and the Senate will try.

A. TRASK: The question is the word on the fifth line. Shouldn't the word "or" be there instead of the word "and," so that it will read "or upon conviction of the charges against such officers," referring to a judicial conviction as such?

CHAIRMAN: Not a judicial conviction, as such. It has to do with conviction in the Senate. I think the word "and" is correct, Delegate Trask.

A. TRASK: In that case, if the movant agrees with the Chair's interpretation, I move for an amendment, therefore, that the words in the fourth line, "removed from office," insert "upon conviction of impeachment for such cause as may be provided by law" period, because otherwise you would have a consideration as to conviction by a court which may precede proceedings of impeachment in the House.

CHAIRMAN: Just a minute, Delegate Trask, there is already one amendment to this and I think we're piling them up. We'll take that later.

The question is on the amendment proposed by Delegate Fukushima which would amend the proposal of - - the motion of Delegate Fukushima to delete the words "elective executive officers" where they appear in each instance, and substitute therefore, the words, "the governor and the lieutenant governor." Are you ready for the question? All those in favor, signify by saying "aye." Contrary.

I wish the members would pay attention and vote on this question. Chair couldn't hear anything to speak of. All those in favor of the amendment will signify by saying "aye." Contrary. The ayes have it.

A. TRASK: I renew my suggestion here that before the word "impeachment," in the fourth line of the first paragraph, strike the word "on" and insert for the words "on," the words "upon conviction of," and then on the fifth line after the word "law," replace the comma by a period. I believe that this is necessary because the word "conviction" may be interpreted to refer to a judicial conviction. We may have a situation, and properly so, where there might be a conviction before the proceedings or conviction of impeachment by the House of Representatives will take place. So if the intention is a conviction of impeachment by the House of Representatives, the word "conviction" should precede and be tied up with the word "impeachment." So if that's the thought of the movant, it seems to me an amendment is necessary so that after the word "office " in the fourth line, strike the word "on" and insert the words "upon conviction of impeachment for such causes as may be provided by law." I move for the amendment.

CHAIRMAN: Before you ask for a second on that, may the Chair invite your attention. This is taken from the language of the Federal Constitution, Article I, which reads: "and no person shall be convicted without the concurrence of two-thirds of the members present." I believe that's where Delegate Okino got his language. It seems to be clear.

A. TRASK: But we don't have that here, do we?

CHAIRMAN: This says, "No such - -

KING: You're talking about something else entirely. Mr. Chairman, Delegate Trask was referring to a different part of the proposed amendment. As I understood it, he was referring to the first paragraph, had no reference to the question of concurrence.

CHAIRMAN: What paragraph are you on?

A. TRASK: I am referring to the first paragraph.

CHAIRMAN: I'm sorry; I misunderstood you, Delegate Trask.

A. TRASK: In other words, if a conviction refers to a House of Representatives conviction it should be tied up with that; otherwise the interpretation would be misleading to refer to a judicial conviction, and I so move.

TAVARES: Am I correct in my understanding that impeachment means charges?

CHAIRMAN: Impeachment does mean the charge.

TAVARES: Therefore, I think Delegate Trask's motion is probably all right. "Upon conviction of impeachment" would mean upon conviction of the charges of impeachment - -

CHAIRMAN: That is correct.

TAVARES: - - and therefore, I believe there would be no harm in the movant accepting that amendment. I wonder if the movant will accept that?

J. TRASK: I will second that motion to amend.

CHAIRMAN: Just a minute. Delegate Trask, will you state clearly to the Chair what your proposed amendment is? In the first paragraph.

A. TRASK: Delegate Okino's amendment to Section 21, the first paragraph, the fourth line, after the third word, strike the word "on" and insert three words "upon conviction of impeachment for such causes as may be provided by law" period, deleting the rest and replacing the comma with a period.

CHAIRMAN: I'm sorry, the Chair still didn't get that. The fourth line?

A. TRASK: The fourth line, after the word "office," "remove from office," strike the word "on" and insert "upon conviction of" and continue "impeachment for such causes as may be provided by law" period, deleting the rest.

OKINO: I will accept the amendment.

CHAIRMAN: Delegate Okino has accepted the amendment. I presume the second will accept it.

TAVARES: I move, to conform to the first paragraph, the following further amendment of the second paragraph. In the third line, delete the words, "all elective executive officers," and insert in lieu thereof, the words, "the governor or lieutenant governor."

CHAIRMAN: I believe that's already been put and carried, Delegate Tavares.

TAVARES: That was just the first paragraph, Mr. Chairman. Will the movant accept that?

OKINO: The movant accepts the amendment.

TAVARES: Then in the next sentence, the second sentence of the second paragraph, in the second line of that sentence where it says "no such elective officers," I move to delete the words "elective executive" and the "s" on the word "officers," so that it will read, "no such officer shall be convicted," and so forth. Does the movant accept the amendment?

OKINO: I do.

TAVARES: Now, I don't know whether the movant will accept this next amendment, but to satisfy some of the members who want to conform to the judiciary article, I would suggest that the last two words of the second paragraph, the words, "members present," be changed to "membership of the Senate."

OKINO: Delegate Tavares, would it not be better to follow the language of the judiciary article consistently and to clarify the situation, finish it up by saying "two-thirds of the membership of each house of the legislature sitting in joint session"?

CHAIRMAN: Just a minute. Is this in the form of a motion, Delegate Tavares? Is this in the form of a motion?

TAVARES: Well, I will make it a motion, Mr. Chairman.

HEEN: May I interrupt at this point? As I recall it, someone read in connection with the similar provision in the article on judiciary. The words used were "the membership present." Is that correct?

CHAIRMAN: No.

PORTEUS: I think I was the one who read that and I believe that you will find that the words are "upon the concurrence of two-thirds of the membership of each house of the legislature, sitting in joint session." You'll find that on page 4, Committee Proposal No. 7, redraft 2.

TAVARES: So that my language does conform as far as it can when we have only one house instead of both houses trying the impeachment. The words, "membership of the Senate" in lieu of the words "members present" conforms as far as practicable to the judiciary language.

OKINO: Delegate Tavares is correct, and I do accept his amendment.

CHAIRMAN: The Chair might point out the two procedures for removal are quite different, the one under the judiciary article and this one proposed, so of necessity they do not have to be in conformity.

TAVARES: I understand that, but it is my understanding that the members felt that if you needed two-thirds of each house's as membership to remove a judge, you should have two-thirds of the membership of the Senate to remove the governor and lieutenant governor.

HEEN: This language here follows the language in the Federal Constitution.

CHAIRMAN: The language unamended.

HEEN: That's right.

CHAIRMAN: Delegate Tavares would amend the language to require an absolute two-thirds of all members whether they are present or not. Is the amendment accepted, Delegate --

OKINO: Yes, Mr. Chairman.

A. TRASK: May I ask a question on this second paragraph, if you please, Mr. Chairman? "The House of Representatives shall have the power of impeachment." In other words, the House of Representatives acts like the grand jury and charges, and that the Senate will be the court trying that person. Now, it seems to try only the governor and the lieutenant governor. Now does it mean that the appointive officers -- how will they be impeached and tried?

CHAIRMAN: They're not dealt with at all in this section.

TAVARES: I think I can answer that. The answer is that only for the governor and lieutenant governor do we actually prescribe the requirements and procedure to that extent. In the case of the others, the legislature can provide a different method of impeachment for appointive officers. If that is the intention of this Convention, I think that's all right, and I'm for it because I think they can adjust it any way they want. They could say the Senate shall present charges or somebody else. However, Delegate Heen raised a point. He asked whether there was a possibility that the legislature could create an entirely separate body to remove appointive officers, and I think the answer probably is yes as this thing stands.

HEEN: Before going into that point, Mr. Chairman, with reference to the use of the term "the members present." As I stated a moment ago, that's the language used in the Federal Constitution, and that was intended, Mr. Chairman, to prevent one-third of the house remaining away from the hearing in order to defeat any trial of the impeachment charges.

CHAIRMAN: That is correct. That would thwart the impeachment process.

PORTEUS: That is not a correct statement. I beg to differ with the chairman. The house has the right to compel the attendance of all the members. If that's so, then the lawyers will fix something so that the justices of the Supreme Court aren't subject. There's an opening there. What we're trying to do is be consistent here. If the statement is correct, that one of the houses, by an absence of members, can stop impeachment, then that's a defect in the judiciary article. And as I understood it --

CHAIRMAN: That has nothing to do with the judiciary article. I'm sorry.

PORTEUS: Why hasn't it, may I ask?

CHAIRMAN: This is the impeachment process.

PORTEUS: That's right, and there's impeachment process in the judiciary article referred to.

CHAIRMAN: No, you're in error. There's no impeachment process in the judiciary article.

PORTEUS: There is a removal from office.

CHAIRMAN: Correct, which is very different.

PORTEUS: Not very different. It's a very similar procedure. In effect there you are requiring the two-thirds. In other words then, if it's the opinion of the chairman of this committee, who was also chairman of the judiciary article, then there is a defect in the judiciary article because you are making it too tough and almost impossible to have a removal. But I don't agree with the opinion of the chairman because I say that I believe that each house has the right to compel the attendance of all members.

CHAIRMAN: Well, are you ready for the question? The question is on the amendment.

TAVARES: I take it that means now that the whole section is to be voted on since all the amendments have been agreed to by the movant.

I should like to point out one more thing which I believe is the proper interpretation of this section, and that is that the third paragraph which authorizes the legislature by law to provide for the manner and procedure of removal by impeachment subject to the provisions of this section will, in my opinion, authorize the legislature to lay down rules even for impeachment of the governor or lieutenant governor, under which the Senate could delegate to a committee the actual hearing of the charges, as is done by a court for a master; and then the charges could be referred to the Senate and the final hearing held in the Senate, as if on the master's report, with such further hearing as the law should provide. I believe that that third paragraph would permit that and I think that is desirable because I think one of the dangers, one of the defects, one of the real defects of the system of impeachment is not the requirement for two-thirds but the requirement for holding a quorum of the whole Senate in session for a long tedious trial, and I believe that is the proper interpretation and I believe the movant will agree with me that that is the proper interpretation of the third paragraph.

ROBERTS: I believe that the process of removing a governor and lieutenant governor is quite serious and the charges ought to be heard by the body that's going to remove him and not by a sub-committee of that group. I certainly do not think that's proper. I believe that the entire body should hear him and the entire body should act on the evidence as presented to them.

CHAIRMAN: Well, I'll point out that this does not follow the Federal Constitution. It permits legislative changes in the method of impeachment and would permit what Delegate Tavares is suggesting be done.

FUKUSHIMA: I don't believe that's a correct statement. The second paragraph reads, "and the Senate the sole power to try all impeachments of the governor or lieutenant governor." That's certainly inconsistent with the statement made by Delegate Tavares.

KING: I subscribe to the remarks of the last speaker. Delegate Tavares had in mind, perhaps, that the legislature might delegate some of its authority to a committee but that should not apply to the trial of the lieutenant governor or the governor by impeachment. It might apply to these others. I think the article reads for itself, the section reads for itself and that no such implication should be accepted by the Committee of the Whole.

TAVARES: Because this question has been raised, may I make a suggestion?

A. TRASK: I think in view of the expression in paragraph one that - -

CHAIRMAN: Would it not be in order to defer this until we get a redraft? Delegate Tavares, do you think there should be a deferment on this?

TAVARES: No, Mr. Chairman, in order to resolve that question I think we should take a sense vote as to whether it's the sense of this Convention that in the trial of the governor or lieutenant governor on impeachment the whole Senate should conduct the whole trial or whether they should be able to - - authorized by law to have a hearing first before a committee and then a final hearing before the Senate.

CHAIRMAN: May the Chair ask you a question, Delegate Tavares? The sentence which reads: "The legislature shall by law provide for the manner and procedure of removal by impeachment, subject to the provisions of this section," wouldn't that authorize the legislature to create a committee?

TAVARES: That was my interpretation, Mr. Chairman, but it is challenged now by men of equal - - certainly for whom I have high regard, and I think it ought to be settled by the Convention.

CHAIRMAN: I think it's perfectly clear to the Chair that there is that legislative power.

LEE: I move that we defer this section until we take the other sections.

CROSSLEY: I second that motion.

CHAIRMAN: It has been moved and seconded that we defer action. All in favor signify by saying "aye." Contrary.

CROSSLEY: I move that we rise, report progress and beg leave to sit again. I would like to point out that it's nearly 5:30 and the Committee on Style meets tonight at 7:30.

CASTRO: Second the motion.

CHAIRMAN: The Chair had hoped that we'd get through with this. All in favor of rising, reporting progress, signify by saying "aye." Contrary. Motion is lost.

CROSSLEY: While it's not pertinent to the discussion, I'd just like to announce to the chairman of the Committee on Style that I won't be available for a meeting tonight. I can't do these hours and do justice to the work.

CASTRO: Neither will I, Mr. Chairman.

CHAIRMAN: Is there a meeting of the Style Committee tonight, Delegate Wist?

WIST: There definitely is a meeting tonight and we definitely need Mr. Crossley, who is the chairman of the subcommittee on the article on taxation and finance that we'll be dealing with tonight, and unless we can meet tonight I don't see how we're possibly going to get through with our work.

KING: May I call the attention of the delegates to the fact we won't complete this article till half past six or seven o'clock.

CHAIRMAN: If there's no objection, the Chair will put the question again.

KING: I would like to ask the Committee of the Whole to rise, report progress and sit again. We can start with these problems fresh tomorrow morning.

CHAIRMAN: It has been moved and seconded that the committee rise, report progress and beg leave to sit again. All in favor signify by saying "aye." Contrary. Carried. The ayes have it.

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CHAIRMAN: The committee will take up the section, Section 21 of Committee Proposal No. 29, dealing with impeachment. Delegate Okino is recognized.

OKINO: I believe there is a new draft on the desk of each delegate this morning after a few of the delegates got together to iron out some of the differences of opinion so far as interpretation of some of the sentences in my offered amendment

are concerned. The amendment before the Committee of the Whole is my amendment to Committee Proposal - - Section 21 as amended by Delegate Fukushima's motion to specify the elective officers. I think that is before the Committee of the Whole at this time. The new draft is dated July 8th.

CHAIRMAN: The Chair would suggest that if it's agreeable to the movants of the numerous amendments, that they all be withdrawn and we start with this draft. Delegate Fukushima, would you accede to that?

FUKUSHIMA: That is acceptable to me.

CHAIRMAN: And I believe Delegate Tavares had made a number of amendments.

TAVARES: I withdraw any amendments I may have moved for.

CHAIRMAN: I think that would clear the decks, so if we pull them all together in this one amendment the thing can be offered.

OKINO: It definitely does so, Mr. Chairman.

CHAIRMAN: And you offer this amendment?

OKINO: That is correct, Mr. Chairman. Amend Section 21 of Committee Proposal No. 29 to read as follows:

SECTION 21. The governor and lieutenant governor, and any appointive officer for whose removal the consent of the Senate is required, may be removed from office upon conviction of impeachment for such causes as may be provided by law. The House of Representatives shall have the sole power of impeachment and the Senate the sole power to try all impeachments of the governor and lieutenant governor. No such officer shall be convicted without concurrence of two-thirds of the members of the Senate.

The Legislature shall by law provide for the manner and procedure of removal by impeachment, subject to the provisions of this section.

Judgments in cases of removal from office shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust or profit under the state; but the person convicted may nevertheless be liable and subject to indictment, trial, judgment and punishment according to law.

CHAIRMAN: Is there a second?

TAVARES: I second the amendment. And in view of the fact that yesterday different people expressed different opinions as to the meaning of the second paragraph of this redraft which says that "The legislature shall by law provide for the manner and procedure of removal by impeachment, subject to the provisions of this section," in view of the differences of opinion on what it means as far as the procedure for trial - - for impeachment of the governor and lieutenant governor is concerned, and since now it is limited only to those two officers, I move that it is the consensus of this Committee of the Whole and shall be inserted in the report of this Committee of the Whole that this paragraph does not authorize a trial of an impeachment charge against the lieutenant governor or governor by a committee of the Senate, but that the trial must be by the Senate itself, this relating however only to the impeachment of the lieutenant governor or governor.

CHAIRMAN: The parliamentary situation is the motion for the amendment is before the house, as the Chair understands it. I don't know whether I can put both questions at the same time.

TAVARES: This is a motion relating to this. We've taken many consensus votes on different measures in this Convention, and this is a construction of the section which apparently is ambiguous because men of ability, I believe, on both sides have expressed opposite views of its meaning.

KING: If the parliamentary procedure permits of such a motion, I would be glad to second it.

CHAIRMAN: That's what the Chair is in doubt about. I don't see how the Chair can put both motions. That could be done separately I should think. I don't know.

CROSSLEY: I see no reason why it couldn't be done subsequently, but if you want to combine them it seems to me the first motion could be amended for the adoption of this amendment, that there be contained in the committee report relating to this amendment the following words, that is, the sense that Mr. Tavares has just given us; and that motion I believe would be in order, inasmuch as they are related subjects.

CHAIRMAN: What was the language that Delegate Tavares wanted in the report? The Chair didn't understand it.

TAVARES: The language was that it is the consensus of this Committee of the Whole, and that it be inserted in the written report of the Committee of the Whole, that the paragraph authorizing the legislature by law to provide for the manner and procedure of removal by impeachment does not authorize the Senate to delegate to a committee of the Senate the hearing of the charges of impeachment against the lieutenant governor or the governor, that the requirement is that such charges must be heard by the Senate itself.

CHAIRMAN: And as to other officers, they could delegate the authority under the same identical language, is that it?

TAVARES: Yes, Mr. Chairman.

CHAIRMAN: Well, the Chair doesn't see how you could have two interpretations for the same words, frankly.

ASHFORD: I leave the proponents of the measure to answer that, although it seems clear to me by the specification of the governor and lieutenant governor in the first paragraph. What I wished to do was to inquire whether the provision of two-thirds of the members of the Senate could be changed in the opinion of the proponent by the Style Committee to conform to other language which is to be used in other sections following the language of the Organic Act, "two-thirds of the members to which the Senate is entitled."

TAVARES: As the seconder of the motion, I am sure that we agree that the Style Committee can do that. The intention is to have two-thirds of the total membership of the Senate concur in the removal of the lieutenant governor or governor, and that being the case, as a matter of style the language can be made to conform to other articles which have been approved with slightly different language.

KING: The only ambiguity is in this phrase in the second paragraph, "subject to the provisions of this section." Both Delegate Tavares and, I believe, the Chair in an informal discussion yesterday interpreted that qualification to authorize the legislature to try the governor or lieutenant governor by a committee or by some group of members of the Senate designated for that purpose. Delegate Roberts expressed his opposition to that and I concurred in his remarks that for the impeachment of the governor and the lieutenant governor the whole Senate should act as the judge, and not a committee designated as such under the provisions of this second paragraph.

Now, all that we are trying to do this morning is to incorporate in the proceedings of the Committee of the Whole and then the Committee of the Whole report our interpretation that "subject to the provisions of this section" may apply to appointive officers but shall not apply to the trial by impeachment of the governor and the lieutenant governor. Now, if it is not proper to have a motion expressing the consensus of opinion of the Committee of the Whole, then it may be adopted as a separate motion after the section itself has been approved, if it is approved.

HEEN: I would like to ask the sponsor of this amendment this question. The first paragraph, the second sentence, you find the following language, "The House of Representatives shall have the sole power of impeachment." Does that mean sole power of impeachment not only of the governor and lieutenant governor but also of the appointive officers?

OKINO: In reply to the question, I should like to say that insofar as my interpretation of the same is concerned it applies strictly to the governor and lieutenant governor. It was for that reason that amendment was inserted in this amendment of mine.

HEEN: Then as I understand it according to that interpretation, the impeachment of appointive officers may be made in some other way.

OKINO: That is correct and that is the reason why you find paragraph three. Originally the second sentence in paragraph one was not in the amendment.

HEEN: Now another question, following the first question. You find this language, "and the Senate the sole power to try all impeachments of the governor and lieutenant governor." Does that imply that so far as the appointive officers are concerned they may be tried by another body or tribunal, is that correct?

OKINO: That is correct. That is intended to be covered by the second paragraph of this new draft.

HEEN: Then it seems to me that the second sentence should be rephrased so that it will apply to appointive officers. "The legislature shall by law provide for the manner and procedure of removal of appointive officers."

CHAIRMAN: You mean officers other than the governor and lieutenant governor?

HEEN: That is correct.

CHAIRMAN: That would fix it up.

HEEN: You don't need any further statutes or legislation to provide for the procedure in the trial of the -- in the impeachment of the governor and lieutenant governor and the trial because you have it all there. The House shall impeach the governor or the lieutenant governor, and the Senate shall try the charges on impeachment.

TAVARES: I don't think that necessarily follows. There might be some slight areas with relation to procedure alone. Perhaps it is the manner of issuing subpoenas and various other things that can still be legislated on by the legislature in aid of the impeachment procedure provided for the lieutenant governor or governor. For instance, if the legislature saw fit to provide for the form and manner of compelling attendance of witnesses by law rather than leaving it to implied powers, I believe the legislature could implement that. If it wished to provide for contempt for failure to obey such subpoenas, it could also legislate in that field. I believe there is a field where it can operate in both, but because of the fact that the field is not the same as to the lieutenant governor and governor as it is with respect to appointive officers, my motion to take a concensus vote was for the purpose of clarifying that.

CHAIRMAN: If it is ambiguous, the Chair feels we ought to clear up the ambiguity rather than leave it to some report.

A. TRASK: Pursuing the same line of thinking with respect to the appointive officers which I asked yesterday of Delegate Tavares also, the second paragraph seems to imply that the only manner whereby appointive officers could be removed would be by impeachment. That seems to be, since in the first paragraph there is "the causes for impeachment may be provided by law"; the second paragraph refers to impeachment only; the third paragraph refers to judgment issued upon conviction of impeachment; so that there is no other provision whereby the legislature could, pursuing the thought of Delegate Heen, allow and provide for the removal of appointive officers by any other remedy except by impeachment. I don't think that is right.

TAVARES: Of course it isn't and if you write other portions of this Constitution in relation to that, I don't think it necessarily follows. I don't think it follows at all. This is simply an additional method of removal giving to the legislature the power of removal by impeachment in addition to any other which is provided in the Constitution, or which under general powers the legislature may provide, simply to give to the representatives of the people one more method of removal in addition to any others provided or permitted by the Constitution.

SHIMAMURA: May I state that I concur with the observation made by the Chair a few moments ago with respect to the difficulty of interpretation in the light of the second sentence of paragraph one and the second paragraph. I believe that the proponent of this measure and the other persons who are in favor of this proposition favor the principle of a trial of the impeachment by the entire body of the Senate, but on that principle I am not quite inclined to agree. Perhaps they feel that the appointive officers are not as important as the governor or lieutenant governor, but when we impeach a man it's a very serious charge. I don't see why as a matter of principle we don't include the appointive officers and not limit the trial of impeachment by the Senate as a whole body merely to the governor and lieutenant governor.

BRYAN: I may be a little out of place being strictly a layman on this subject. However, I think that in my mind the ambiguity can be cleared up very easily using the same language that we have here but rearranging it somewhat. I'd like to ask the movant and others to consider this. To withhold the first sentence and start the paragraph off with the House of Representatives. "The House of Representatives shall have the sole power of impeachment and the Senate the sole power to try all impeachments of the governor and lieutenant governor. No such officer shall be convicted without concurrence of two-thirds of the members of the Senate. The legislature shall provide for the manner and procedure of removal by impeachment," and going back to the first sentence, "of any appointive officer for whose removal the consent of the Senate is required," then continue on.

HEEN: It seems to me there should be some amendment along those lines. Of course, the last speaker hasn't completed the amendment of the entire provisions of the second paragraph. May I ask at this time for a short recess. I think we can iron this out.

CHAIRMAN: Short recess.

(RECESS)

CHAIRMAN: The committee will please come to order. There are two proposed amendments to this section presently being printed and it seems advisable that we proceed with the discussion of the section relating to legislative council while that work is being done. The Chair will entertain a motion to defer Section 21 until later.

OKINO: I so move at this time.

SAKAKIHARA: Second the motion.

CHAIRMAN: All in favor signify by saying "aye." Contrary. Carried.

HOLROYDE: I move for the adoption of Section 22 to get it before the house.

BRYAN: Second the motion.

CHAIRMAN: It has been moved and seconded that Section 22 relating to legislative council be adopted.

LAI: I move to delete this whole Section 22.

DOI: I second the motion.

CHAIRMAN: It has been moved and seconded that this section be deleted. Is there any discussion?

LAI: May I speak on that? This council will add another burden upon the State's finances. Creation of this legislative council will mean more compensation for employees and its members. Because of the annual session of the legislature as provided in this article, emergency legislation does not need to wait for two years for its consideration. There is no guarantee that any member of this council will be elected the following term and therefore his service and his study of different legislative problems is not certain to render any value to the following legislature.

We have created a twenty-five member Senate and a fifty-one member House. A legislature of this size will form a better deliberating legislative body. It is harder for a larger body of this type to railroad through any bad legislation. Therefore any emergency that arises, a legislature can always create or appoint a commission to study a particular problem. Therefore I am against this section and I move to delete this section.

LARSEN: I would like to speak against this. I also have an amendment to suggest. It seems to me, what the previous speaker said, it isn't the cost of a few extra salaries that's important in a democracy, it's whether democracy is efficient and whether we can prevent the abuse of power. We know that democracy is cumbersome but what we're after—and after I've listened to the floor discussion, it's very evident that we all of us feel—how can we prevent abuse and how can we increase efficiency? In all these studies and in the ancient days when we began this Convention I was particularly interested in this and had occasion to look it up and a good many of the states have it and more of them will have it. With a short legislature, it still is more important to have some group, an analytical group, working between sessions, and if they are not working between sessions then the terrific rush of the sixty-day session will be inefficient and we won't get what we're after.

Now I notice in the committee report itself, they say, "While such a provision," for a legislative council, "might be considered legislative and the inclusion of such provision objected to on that ground, your committee believes that the work of the legislature must be implemented by a continuous study by some agency under the control of the legislature in the interim between sessions, and that it is a matter of such importance that it should not be left entirely to legislation."

Now we have heard a lot of criticism lately about the holdover committee. We have heard that they got $150,000 and did very little. I suspect that much of that is newspaper analysis without perhaps going into what they actually have done. I hope they have done more than one of the newspaper editorials suggests.

But it isn't a choice made by the previous speaker of not having a legislative council. The legislature can vote for a holdover committee. The legislative council does what the holdover committee is supposed to do. We are trying to prevent, as much as possible, abuse.

The amendment that I have, if this present motion is defeated, is to insert the following: "There shall also be one member of the legislative [council] from each county, appointed to the council by the governor. Neither house shall have a greater number of members in the council than that of the number of non-members." So theoretically we have a total council of twelve members. This is an efficient body and can be working. I feel it's so important to prevent abuse by having too many people, by having a critical analysis between times. I believe from the standpoint of our community there are a good many people who believe in initiative and referendum, and academically initiative and referendum is an ideal way of democracy but by actual practice it's been abused, and it's the abuse of power, and we all recognize I think that wherever power is put into a few hands, there is abuse of power.

Now this legislative council is not criticising the legislature. Putting on lay members is not criticising legislators but it's putting that ear into the community of a few men, one in each county, who shall not have to think about being reelected and who can critically analyze legislation, who can propose things, who can work together with the legislature more analytically than critically. I believe if we're going to save money in this setup we need something working between times and we need this ear in the community to listen to the criticisms of laws and government. I believe it's an essential thing and I would be very strongly in favor of killing this deletion movement, and if it's killed I would like to suggest the amendment.

CASTRO: I'm not opposed to the idea of the legislative council. However, I am aware that the legislative council -- the idea of the legislative council and the matter in which it is worked out varies greatly in the various states which have tried it. I therefore am in support of the motion to delete and I would say that I would like to have had the pleasure to make the motion myself.

Now the argument that a provision is statutory, I realize, has been overdone in this Convention from time to time, but in most cases the argument is a valid one. In this particular case it is a valid one. The supreme court of the State of Washington, when a statutory provision that set up a legislative council was challenged on the basis of the fact that it was not constitutional, the supreme court brought out an opinion which indicated that in its view the legislative council was nothing more than a body to aid the legislature in its work and was not adding any powers to the legislature, and therefore it was perfectly within the statutory provision and properly a subject for statutory provision.

Now, I don't think we ought to put anything into our Constitution that we are not too sure about, and if you examine the record, the efficacy of this kind of a legislative council is

something we cannot be too sure about. I can indicate several weaknesses in this provision. One, there is no limit to the number of members. According to this provision, Section 22, the whole legislature could be a member of the legislative council. I know that's carrying it to the ridiculous extreme but according to this provision, that's true. They've got salary provisions, they've got power provisions in here that make this council more than what it -- actually the original concept and the accepted concept is, and that is that it should be an organization merely for collecting information and outlining the legislative program.

Now there have been states which have tried this. In New Jersey, a state whose Constitution many of the more able members of this delegation pay a great deal of attention to, the State of New Jersey, despite the recommendation of its Constitutional Revision Commission, did not include the legislative council in its Constitution of 1947. Now, the State of Missouri did include the legislative council in 1945 but it cost the State of Missouri $110,000 a year. We already have a holdover committee which in 1947 received an appropriation of $50,000 and in 1949 received an appropriation of $150,000. We have a Legislative Reference Bureau which as far as I can see actually carries out the true function of the legislative council.

Michigan established a legislative council in 1933. Six years later they got rid of it. That was by statute. If we should establish a legislative council here in our Constitution and decide it is running away with us, possibly costing more money than it's worth, we can't get rid of it as easily because it's a constitutional matter.

Wisconsin tried an executive council which is more along the line of the proposed amendment of Delegate Larsen, appointments by the governor. They found it pretty successful but they kept changing the membership. In 1931 they had five senators, five assemblymen and ten citizens at large, private citizens. In 1933, two years later, they made it three senators, three assemblymen and three citizens. In 1933, the citizens were replaced by heads of the major state departments, indicating that these councils from time to time as the needs arise vary in the functions that are demanded of them, and if you tried to set out these functions the section would be weak unless it spelled them out correctly, and I am not so sure we know exactly what we want as to a legislative council.

Now I think that actually the legislative council idea, while very laudatory and I say I agree with the idea, it is still in the experimental stage. Kansas was the first state to try the legislative council, that was in 1933, but actually outside of Kansas the experiment is only about ten years old in the United States. We find each year that a different type of legislative council is set up in the various states as they come around to this thinking, all through statute and the statute is never challenged. The fact that it is still in its early stages would be a very sound argument against placing it in the Constitution.

Now the charge was made in the Honolulu Advertiser the other day that the legislative council is something of a pork barrel, and I am inclined to agree that if you should allow a council to be set up with no brakes on it, it could become a pork barrel. Now in deference to our honorable legislators, I think that they would not have the temerity to make it such, but according to this Section 22 it could become such.

What kind of salaries are you going to pay to these people, and how about all the rest of the expenses? And it says "other powers and duties," what kind of powers are you going to give them, extra judicial powers? I thought that this was an organization for the gathering of information and for the proposal of legislation. They've gone so far in some states as to take away the right of the legislative council to propose legislation. They have said that it is merely a fact finding body. I present to this group we have a fact finding body, a very efficient one, the Legislative Reference Bureau.

So, I think, Mr. Chairman, in view of the rather unusual status of this idea throughout the country, varying as it does from one state to the next—some include private citizens, some don't, some have fifteen members, some have five, some have clerks, some have salaries, some don't have salaries—I think that if we place something in the Constitution that is so unsettled we are merely taking a chance. We are experimenting with our fundamental document. There's room enough for experimentation in the statute and I think that is the place where this belongs.

MAU: I wonder if the last speaker would agree that there shall be a prohibition against legislative holdover committees, and permit only the Legislative Reference Bureau to function? Is that his idea?

CASTRO: I made no such statement, Mr. Chairman.

CHAIRMAN: The Chair did not understand him to say that, Delegate Mau.

FONG: I am convinced that we should not write into the Constitution this legislative council. I believe that the legislature could, by its powers in the enactment of statutes could provide for a holdover committee or a legislative council by statutory enactment. I presume that would be sufficient. I don't think we should copper rivet it by putting it in the Constitution.

Now in defense of the legislative holdover committee, irregardless of what the newspapers have stated, I would like to say that when the report will be finally in, you will find that we will be able to save millions of dollars as far as the Territory is concerned. We are now working on the problem of insuring all the buildings of the Territory, which would mean a saving of several million dollars to the Territory. We are now taking a look at all the institutions, taking a look at the hospitals, trying to centralize the hospitals. We have a group of doctors who are advisors to the committee and we will be able to present to the community a centralization program which will mean millions of dollars to the Territory. The public lands problem is being gone into. We have an expert working on the problem and by the end of the year when all the reports are in, the people will find that the Territory will be given legislation by which millions of dollars will be saved. So let us withhold our comment on what the legislative holdover committee is doing, or is not doing, or has done. The committees are busily working on the problems. We have laymen from the community who are experts in the problem helping along in the work and I feel that when the whole matter will be presented to the legislature that millions of dollars will be saved. I believe that the question of a holdover committee can be taken up by statutory enactment rather than by constitutional enactment.

WHITE: I'd like to speak in favor of Mr. Lai's motion to delete it. I think in theory such an organization, such a legislative council, sounds all right. I think in practice though, it has a great many problems.

In reading the second paragraph here it says that, "It shall be the duty of the legislative council to collect information concerning the government and general welfare of the state and to report thereon to the legislature." Well, I

think that's a function of your executive branch of the government, to collect all the information on the state of affairs of the government for presentation to the legislature.

As I view this thing, I think it could become a super-organization. I think that you've got to take into account human nature. You set up an organization of this kind and I think that I'd be just like everybody else if I were director of it. I'd like to make sure that the thing grew so that my job became still more important. I think as far as the economies are concerned it would work just the other way, and I know no better way of developing a cleavage between your executive branch of the government and your legislature than by having such an organization.

TAVARES: I feel compelled to speak against the deletion of this, with one qualification. Unless it is amended to put laymen on it I am not in favor of it. I believe that some laymen on the committee will tend to keep too much of the superpolitics from getting headway. I think the laymen will tend to call the shots more non-politically than the members of the legislature.

However, as Dr. Larsen has pointed out, you have pressures in your community from people who want legislation and in between times you have no central body to go to to discuss or present ideas for laws which you think are needed. To be sure, you can go to individual legislators, but they don't have the office set up for it and they aren't always available to listen to you. If people have a central agency to go to that has some degree of impartiality—and I believe that if it is set up that the legislature will be careful in choosing the members of that council and it would have some measure of impartiality, particularly with some laymen on it, not a majority of laymen—that you will relieve that pressure for the initiation and the referendum. You will have a place where people can go any time of the year, present ideas and have them studied.

Therefore I shall vote against the deletion but as I say, with the qualification. I shall vote for some amendment such as Dr. Larsen's.

AKAU: Mr. Chairman, I think we have been very much interested in what has been said here for and against the legislative council. Mention has been made of the council being rather new and being tried out in several states in the past ten years. Since we are growing in status here and we are reaching out to various countries in the world and knowing and interested in what they're doing, I thought with just one quotation from New Zealand—and I am not from New Zealand—that you might be interested in knowing how the legislative council has worked in New Zealand and I just quote one sentence. "The legislative council in recent years," and this is from New Zealand, "has played a very small part in the country's affairs. Very little legislation originates there and has been used merely as a revising chamber to make minor changes voted by the government after bills have passed the lower house."

I think that meeting every year here that we really don't need a legislative council at all, and I would go along very much with the idea that our Legislative Reference Bureau and our Reference Bureau in the University does an all year round job and the research that is needed for any of these bills or any potential bills could easily be done there. I think we need no council at all.

CHAIRMAN: Counsel for the defense want to say anything in regard to this proposal? I think we should hear from the committee.

HEEN: I've gotten in the position that I'm almost neutral now.

NIELSEN: I question this council because I think it is absolutely another pork barrel opportunity and any one that says that the holdover committee at present is not a pork barrel job, they just haven't looked into it. All you have to do is see who got on the holdover committee in the House. Only one man that was for the closed primary got on it. Anyone else that voted for the closed primary didn't have a chance. In addition to that - -

CHAIRMAN: Are you a member of the committee, Delegate Nielsen?

NIELSEN: Absolutely not for that very reason, that I voted and stuck for the closed primary.

Further, they voted themselves $20 a day and here they argue we shouldn't be paid $15 a day, us outside island members, if we serve in the next state legislature. I could go on and on, but I won't take any more time. I'm against it.

CHAIRMAN: The Chair will put the question.

ROBERTS: I was sorry to hear the chairman of the committee indicate his neutrality in view of the strong position made in the report. I thought we were going to support the Legislative Committee report on the floor.

I recognize that there is some problem in terms of cost. There are also some problems in terms of potentiality of abuse. I don't think the question before us is either a legislative council or no legislative council. I think the question is a legislative council or a holdover committee. It seems to me quite clear that if we make no provision in the section, in the Constitution, then you have greater potentiality for abuse. I'm not suggesting that there has been abuse. I think that there's a very definite job which needs to be done in between sessions, not a matter merely of compiling materials but a matter of reviewing legislation which may be needed and which ought to be prepared for the next session. I think that the work of the Legislative Reference Bureau to us here has been very useful and I think it ought to be continued, and the legislative council, I think, can continue such function and can provide for additional research work to be done by the Legislative Reference Bureau.

I think the question basically is how do you best achieve that particular end, and it seems to me that the best way to achieve it is by providing a body, not to go into the executive functions, not to take over the power of the executive, but as the section clearly implies and states, only with regard to legislation to be proposed at the next session of the legislature. I believe that, as Dr. Larsen has stated, that a group of laymen on that board would be extremely useful and valuable in terms of finding out as close to the county as possible what legislation is required and what type is required, and also to see to it that the expenditures of such a group be maintained within reason.

I therefore believe, Mr. Chairman, that we should make a provision, in view of the other sections that we have adopted, that there ought to be a legislative council, that it ought to consist of legislators and laymen, and therefore I hope that the motion to delete be acted on unfavorably, that we retain the section and subsequently amend as proposed by Dr. Larsen.

MAU: I wonder if any one can explain to me the difference between the present legislative holdover committee and this legislative council without the suggestion of Dr. Larsen. The only difference I see is that constitutionally we say that the members of the legislative council shall receive a salary in addition to their salaries as members of the legislature. The holdover committees do exactly what is called for in

the legislative council. Maybe there is some difference and yet no one has mentioned it.

CASTRO: May I answer that question? The difference is only in the name is the answer to the question. The duties of the legislative councils throughout the states vary completely. They vary from mere clerical work to extra judicial bodies, bodies that can subpoena witnesses, and the legislative council as set up by this constitutional section is in duties no different than your holdover committee. I think that's the answer, the difference is in the name.

LAI: Could I answer what the difference with the amendment is? It limits the number; it brings in the layman; it also recognizes there shall be a critical analysis and there shall - -

CASTRO: Point of order.

CHAIRMAN: State your point.

CASTRO: Delegate Larsen's amendment nor my proposed amendment, if the motion to delete fails, is not before the house. The motion before the house is to delete the section.

CHAIRMAN: That's correct. Delegate Lai was seeking my attention. Oh, excuse me, Delegate Mau still has the floor.

MAU: One more question. If this motion to delete carries there will be an opportunity to insert a new provision in lieu of this legislative council provision, is that correct?

CHAIRMAN: The Chair would say yes because this is confined to the members of the legislature, and you could have a different section which would be comprised of other people. The Chair will recognize Delegate Lai. He's been endeavoring to get the attention of the Chair.

LAI: I just want to add one more thing. A problem of today may not be the problem of next year or tomorrow or next month, therefore the service of a council of this type as suggested by the committee or as stated by Dr. Larsen is not of much value.

CHAIRMAN: The Chair will put the question. The question is upon the adoption or the deletion of Section 22.

DELEGATE: Roll call.

CHAIRMAN: Delegates want roll call? Show of hands for a roll call. The Clerk will please call the roll. The motion is that Section 22, relating to a legislative council, be deleted. In other words, if you vote "aye," there will be no legislative council consisting of members of the legislature.

Ayes, 42. Noes, 14 (Heen, Holroyde, Kanemaru, Kawahara, Larsen, Lee, Loper, Mau, Roberts, Shimamura, Tavares, A. Trask, Wirtz, Anthony). Not voting, 7 (Ihara, Mizuha, Phillips, Sakakihara, Silva, Wist, Woolaway).

The section is deleted. The motion is carried.

LARSEN: I would like another trial balloon, if I may. I would like to introduce a resolution which reads as follows:

> Legislative council. There shall be a legislative council consisting of twelve members to be chosen in the following manner: four members to be selected by the Senate from its membership; four members to be selected by the House of Representatives from its membership; four members who are not members of the legislature to be appointed by the governor, one from each county.
>
> The legislature shall provide by law for selection, tenure, compensation - -

CHAIRMAN: Shouldn't that be done in the Convention rather than in this committee? We're adopting proposals for the legislative article.

LARSEN: Well, I am proposing a legislative article to take the place of the one that was defeated.

CHAIRMAN: You said resolution, Dr. Larsen.

LARSEN: Well I'm sorry, I misspoke.

MAU: For the purposes of discussion, I second the amendment.

LAI: I think that motion is out of order, because the substance of that motion is the same as that one just defeated.

ROBERTS: I'd like to suggest that it's perfectly proper for Delegate Larsen to submit a new section, Section 23, specifying the proposal which he has as a new section to the Constitution. As the Chair previously pointed out we have acted only on the proposal submitted by the committee which deals with a specific question. This provides for an entirely new proposal.

CHAIRMAN: The Chair will so rule, Delegate Roberts. The point of order is overruled.

ROBERTS: I move that the proposal submitted by Delegate Larsen be added as a new section to the Constitution, Section 23, to read as he has previously indicated on the floor.

AKAU: Point of order.

CHAIRMAN: State the point of order.

AKAU: The proposal presented yesterday was called 23, so if this could be called 24, I think you would be in order.

ROBERTS: I accept the amendment, Section 24.

SHIMAMURA: I second Delegate Roberts' motion.

CHAIRMAN: The Chair thinks that is in a rather amorphous state, is it not? Delegate Larsen, is it ready for offering at this time?

LARSEN: I'm ready to offer it. I have it here all written out but - -

CHAIRMAN: Not printed.

LARSEN: Not printed.

CHAIRMAN: Will you read it again so the Chair can understand it? The Chair would like to hear it so the Chair knows what we're acting on here, to make sure that we're right.

LARSEN:

> There shall be a legislative council consisting of twelve members to be chosen in the following manner: four members to be selected by the Senate from its membership; four members to be selected by the House of Representatives from its membership; four members who are not members of the legislature to be appointed by the governor, one from each county.
>
> The legislature shall provide by law for selection, tenure and compensation - -

and if it doesn't work they can - -

CHAIRMAN: Wait a minute. Is that the end of the proposal?

LARSEN: I'm sorry, I was going to comment. May I just add the final word:

of members of the council and for such research staff as the council may require to perform its duties.

Then I have a second section on duties, but that's much like what we have. May I comment for one moment?

CHAIRMAN: You have the floor, Dr. Larsen.

LARSEN: The idea, of course, is this does take the duties of the legislative council. However, I call your attention that if the legislature feels that it's not working well they can delete compensation, it's left open to that. This is much like an organization before any -- It's an organization that will outline the list of what's to be done at the next session; they also hear the criticism of the community. However, that discussion seems to me has been full here but the idea of limiting it seems important.

CHAIRMAN: Delegate White has been endeavoring to get the floor.

ROBERTS: I would like to make a suggestion on procedure. We already have the Okino amendments; I would suggest that we defer action on this to give the delegate a chance to print the amendment.

CASTRO: Before that's done, I appeal for a ruling from the Chair. I submit that Delegate Larsen's proposal is nothing more than an amendment to Section 22. It's an amendment insofar as the make-up of the membership. It is not an amendment as to the subject of the legislative council. It is a legislative council.

Now the amendment as to the make-up was not the argument that went back and forth here a few moments ago. The argument was as to the establishment of a legislative council. If there were delegates who felt that the legislative council should be established if its membership were amended, they should have voted no. But they voted aye and the aye vote was simply to delete the legislative council.

DELEGATE: Point of order on the speaker.

CHAIRMAN: Delegate Castro has the floor. Proceed, Delegate Castro.

CASTRO: The vote, Mr. Chairman. I'm asking for a ruling from the Chair. The vote, as I understood it, was against the establishment of a legislative council. It did not go to the make-up of the membership and I would like to ask whether or not the Chair agrees.

BRYAN: I think that question is out of order. I would like to call the previous speaker's attention to the fact that the Chair made that ruling before the motion to delete was put. If there was any objection to the ruling of the Chair at that time, it should have been made at that time. The Chair distinctly ruled before the motion to delete was put that it would not prevent a new section or an amendment of the question.

CHAIRMAN: That was the purpose of the Chair's ruling, Delegate Castro.

CASTRO: I withdraw my objections.

CHAIRMAN: Withdraw the appeal. No appeal.

CASTRO: "No appeal" is the word.

SMITH: I would just like to correct one statement there. I believe that the chairman stated before the deletion motion -- the motion for the deletion that he would recognize any amendment to the section, not saying any new section.

CHAIRMAN: The Chair ruled in response to the inquiry of Delegate Mau that in the opinion of the Chair a negative vote on the present section would not preclude a different legislative council consisting of persons not exclusively legislators.

WIRTZ: At this time I would like to second the motion of Delegate Roberts to defer this to give the movant an opportunity to have it printed. There may be some other amendments to it.

CHAIRMAN: It has been moved and seconded that the matter be deferred. All in favor signify by saying "aye." Contrary. The Chair is in doubt. The Chair will put the question. This is on the deferment. All those in favor signify by saying "aye." Contrary. The ayes seem to have it. The ayes do have it.

There has been printed and on the desks of the delegates, two proposed amendments to Section 21, one offered by Delegate Heen and the other offered by Delegate Trask. The Chair would suggest that all existing amendments to this section could be withdrawn in order to get this on the floor and straighten out the parliamentary situation.

OKINO: Mr. Chairman, apparently there has been a bandit around here. The amendment designated as being offered by Judge Heen is really my amendment.

CHAIRMAN: That is correct. I didn't mean to deprive you of that. Could we first have all prior amendments to Section 21 withdrawn by agreement?

BRYAN: I think we are a little bit out of order. I'd like to move for the adoption of Section 21. It was deferred so that we could reconsider it.

CHAIRMAN: That has been moved, the Chair believes.

BRYAN: That's right, but there's no reason that it should be the next matter of business other than some other section. We have deferred what we are on.

CHAIRMAN: You're quite right.

HOLROYDE: I second the motion.

CHAIRMAN: It has been moved and seconded that we adopt Section 21. All in favor signify by saying "aye." Contrary. Carried. The Chair was in error, that we debate Section 21. Will the Clerk please note.

HEEN: There is now on the desks of all the delegates an amendment to Committee Proposal No. 29, RD. 1. This bears the endorsement that it was offered by myself. That's a mistake. It really should have been in the name of Delegate Okino. This amendment now reads:

> Section 21. The governor and lieutenant governor, and any appointive officer for whose removal the consent of the Senate is required, may be removed from office upon conviction of impeachment for such causes as may be provided by law.
>
> The House of Representatives shall have the sole power of impeachment of the governor and lieutenant governor and the Senate the sole power to try all such impeachments, and no such officer shall be convicted without the concurrence of two-thirds of the members of the Senate. Subject to the provisions of this paragraph, the legislature may provide for the manner and procedure of removal by impeachment of such officers.
>
> The legislature shall by law provide for the manner and procedure of removal by impeachment of the appointive officers hereinabove mentioned.
>
> Judgments in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust or profit

under the state; but the person convicted may nevertheless be liable and subject to indictment, trial, judgment and punishment according to law.

CHAIRMAN: You are now seconding Delegate Okino's motion to amend the section, I gather.

OKINO: I move the adoption of this amendment.

HEEN: Second the motion.

ASHFORD: May I ask a question? In the second paragraph, "the Senate the sole power to try all such impeachments," does that "all" refer to the impeachment of any appointive officer or does it refer merely to the governor and lieutenant governor, and if it be the latter should it not be stricken out?

HEEN: By putting that in the same paragraph it was intended to refer to the impeachment of the governor and lieutenant governor.

ASHFORD: May I address a question? Would not the chairman of the Legislative Committee feel that that interpretation would be strengthened by leaving out the "all"? In other words, it is "such impeachments," the impeachment of the governor and lieutenant governor.

CHAIRMAN: Delegate Ashford, the Chair understands your difficulty. The word "such" would refer back in your judgment to either appointed officers or the governor and lieutenant governor when the word "all" was in there.

ASHFORD: When "all" is in there, yes.

CHAIRMAN: The chairman can quite agree with that.

HEEN: I move the deletion of the word "all."

OKINO: I accept the amendment.

CHAIRMAN: Will the delegates strike out the word "all" and that's the amendment that's before the house.

A. TRASK: On a redraft, RD. 2, which is indicated by myself, it's a mistake also and should be Delegate Okino. The only difference between the draft 1 and draft 2 lies in the liberality that will be awarded and given, vested with the legislature, to try in whatever manner and for what causes appointive officers may be removed.

CHAIRMAN: Excuse me, Delegate Trask, you're moving for an amendment are you not?

A. TRASK: I am moving for an amendment, yes.

CHAIRMAN: Let the Chair get this straight. Is there a second to Delegate Trask's amendment?

A. TRASK: I move the amendment of RD. 1 by RD. 2. Amend Section 21 of Committee Proposal No. 29 to read as follows:

Section 21. The governor and lieutenant governor may be removed from office upon conviction of impeachment for such causes as may be provided by law. The House of Representatives shall have the sole power of impeachment and the Senate the sole power to try all impeachments of the governor and lieutenant governor. No such officer shall be convicted without concurrence of two-thirds of the members of the Senate.

The legislature shall by law provide for the manner and procedure of removal by impeachment subject to the provisions of this section.

Judgments in cases of removal from office shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust or profit under the state; but the person convicted may nevertheless be liable and subject to indictment, trial, judgment and punishment according to law.

Any appointive officer for whose removal the consent of the Senate is required may be removed for such causes and in such manner as provided by law.

NODA: Second the motion.

CHAIRMAN: It has been moved and seconded that the amendment to Section 21 offered by Delegates Heen and Okino be amended and be substituted therefor by RD. 2, which is likewise printed and on the desk. Delegate Trask has the floor. It has different names, endorsements at the bottom. Does Delegate Tavares want to be recognized?

TAVARES: I raise a point of order, that actually I don't think Delegate Trask's proposed amendment is different in substance in any way from the other one. I think he may have intended it to be but as I read it, it doesn't change it at all, it just shifts the language around a little bit.

A. TRASK: May I discuss that. There is a substantial difference. The confusion in the discussion of this section is due to the fact that the governor and lieutenant governor and appointive officers are discussed in the commencement of this section. That's where the confusion is. In other words, I think it is the sense of this Convention that the governor and lieutenant governor shall be given a dignified state trial as such with all the proper attention that should be given such a trial of state. With respect to the appointive officers I do not think it is the sense of this Convention that they should be given a trial and impeachment process of equal dignity and order. So, that being the case, I have removed the expression "appointive officers" and relegated it to the last paragraph of that Section 21.

Now the difference, in answering Delegate Tavares' inquiry, if you will direct your attention to the Okino-Heen RD. 1, the third paragraph, you will note that, "The legislature shall by law provide for the manner and procedure of removal by impeachment of the appointive officers hereinabove mentioned." In other words there is no other process than by the process of impeachment whereby a person may be—an appointive officer particularly—may be removed, whereas if you will direct your attention to the last paragraph of the Okino-Trask amendment you will note that the removal of appointive officers shall be prescribed by law "for such causes and in such manner as may be provided by law."

Now it is my interpretation and understanding—that's where Delegate Tavares seems to differ with me—I say that the causes and the manner is certainly more elastic and broader than by the only one procedure of impeachment which is advocated by the Okino-Heen amendment. It certainly is my understanding that the sense of this Convention is not to make the removal of appointive officers difficult, but if the governor doesn't remove a more or less difficult - -

CHAIRMAN: Pardon me. May the Chair direct one thing to your attention. I just want to straighten out whether or not there's any difference. If you will examine the first sentence of RD. 1 it says "for such cases as may be provided by law." Wouldn't that be the same as the substance of your amendment?

HEEN: "For such causes."

A. TRASK: "For such causes." The situation is this, Mr. Chairman. I conferred with Judge Heen and his interpretation to me of how an appointive officer may be disposed of or removed, he says it shall be only by the process of

impeachment. That is Delegate Heen's interpretation of the Okino-Heen amendment. I feel that the causes and the manner, the procedure for the removal of an appointive officer should be more elastic than mere handling by the House and Senate.

In other words I feel that if the House may decide to act as a grand jury and bring a charge against a rascal appointive officer whom the governor refuses to remove and the legislature therefore feels that it is in honor bound to act, therefore it may do so by impeachment, by the selection of a joint committee of both houses, or just by the Senate or just by the House, in whatever manner and for whatever causes. So I do feel that that is the sense of this Convention and that's why I urge that the language be made broader to include eauses and remedy and not to have the removal of appointive officers by impeachment only.

CHAIRMAN: The Chair has got to dispose of this point of order. It seems to the Chair that this is a close question. Delegate Tavares, you have any further views on the point of order, whether Delegate Trask's motion is in order?

ROBERTS: I have a point of information which if answered might dispose of the question.

CHAIRMAN: State your point.

ROBERTS: The question I want to raise is this. If we adopt the article as submitted by the committee on impeachment and leave out any reference to other appointive officers, doesn't the legislature have the power to provide by law for procedures and methods of impeachment?

CHAIRMAN: Absolutely.

ROBERTS: If they do, it seems to me that we ought to adopt the committee proposal and then leave it to the legislature to make such other provision as they may want to with regard to impeachment.

TAVARES: I beg to differ with the last speaker. The impeachment provision applies only to elective officers as it now stands. That's fine, but we want to extend it to appointive officers.

CHAIRMAN: His question was whether or not it could be by legislation.

TAVARES: I disagree there. The Constitution has now prescribed two methods of removal. One, impeachment of elective officers; the other one, the removal with the consent of the Senate, removal by the governor of appointive officers with the consent of the Senate. By implication you have excluded other methods of removal of those particular officers. As to those officers for whom no particular method is prescribed, it is true the legislature in setting up the office can also provide for methods of removal, but as to those officers for whom provision has been made, such as heads of principal departments, for a method of removal by the governor with the approval of the Senate, I say by implication you can't remove them any other way unless in another section of the Constitution you give that express power to provide by law.

CHAIRMAN: The Chair is inclined to agree with that, Delegate Roberts. The Chair was in error a minute ago.

SHIMAMURA: Speaking to the point of order raised by the Chair - -

CHAIRMAN: It wasn't raised by the Chair.

SHIMAMURA: Very well, raised by someone, Mr. Chairman. I feel that this amendment by Delegate Trask, with all due deference to him, is out of order for this reason. The first paragraph of Delegate Trask's amendment is substantially similar to the first two paragraphs of Delegate Heen's amendment, but in the additional paragraphs Delegate Trask's amendment diverts from the matter of impeachment. It provides for removal for all causes not limited to impeachment. Therefore, I respectfully feel that at least as to the latter portion of this amendment, it is out of order and the amendment being whole and not separable should be ruled out of order.

MAU: With all due deference to the last speaker, although I don't agree with the amendment offered by Delegate Trask, I believe that his amendment is in order. There is a substantial difference in the method of removal of appointive officers. In the first instance, the amendment by Delegate Heen proposes that the removal of such appointive officers shall only be by impeachment. Under the Trask amendment it provides that the legislature may provide any other means, whether by impeachment or any other procedure. So I think there is a substantial difference.

CHAIRMAN: The Chair is prepared to rule. This question is not free from doubt, but the Chair will rule that the Trask amendment is in order, and will now put the question.

FUKUSHIMA: In that event I wonder if Delegate Trask will accept an amendment by inserting the fourth paragraph before the third as it appears in his amendment. The paragraph reading, "Any appointive officer for whose removal," etc., insert that paragraph before the paragraph which reads, "Judgment in cases of removal," and that will clarify the amendment.

CHAIRMAN: Will you state that again?

A. TRASK: I accept that, which is to make paragraph four of RD. 2, paragraph three, so that paragraph three would become paragraph four, Mr. Chairman, beginning with the word "Judgment" as the last paragraph.

KING: I would like to speak against the amendment offered by Delegate Trask for the simple reason that that paragraph four, which would now become paragraph three, would permit the legislature to dismiss an executive officer who had been confirmed by the Senate and whom the governor refused to remove with the consent of the Senate, on any cause at all not with any formal impeachment. By law, the legislature could provide some means of removing from office any one of the appointive officers of the governor's cabinet, heads of departments, with no formal impeachment and perhaps very little trial. It broadens the purpose of the original amendment very greatly.

This whole issue arose by Delegate Okino's desire to provide a means of removing officers who are appointed to office by the governor with the approval of the Senate when the governor refuses to remove them. It provides, and I think very properly, that such officers should be impeached. The legislature is left with the procedure of impeachment, the manner of trial, and that should be the limit of the legislative jurisdiction over that. Otherwise it could very easily be possible that the legislature could harass a department head without very much of a formal charge or trial. And therefore, I am opposed to the RD. 2 of this amendment but feel that the original amendment revised from Delegate Okino's offer by Delegate Heen should carry.

CHAIRMAN: All in favor of the amendment—this is the Trask amendment—signify by saying "aye." Contrary. The noes seem to have it. The motion is lost.

The question is now on the amendment.

ROBERTS: I am sorry to bring an amendment on this but I think the original proposal submitted by the committee had two sections in it which were extremely valuable and I think ought to be retained. If we are going to adopt the amendment proposed now, the Okino-Heen amendment, in the second paragraph of 29, RD. 1, at the beginning of the second sentence which starts "Subject," I would like to include a new sentence in there which would read as follows – this applies only to the impeachment trial of the governor and the lieutenant governor by the Senate – and the language would read as follows: "When sitting for that purpose, the members of the Senate shall be on oath or affirmation and the chief justice shall preside."

If I have a second to that, I'd like to speak to it. It's in the committee proposal.

TAVARES: For the purposes of enabling the speaker to discuss, I will second the motion.

ROBERTS: The language proposed by the committee followed very closely the language of the Federal Constitution. I am not arguing that everything in the Federal Constitution ought to be adopted by us. I haven't so argued before and I don't plan to argue that now. I do feel, however, that the removal of a governor or lieutenant governor on impeachment charges requires as careful a procedure and method for disposing of him, if he needs to be disposed of, in accordance with the best rules that we can lay down. It seems to me when the Senate sits for impeachment that it ought to sit and that it ought to be on oath or affirmation and that the chief justice ought to preside in those cases.

The argument might be presented that the governor is going to appoint the chief justice. That may be true, but so does the President of the United States appoint the justices of the Supreme Court. The justice who may preside may not be the one appointed by the specific governor on trial. We have provided for long tenure for our justices and it's possible obviously that the justice presiding will not be the one appointed by the governor. In any event, the justice presumably has to preside and the justice is required to give justice in any event.

I believe, Mr. Chairman, that the procedure with regard to impeachment of a governor is a pretty serious problem and it ought to be circumscribed in such manner that he be given adequate and full and careful trial. It seems to me these amendments, Mr. Chairman, to conform to the provisions of the Federal Constitution and the committee recommendations are in order.

CHAIRMAN: Delegate Roberts, just where would that amendment go.

ROBERTS: It goes in the second paragraph of the draft RD.1 as a new sentence after the word "Senate."

ASHFORD: After having the extremely agreeable experience of having the delegate endorse something from the Constitution of the United States, in counter-distinction to actions in the Style Committee, I would like to say that I am heartily in favor of having the chief justice preside. If he doesn't preside fairly, he can be impeached. But I would also like to know what's meant by "upon oath or affirmation." The Senate is upon oath or affirmation all the time.

CHAIRMAN: That is taken from the Federal Constitution and they are sitting as a high court of impeachment specifically when they try impeachment cases.

FUKUSHIMA: The Federal Constitution, when it provided that the President when he is being tried for impeachment the chief justice should preside, there was a reason for that. As you know the presiding officer of the Senate is the Vice President. It would be hardly conceivable for the Vice President to preside over the impeachment of the President. Here we don't have such a thing. So if we have the lieutenant governor here, he is not the presiding officer of the Senate. Therefore the amendment proposed by Delegate Roberts doesn't seem to be in order. There was a reason for the provision in the Federal Constitution which does not exist here in our Constitution.

FONG: What would happen in the case if the governor knew he was going to be impeached and he refused to appoint the chief justice.

CHAIRMAN: Then the office would succeed under the judicial article.

FONG: He is not chief justice, he is only acting chief justice.

CHAIRMAN: The judiciary article provides for succession and the associate justice will succeed to all the powers of the chief.

SHIMAMURA: I should like to speak in favor of Delegate Roberts' amendment. I believe this is a sound amendment because I think it will more greatly assure justice and fairness of the trial where the chief justice, who has knowledge of the law, is the presiding officer.

OKINO: The amendment offered by Delegate Roberts was in one of my amendments. It was left out. I was rising to accept the amendment so that the matter can be put to a vote. I do accept the amendment.

CHAIRMAN: Is that amendment accepted, Delegate Heen?

HEEN: It's accepted.

MAU: I wonder if the movant would also accept this amendment to his amendment, "Two-thirds of the members present." It appears in line five of the second paragraph.

HEEN: That question came up before this committee I think yesterday and it was voted down to have it read this way.

MAU: It was discussed but I don't believe a vote was taken.

CHAIRMAN: Well, all prior amendments have been withdrawn. If you wish to make that amendment, the Chair will entertain it at this time.

MAU: I do make that amendment, Mr. Chairman.

SHIMAMURA: Second it.

CHAIRMAN: The word "present" would be added.

HEEN: That I think is a separate amendment, not tied up to the amendment made by Delegate Roberts.

CHAIRMAN: No, the Chair is not going to put that amendment in view of the fact that both the movant of the original amendment and the second have accepted the proposal of Delegate Roberts. Therefore, the parliamentary situation is there is one amendment by Delegate Mau, who would add the word "present" at the end of the expression "two-thirds of the members of the Senate present."

MAU: I had in mind as a matter of style, "two-thirds of the members present."

CHAIRMAN: In other words, you would conform to the Federal Constitution.

MAU: That's correct. I don't think "of the Senate" is necessary. Just surplusage.

H. RICE: I think we should defeat this amendment because you should have all the Senate present.

CHAIRMAN: The question is on the amendment. All in favor signify by saying "aye." Contrary. The motion is lost.

The Chair will now put the question on the amendment to Section 21. All those in favor signify by saying "aye." Contrary. Carried.

SAKAKIHARA: I now move that Section 21, as amended, be adopted.

ROBERTS: Second the motion.

CHAIRMAN: It has been moved and seconded that Section 21, as amended, be now adopted. All those in favor signify by saying "aye." Contrary. Carried.

GILLILAND: Having voted in favor with the majority, at this time I move that this committee reconsider the action taken on Section 11 from Committee Proposal No. 29, the last paragraph there with respect to expenses of $1,000 a day for the legislature.

KAM: Second that motion.

CHAIRMAN: It has been moved and seconded that we reconsider our action in regard to Section 11.

A. TRASK: Will that section be read, if you please. There are so many drafts of it.

CASTRO: Point of information. Is it proper to ask a movant of a motion to reconsider the reason for the motion? I think it would enlighten the vote. In other words, there is considerable in this section and I am sure that a motion to reconsider in this particular case, the movant probably doesn't have the entire section in mind, and I'd like to know so that I may vote more intelligently, the reason for the motion to reconsider.

CHAIRMAN: Delegate Gilliland, do you desire to state your reason?

A. TRASK: Point of order. Since the Chair is having some time getting that particular amendment and since Mr. Gilliland has proposed it, let's have Mr. Gilliland read the section he is referring to, please.

NIELSEN: Point of order. Mr. Gilliland voted "aye" on the limiting of legislative spending, so he can't move for reconsideration, I don't think.

CHAIRMAN: That is just the reason he can, Delegate Nielsen. The Chair will declare a few minutes recess so we can get these amendments together.

(RECESS)

CASTRO: In regard to my question as to whether or not it is proper to ask the movant of a motion to reconsider his reason for wanting a reconsideration, if it is proper, I would like to direct that question to the Chair.

CHAIRMAN: As soon as the delegates take their seats, the Chair will acquaint the body with the status of the section. The Chair will endeavor to state the status of the section, the substance of it, without reading the exact language, unless the words are requested.

There was a motion by Delegate Roberts to amend Section 11, which would provide that the legislators receive salary and allowance prescribed by law. There was also a motion that the salary be fixed in the schedule. The second part of Delegate Roberts' motion involved a schedule for the first legislature. That schedule was adopted and provided for a salary of $2,500 for the general session and $1,500 for each budget session and $750 for each special session. There was also an amendment -- I might state that Delegate Roberts' motion was an amendment to the amendment offered by Delegate Rice, which left the second paragraph of Delegate Rice's amendment intact. That was voted upon and it was that paragraph which fixed the limit which the legislature could expend for employees. That was adopted. And that was fixed at $1,000 per calendar day during any general session and $500 per calendar day during any budget or special session. Those provisions now constitute, added up together, Section 11.

Does Delegate Gilliland desire to enlighten the body as to the reasons for his request for reconsideration?

ASHFORD: I'd like to correct part of that. I think Mr. Rice's amendment was an amendment to my amendment.

CHAIRMAN: That is technically incorrect because if the delegate will recall she withdrew her amendment at one time to permit Delegate Rice to put in the substance of the same thing in the delegate's amendment. Substantially you are correct, Delegate Ashford.

GILLILAND: Since voting on this Section 11 I have had further time, ample time, to study the cost and expenses of the legislature. Having been a member of the legislature at one time in 1947, I have come to the conclusion that the legislature cannot get along on $1,000 a day or $500 a calendar day as we voted for on this Section 11, so my intention is to have this section of the second paragraph of Section 11 be deleted altogether. That's the reason I'm asking for a reconsideration.

CHAIRMAN: And you are asking for a reconsideration of the entire section, is that correct?

GILLILAND: Of paragraph two of Section 11.

CHAIRMAN: Just the paragraph relating to fixing the maximum of expenses per diem of the legislature?

GILLILAND: That's right.

KING: He has to ask to reconsider the action taken in the adoption of the section before he can vote on a certain paragraph.

CHAIRMAN: That is correct. The Chair will so rule. It has been moved and seconded that we reconsider the action taken.

ARASHIRO: Point of information. Are we going to reconsider the whole section or the second paragraph?

CHAIRMAN: The whole section.

PORTEUS: May I point out to the delegates, as I understand this particular motion, it is the intention to get at the particular section with respect to the $1,000 limitation, but because of having adopted the entire section you can't get after the paragraph unless you reconsider the action on the entire section.

CHAIRMAN: That is correct.

PORTEUS: But insofar as the salaries of legislators are concerned, that's in the schedule and that is not included in this motion.

CHAIRMAN: No, the Chair will rule otherwise on that.

PORTEUS: Pardon me, if you will read Section 11, the schedule of $2,500 is not in Section 11. The motion was to reconsider the action taken on Section 11. That leaves the $2,500 as set in the schedule quite apart from this motion. It will not be in order to vote again with respect to the pay of legislators because that is not written out in Section 11. That is put into the schedule and it's not in the motion and that's not what the gentleman is after. He's after the $1,000 limitation, as he stated.

FONG: I believe the speaker is correct in that attitude and I don't think there is any move here to reconsider the salary of $2,500. There is no move here to reconsider that salary, that salary will stay.

H. RICE: When you consider the section the whole section is open to amendment, not just part of the section.

CHAIRMAN: It is the Chair's understanding. Certainly, it was the substance of Delegate Roberts' motion. He made it very clear to this body that when he was changing the stated figure, the numbers that he didn't want, that he was doing so in abiding by the figure that this body had already voted upon, and he would offer at the appropriate time a schedule which would have the identical figures in it and that was done and that was carried. It seems to the Chair that in that framework it's improper to consider the section apart from the schedule.

FONG: May I ask for a ruling? The movant asked for reconsideration of the last paragraph of Section 11, paragraph two. Under that request I believe it is proper for us just to discuss paragraph two.

CHAIRMAN: Don't you agree that the entire matter of the salary and the expenses were tied up in Delegate Roberts' motion? You do not agree with that?

FONG: No, I do not agree with that.

CHAIRMAN: The Chair will ask Delegate Roberts, being the author of this impasse, to enlighten the body.

ROBERTS: I am not the author of the impasse. I would like to state that so far as my amendment was concerned and the rulings of the Chair are concerned, they apply to Section 11. It is true that the section, the second paragraph, would appear in the schedule. Technically I think the Chair could rule either way on this question, that having adopted Section 11, Section 11 consisting of two parts, paragraph one of Section 11, paragraph two to go into the schedule, he therefore could rule in favor of reopening the second section. The section dealing with paragraph two of the Rice modified amendment deals with another part of that same proposal.

It seems to me, Mr. Chairman, that once you open the section, however, you open the section to any amendment unless the Chair clearly rules beforehand that opening Section 11 will not permit the opening of the section dealing with the salaries. Then it would be open for amendment when it came in. If the Chair would rule that it's not open, then the question could be opened on reconsideration.

KING: I have before me a copy of the amendment to Committee Proposal No. 29, amending Section 11 to read as follows: "Section 11. Compensation of members. The members of the legislature shall receive such salary and allowances as may be prescribed by law," and something about "the amount thereof shall neither be increased nor diminished during the term for which they are elected." That language was changed. Then, "No salary shall be payable when the Senate alone is convened." Then there's quite a break in the amendment offered by Delegate Roberts and the language goes on, "The following to appear in the schedule." So I think that the point raised by Delegate Porteus is well taken, that the action on the salaries is not a part of Section 11 but is going to be a part of the schedule. We adopted it to be incorporated in the schedule when the schedule is taken up, and this first paragraph pertains only to the first paragraph of Section 11 and that has only one more short paragraph.

ASHFORD: I am not in agreement with some of the previous speakers. I think that first section, if we choose to amend it now, we can go right back to where it was before the amendment and write in the salaries.

CHAIRMAN: The Chair is trying to get its bearings here. Will you just hold that a minute?

PORTEUS: I wonder if you would give me the opportunity to make a suggestion which may bring this matter to a head. That is if the movant—if I can get his attention, Delegate Gilliland—if the delegate were to make a motion that he moves to reconsider Section 11 for the purpose of dealing with the paragraph with respect to the limitation of expenditures for employees of the legislature, that it would mean that the section was being reconsidered for that purpose only and the motion to reconsider carrying on that basis would leave that paragraph alone for consideration. That would dispose of this other question.

CHAIRMAN: That doesn't seem to dispose of the Chair's problems.

BRYAN: Might I help the Chair, please? As I recall, there was a ruling on this very subject yesterday in terms of whether we could vote on Section 11 and the part appearing in the schedule at the same time. Does the Chair recall that? It was finally ruled that they were actually separate things. I think that that might help clarify the present problem.

H. RICE: I move to reconsider the whole Section 11.

FONG: Second the motion.

FUKUSHIMA: I rise to a point of order. There's another motion pending.

CHAIRMAN: The point of order is sustained.

H. RICE: I'll amend the motion that we consider the whole section.

CHAIRMAN: That's the basic question that the Chair has to decide. I think we'll take about a two-minute recess while I read the minutes.

A. TRASK: Delegate Gilliland has withdrawn his motion.

DELEGATE: No.

(Confusion)

KING: Just one small point. Delegate Rice, I think, is not qualified to move to reconsider. If the Chair wants a two minute recess I think it might be quite in order.

(RECESS)

CHAIRMAN: The Convention will please come to order. Will the delegates please take their seats.

It is the ruling of the Chair that Section 11 alone is being reconsidered in view of the fact that we voted upon the schedule separately. However, the Chair will point out that in the event Section 11 is reconsidered, it would then be open to any member to incorporate or make by reference

or otherwise the schedule, so therefore the entire subject of the salaries of the legislators would be open by that method.

Are you ready for the question? The question is on the motion for reconsideration. The Clerk will please call the roll.

MAU: I wonder if you would ask the delegates to use their mikes. We can't hear those who are voting in the front.

CHAIRMAN: The Chair has requested that several times.

[Delegate Tavares entered the Hall during the voting and voted on the question.]

CHAIRMAN: The Chair will rule that Delegate Tavares is out of order at this time.

KING: Delegate Tavares has entered the hall before vote was announced and he may vote.

CHAIRMAN: He may vote any time before the vote is -- He can't participate in debate.

TAVARES: I simply asked and I vote "aye."

Ayes, 34. Noes, 22 (Akau, Arashiro, Ashford, Castro, Corbett, Kanemaru, Kawahara, Kawakami, Kellerman, Larsen, Luiz, Nielsen, C. Rice, H. Rice, Roberts, Sakai, Serizawa, A. Trask, J. Trask, Wirtz, Wist, Anthony). Not voting, 7 (Ihara, Lee, Mizuha, Ohrt, Phillips, Silva, Woolaway).

CHAIRMAN: The motion to reconsider is carried.

ASHFORD: May I now ask if there were some who voted "kanalua" whose names were not subsequently called?

CHAIRMAN: They were all called.
Section 11 is now before the body.

FONG: I now move that we delete the second paragraph of Section 11.

FUKUSHIMA: Second it.

CASTRO: Mr. Chairman?

CHAIRMAN: Just a minute, Delegate Castro.
The Chair will direct your attention to the fact that the only thing that is left is the committee proposal. The entire Section 11 is reconsidered. And what is your motion then, delegate? Should there not be a motion to adopt the section originally? The Chair will entertain a motion that Section 11, as reported by the committee, be adopted.

CASTRO: I so move.

FUKUSHIMA: I second that motion.

FONG: Mr. Chairman, I now move that that Section 11 be amended to delete the second paragraph.

FUKUSHIMA: I second that motion.

CHAIRMAN: The Chair does not understand at all what Delegate Fong is talking about. There's only one paragraph in Section 11.

BRYAN: I think, in order to clarify the thing, I will move that we adopt Section 11, as amended.

CHAIRMAN: That has been moved by Delegate Castro and appropriately seconded. Now the question is the vote on Section 11.

BRYAN: Point of information. That means my motion was Section 11 as reported by the Committee of the Whole yesterday?

CHAIRMAN: The Committee of the Whole has not made any report.

BRYAN: All right, as amended by the Committee of the Whole yesterday.

FUKUSHIMA: That motion has already been made and seconded.

KING: The motion offered by Delegate Fong referred to the amendment which I think was originally proposed by Delegate Harold W. Rice which split Section 11 into two paragraphs. The first paragraph was amended and adopted, and then the second paragraph was adopted.

CHAIRMAN: That's not now before the house. We've reconsidered everything that we did yesterday. The only thing before the house is Section 11.

FONG: May I restate my motion? I move that Section 11 be amended to read as follows: substitute the word "$2,500" for the word "$1,500."

ROBERTS: Mr. Chairman.

CROSSLEY: Point of order.

CHAIRMAN: Delegate Fong has the floor. Proceed, Delegate Fong. One at a time.

CROSSLEY: Point of order. The Chair has just ruled that the section before us is the original Section 11. That is not what we voted to reconsider. We voted to reconsider our action yesterday in adopting Section 11, as amended. That is what we reconsidered.

DELEGATE: Point of order.

CROSSLEY: I have not finished stating my point of order, please. Therefore I think the Chair is out of order in stating that what we voted to reconsider was the original section, not what we had adopted. We voted to reconsider the action that we took yesterday.

FONG: I think the point is well taken.

A. TRASK: Point of order. I had requested the Chair, when Mr. Gilliland first brought up this subject of reconsideration, to inform this body what the movant wanted reconsidered. He failed to do so and I think the Chair is right in opening up the subject and leave it to the committee proposal Section 11. They refused to bring up that subject and to read the precise matter at hand because they were fearful of bringing up the question of compensation. They wanted to limit the attention of this body just to what they were interested in and nothing else.

CASTRO: My motion, which has been duly seconded and is before this committee, was that Section 11, as amended, be adopted. That has been seconded and that is what is before this house. So that my understanding is that Section 11, as amended, starts out with a paragraph on compensation of members and the second paragraph is regarding the calendar day limitation of the expenses of both houses, and the intention of my motion, Mr. Chairman, was to place whatever motion the opponents of the amended section have before the committee. So I really believe that at the moment the motion that Delegate Fong was about to make is in order because the motion to adopt is now before the committee.

CHAIRMAN: The Chair was trying to get Delegate Fong's motion and all these points of order were raised. Will you please state your motion, Delegate Fong?

FONG: I believe that the points raised by Delegate Crossley and Mr. Castro are well taken. My amendment is that

Section 11 be amended to delete from that section the second paragraph - -

CHAIRMAN: Just a minute, what Section 11 are you talking about?

FONG: Section 11 as we have before this assembly, which is the Section 11 which we adopted.

CHAIRMAN: The Chair understands that.

FUKUSHIMA: I now second that motion.

CHAIRMAN: What paragraph do you want to delete, Delegate Fong?

FONG: The second paragraph.

ROBERTS: I think it would help the situation if Delegate Fong would read the specific section he would like to have deleted so that the body would know specifically what he wants deleted.

FONG: The paragraph to be deleted will be - -

A. TRASK: Point of order, let us have stated for now and all time what the entire section is that we are considering.

FONG: We have been stating that for the last two minutes, Mr. Chairman.
The paragraph reads as follows:

> In no case shall the total expenses for officers and employees for each house exceed the sum of $1,000 per calendar day during any general session, nor the sum of $500 per calendar day during any budget or any special session, based upon the average - -

I didn't get the other words on that.

HEEN: That is not correct. I think the word "expenses" was changed to "compensation."

FONG: I think that was it, yes.

CASTRO: There's also a period after the word "session."

CHAIRMAN: We will leave that to the Style Committee, if it ever gets it.

CASTRO: I have a question which I think goes to the very root of this motion and I'd like to direct it to the Chair. I'd like to ask the movant what the reason for his motion to delete is, because if it is my understanding that his reason is that the limitations are too tight then I would gather from that that he would have no objection to further amendments to this section which would attempt to make the financial operation of the legislature more efficient. My question is, what is the reason for the motion to delete?

FONG: The reason for deleting that was well expressed yesterday by the speakers who spoke against this amendment. We feel that we shouldn't hog tie the legislature, that we should have no limitation as far as the legislature is concerned in this matter.

RICHARDS: I feel that it is perfectly proper to delete this. We do not know what the legislature is going to be faced with; we do not know what type of inflation might come along which would change salary schedules, we do not know what can happen in the next ten years. It's the same situation as faced this Convention when the last legislature in a matter of less than two years ago picked the figure of $250,000 out of the air to run this Convention and we find out that they were very wrong. Now we are putting in something in the Constitution that isn't just two years away but is going to run ten years. I think that it's entirely out of order for this body to put something in when we don't know what the conditions are going to be and will not be able to take care of the situation.

AKAU: As a direct antithesis of what is just being said, why then did we stipulate the money for the governor, the money for the lieutenant governor and other purposes that we have been incorporating. In other words we are being very inconsistent, we stipulate something in one place and then we say it smells wrong if we put it elsewhere.

RICHARDS: In answering the statement of the last speaker - -

CHAIRMAN: Delegate Lai is recognized.

LAI: I can answer that question. I think the salaries set in this Constitution would be more than enough to support the governor himself, but I am in favor of this motion to delete this paragraph because we have no concrete evidence that we can run the legislature with a thousand dollars a day. Nothing has been shown to us yesterday or today with figures that we can run with that amount. Another thing, the fluctuation of the American dollar has gone up and down the last few years and you know we talk about basing our value of the dollar on the cost of living. I don't think we can do that because the value of the dollar in buying merchandise or cost of living is not the same as the value of a dollar in hiring help. Sometime you have foodstuff plentiful, that's where you have prices that are low. That's not the case with help. If you have a shortage of special help, of special type of help, you find that the salaries are going to be high. So I don't think to set a specified amount of $1,000 would be very practical and I think this is dangerous.

MAU: I was one of those who voted for reconsideration because I wanted to give the proponents of any new motions they would make a chance to give us any new material they have. So far I'm not convinced that this paragraph should be deleted. Yesterday, I recall, the figures that were presented by Mrs. Kellerman, and I'm very, very grateful to her for the information she gave to this Convention, and I think the people at large would be very interested in that information. But until I can be shown that it was necessary, for instance, in the last session to spend close to a half a million dollars for clerical help, I'm not ready to delete this paragraph.

H. RICE: When the great sovereign state of California can limit their regular expenses of salaried employees to $300 per regular session and $200 for a special session, it seems to me that we're very liberal here in setting a limit of $1,000. Of course, I know there is a lot of unemployment in the territory and probably the body in power would like to spread their patronage over more people, build up the printing committee with a lot more people than they need, but it doesn't make sense to me. If we don't put a limit here, the legislature themselves will not be able to do it. It's shown how the expenses of the legislature have grown year after year. It just doesn't make sense.

HAYES: I would like to state my reasons here why I voted against this section here. For the simple reason first that I do not wish to put restrictions on those who will come into the future state of Hawaii in this section. I'm not one of those legislators - - I can say, and look you in the eye and say that I have had a lot of pies to split in quarters. I am not that type of legislator that has had or has ever done such a thing as that. In spite of that, in spite of the fact that I do not have about ten or three or four people to work for

me in the legislature, I still feel that there is a certain principle in this section, that I have no right to come here and put restrictions such as this for the new legislators that may come in to be elected to the legislature.

Then, too, Mr. Chairman, right here in this convention, you and I know that as we look around here we have had many people who are working here that perhaps we should have done away with them. Have we? The principle is the same, Mr. Chairman, and let's leave to the leadership of the legislature to decide for themselves, and if the people don't like that kind of leadership, then let them defeat them at the next election.

SMITH: I was one that voted for reconsideration for one fact, that—more on the sentiments of Delegate Richards—I'd like to ask the Reference Bureau for the information as to how they arrived at their figures and how the $1,000 was arrived at. I think it's very important that if we sit down and try to figure out -- I don't know a single thing about the clerical staff, but I do know this, that if we sit down and take into consideration the cost of lawyers and the clerks and the overtime that they do work, the time that is needed, I'm very leery of putting down in the Constitution a statement that they shall only be able to work under a set figure. If they would limit the number of persons working, as some of the other states I believe have, maybe that's a different thing, but I certainly am reconsidering it on that thought.

FONG: I'd like to give the members some idea of how the people work in the legislature. When I first went into the legislature I had no inkling of how hard the clerks worked, but being Speaker of the House in the last session I was faced with the problem of seeing that all these things were to come out on the calendar for the next day, seeing that these bills that were enacted into law were sent to the governor and seeing that everything was run right. As Speaker of the House I feel that the people who work for the legislature are really doing a service to the Territory of Hawaii. We begrudge them the salary of say $17 a day but do you know, Mr. Chairman, that those people come to work at 7:30 or 8:00 o'clock and they don't go home until 3:00 or 4:00 o'clock the next morning, that again the next day they've got to get to the legislature and report to the legislature at 8:00 o'clock and sometimes they are excused for another hour at 9:00 o'clock and they work throughout. Many of them work for fourteen, fifteen, sixteen hours a day doing the work of the legislature.

Now you have seen some of the stenographers here in this Convention work. I understand that some of our clerks do not go home until 1:00 o'clock in the morning or 12:00 o'clock at night. Now, do you begrudge these people paying them $17 or $20 a day for doing work which ordinarily will require three people's time to do the work?

Now as Speaker of the House I feel that those people who come to the legislature to work for sixty days only—remember this is not permanent work, it is temporary work, work for sixty days—working during those long hours of the day, they are really doing a service to the Territory and I can't see how we can set a limit on the amount of pay we are going to give those people, aside from the economic factors in the community.

DOI: I am in agreement with the ideas expressed by the amendment. Yesterday after Delegate Tavares' amendment to the amendment was defeated, I cannot see how we can vote for this amendment as is in the present form. Delegate Tavares' amendment was to meet the fluctuation in the value of the dollar. Now that that has been defeated there is no sense -- reason why we should vote for the amendment in the present form. I am more fearful of freezing the expenses at $1,000 than the abuse that might be exercised by the legislators.

ROBERTS: I voted against the proposal which was adopted on the floor yesterday. I believe the record is clear as to the basic reasons. I think the action yesterday has served its purpose. The purpose was to call attention to the fact that our legislative expenses other than salaries have been high, comparatively. I do believe that it is not appropriate to place in the Constitution an intent to criticize actions of a group or body.

Our Constitution has to be regarded as a document which will remain in existence for many years to come. We have written a very difficult section in our Constitution dealing with revisions and amendments. I say it will be extremely difficult to amend our Constitution. I can't see writing anything in our Constitution dealing with specific funds and allotments of money, regardless of the basic value and purposes for which the amendment was intended. As a matter of statute I think we could do it. As a matter of publicity and action in the community I think we ought to do it, but I cannot see how we can write into our Constitution a limitation of this type, no matter how desirable, because of the difficulty of amendment and because we've made no allowances and no provision for modification based on the appropriate changes either in prices or other methods as suggested yesterday by amendments. I think the proposal ought to be defeated.

KING: I rise to support the motion to delete this last paragraph. I voted against the paragraph for somewhat the same reasons just mentioned by Delegate Roberts. I don't think it's good constitutional law to write a limitation into the Constitution on the expenses of the legislature. As a matter of fact, the legislative branch as one of the three coordinated branches of government is the least expensive branch to the taxpayer. When you add the salaries together and the expenses of the legislature it does not compare in dollars and cents with the executive branch or the judiciary.

Now I feel that we're going way out of line to say that for the next ten years at least, until there's another Constitutional Convention, the legislature shall be restricted in its expenditures to $1,000 a day per house, and we've made no provision in there for the expenses that carry over after the legislature has adjourned, and there is a great deal of clean up work that needs to be done. So I feel that the original paragraph should be deleted and I speak in favor of the motion made by Delegate Fong.

I'd like to add one more word. I am neither a member of the legislature nor a prospective one and those who may feel that the members of the legislature are speaking from personal interest—because I do believe you're doing them an injustice when you do that—they are speaking from experience. But certainly you cannot apply that criticism to my opposition to this paragraph.

LAI: I want to ask the Convention one question. Can you tell me sincerely, that the help for the last legislature, half of them are useless and not necessary? Now, if you can't answer the question, I hope you vote to delete this paragraph.

RICHARDS: I would like to point out something here. We've been talking a great deal about how the payroll has been padded. In this sheet that was prepared by the Legislative Reference Bureau that was discussed the other day when we took our previous action, there was one line that wasn't pointed out, I think inadvertently, but that is the line, "Percentage employee cost to total cost." In 1929 it was

63.8 per cent. In 1949 it was 63.4 per cent. In other words, all the costs have gone up and it hasn't been just the padding of payroll that seems to be indicated here.

ASHFORD: I would like to say that I voted against this amendment yesterday because it seemed to me clearly a restriction that should not be in the Constitution and I followed the reasoning that has been discussed here on the floor repeatedly, but this morning I voted against reopening it because I am very much concerned by the apparent growing tendency to reopen what has been amply discussed and voted on.

ARASHIRO: As I have stated yesterday that I thought that the intent of the amendment was a very good one except that I had a grave doubt in myself whether the $1,000 was sufficient, but after thinking it over and voting for it I prefer the legislature to be a legislative body and not an employing body and that is the reason why I thought maybe the printing and other jobs can be contracted out to some contractor and we need not worry about how long the clerks work or how late the clerks work and we could get away from that worry and forget about employees completely.

I also made a suggestion that maybe we'd rather have the Civil Service Department or the Unemployment Department of the government to furnish us with the employees that are necessary, and the $1,000 that was limited to us was for the caring of the chief clerk and other employees or officers that were of that particular profession. That is the reason why I voted for it and I still think that we can go by with it, except if some amendment should be made, then I would vote for it. But I'm still in favor of the intention of that amendment and if that amendment is killed I prefer the employment part of the legislative body will be completely divorced from the legislature and some other agent should handle that.

KELLERMAN: If there is no one else who would wish to speak I suppose I -- Mr. Rice has granted that I may close the debate since this paragraph was originally my motion.

MAU: I desire to speak if the lady desires to close the debate.

CHAIRMAN: The lady has yielded, Delegate Mau.

MAU: Thank you. There's been a remark, Mr. Chairman, that the lady always wants to have the last say.

CHAIRMAN: Housewife politicians yesterday.

MAU: There's been no answer given to the figure, for instance, that was used yesterday and is on the sheet that was furnished to show why in the legislative session which lasted for sixty-three days, for instance, one of the officers, the sergeant-at-arms, was present for one hundred and forty-one days. However, I don't believe that there has been any padding of payroll. I agree that there possibly have been raises in the salaries of the various employees due to the high cost of living.

But I think essentially we must come down to this basic point that this paragraph does not belong in the Constitution. There have been many of us who have argued that the Constitution should be a concise document, that legislative matters be left to the legislature. I think that we must look at it in this sense, that if we disagree with the enormous amounts of money that may be spent for legislative employees during the sessions, then we must place that responsibility upon the legislators. After all they are elected by the people and let them carry that responsibility. By voting to delete this it does not mean that I give my consent or agree to a total of close to half a million dollars that was spent in the last session. I do believe that economies could have been practiced, but I do not believe that such a provision belongs in the Constitution.

TAVARES: As one of those who advocated this amendment and voted for it, I think I owe this Convention and myself an explanation if I vote contrary, which I'm going to do. I believe very strongly in the principle of what this thing is trying to accomplish but I have now been convinced by talking to others and thinking the matter over myself that there are so many holes in it anyhow that I don't think it will accomplish its purpose.

However, I want to say that I can't help but feel that this Convention has demonstrated that by pooling employees and by choosing more competent employees they can save money. I do believe there is substantial ground for improvement in the legislative expenses, and without trying to point the finger at any one I do believe that our legislature owes it to the public now and in the future first of all to choose more competent help. We won't resent paying help that's really competent. We do resent, for instance, employing clerks who leave out a whole line when they're checking and don't pick it up, which has been my experience. Have it picked up after the law has passed and sent to the governor. Even in engrossing that has happened. That was not the job of competent clerks, it was the job of some clerks who at times were not fully first class stenographers. I am not pointing the finger at any clerk either. That type of clerk should be given a clerkship other than engrossing and things like that. But I do say there is plenty of grounds for taking out some of the water and I believe that this is going to have some effect in that respect.

I am going to vote now to delete the amendment because I am convinced it would not accomplish its purpose.

APOLIONA: I voted against this amendment yesterday for two reasons. First, because I believe that it is purely statutory and secondly, the proponents of this amendment referred only to the compensation of the hired help. Why is it so that no reference was made to the cost expense of carrying out the work of the legislature, and that is paper costs, pencils, ink, and so forth. I would contend that the proponents of this amendment know that the cost of the different items necessary to carry out the successful work of the legislature varies and so does the hired help vary. And in response to my good friend Delegate Rice from Maui saying that the California hired help costs -- compensation is much less than the Territory of Hawaii, I would say that our people here are much better than the people in California.

NIELSEN: In this large book it says, "The temptation to reward the politically faithful and to repay political favors through appointment to legislative office or employment has resulted in the establishing of both constitutional and statutory limitations on the legislature's power to choose its officers and employees," and in the Lord's prayer it says, "Lead us not into temptation." I think we ought to lead the legislators away from temptation.

ARASHIRO: One more word I want to inject over here is that it's hard for a politician to correct its own evil and a non-political assembly of this sort may be able to help. Because I had an experience in the legislature where people from Kauai came over specially to work in the legislature and the number of jobs that we were entitled to were limited and we only can give so many jobs, but the moment we gave to the one that we thought were most qualified, the one that couldn't get the job went back and said I was a no-good legislator and everything that I did in the legislature was no good. Maybe they're right. I don't know. But if we can

have something that we do not have to go into the employment business, then I think this will be something good for the legislature. And that is the thing I want to prevent, I don't care how it is done, but I'd like to have something in that line to correct that sort of a thing.

KELLERMAN: May I answer some of the points that have been made against my proposal and I think there are answers to every point that has been made. I'll begin with number one. No figures have been given to support the reasonableness of the figures of $1,000 per house per calendar day. I don't think we need a complete breakdown for the future to obtain those figures. I call to your attention one more time, because it has been misunderstood and misunderstood by the press also in one instance, we are running this Convention with 63 delegates, 78 employees, paying rent, paying for a loud speaker system, paying for all of our supplies for less than $1,200 per day. That includes the salaries of the 63 delegates, it includes all supplies, it includes rent, it includes loud speakers and it includes the salaries of the 78 employees. I think they've done an excellent job. Admittedly they have worked hard and they have worked overtime.

That leads me to the second point. I think the first point is answered. The second point, my proposal to limit the expenses was not directed against the per diem pay of those who worked and performed their jobs. I know they work overtime. I know they come early and they stay late. I know it would be impossible to fix a classified pay for people who work on that type of schedule and that wholeheartedly. I know there are many others who do not work that way. It was directed against an overall which includes the many who are not capable and efficient and working in that manner and it includes those who, according to the schedules of payment, have been paid for days as much as sixty days in excess of the length of the full session, including the calendar days within that session. On the work, I think Mr. Fong brought out the point that those who worked so hard worked only sixty days. That's one reason that I mentioned the extension of time. In many cases I must believe that extension is not and cannot be justified.

On the point of this being the least expensive of three of the branches of the government, I think that argument is extremely weak. As also was pointed out yesterday, the amount of money spent by the legislature on its own expenses is something like one-twentieth of one per cent or one-tenth of one per cent of the total amount appropriated. Ladies and gentlemen, the Congress of the United States is about to adopt an appropriation bill for one fiscal year of twenty-eight billion dollars. I wonder what per cent of that the Congress of the United States costs and if that makes to you any sense as an argument whatsoever. If I put my hand in your pocket and take out ten dollars I am guilty of stealing, whether it's ten dollars or $10,000. It is not a question of diminumus, it is a question of if we are paying more than we need to pay and we are paying it for political patronage, let's cut it out. It isn't a question of the dollar value.

Now the question has been brought up also on "leave it to the citizens to correct the evil." I think that's a very excellent idea. I would like for all of the citizens to know the evil. I would like for them to carry it in their minds long enough and have the ability to direct it against the legislators who are responsible. I would like to ask the proponent of that idea how are the citizens going to know which legislator is responsible. He'll never get it from a confession of the legislator and he will always get the answer that it wasn't my doing, it was everybody else. And if you suggest that the citizens can turn down at the next polls every member who was elected in the preceding legislature on the theory they'll get them all because we can't tell which ones are guilty of this, then I think you are mistaken. The citizens don't act that way, they would be unjustified in acting that way. I had it from one of the members who has proposed the deletion of this amendment only yesterday the flat statement that the memory of the public is very short and if you make friends with them in the interim between anything that occurs in one session they don't like, they are very, very prone to forget it by the next.

I think the last point made that this is statutory only, I give you gentlemen an example of what you can expect from a legislature curtailing its expenses by statute. If you have had ears to the ground or to the ceiling or just in the middle of the room in the last 24 or 36 hours, I think you will note that there has been a great deal of work to obtain a necessary vote of 32 to 34 people to get reconsideration of this proposal and that work has been done by the legislators. Some of them, I shall not include all. I think that certainly points very clearly the fact that the legislators need the help of others than themselves to clear their houses. I do not believe the citizens' body are capable of doing it as well as this body.

For that reason, those many reasons, I feel the proposal that was introduced and adopted yesterday was well thought out and was well adopted, and I would ask that you defeat the amendment to delete.

Before I sit down I'd like a ruling from the Chair on one point. If by any chance this proposal -- the amendment -- I beg your pardon, the motion to delete carries I propose to introduce a second amendment. Will that be in order under the ruling that we now have Section 11 before us?

CHAIRMAN: Relating to what section?

KELLERMAN: Relating to the same subject.

CHAIRMAN: Well, if it is just a re-hash of what we're voting on it would be out of order.

KELLERMAN: It is not, Mr. Chairman.

CHAIRMAN: Well, the Chair will say it would be in order then.

LYMAN: I heard a figure of $1,200 per day mentioned. I am a little curious as to how that figure was arrived at. It seems to me that the average cost per day that we were paid was $1,000 a day for the delegates alone and I can't understand how the $200 would cover the cost of all other help, plus all other expenses.

CHAIRMAN: Delegate Castro, you have those figures?

CASTRO: I gave Delegate Kellerman some figures. The Convention has or will by July 15th have spent $181,000. Those figures can be broken down to three items; $136,000 which is the balance of the appropriation available to us for the running of the Convention, $30,000 which we received from the Governor, and an additional $15,000 which we received from the governor; $181,000. The pay of the delegates—and this is the point that needs correcting—the pay of the delegates is $63,000. We have run -- by July 15th we will have run one hundred days. If you subtract the pay of the delegates from the $181,000 you'll get $118,000 for 100 days, which is $1,180 cost for this Convention exclusive. Now, if you add the cost of the delegates it is still under the $2,000, it is in fact $1,810.

Now, I gave Delegate Kellerman a round figure, the $1,200 was without the salary of the delegates, and I wish to apologize for giving her the incorrect figure because it was quickly arrived at.

However, this does not shake the point of view and the argument that Delegate Kellerman brings forth which is that this Convention with its volume of work has proceeded in one hundred days of work at the mean cost of $1,180 per day which is just short of $1,200.

CHAIRMAN: The Chair will put the question.

DELEGATE: Question.

CHAIRMAN: The question is on the motion to delete the paragraph and that relates to the paragraph the Chair will read:

> In no case shall the total expense for officers and employees for each house exceed the sum of $1,000 per calendar day during any general session, nor the sum of $500 per calendar day during any budget or any special session.

FONG: Roll call.

CHAIRMAN: A roll call demanded? Voting aye will favor the deletion of the section which was adopted yesterday. Clerk will please call the roll.

Ayes, 35. Noes, 19 (Akau, Arashiro, Castro, Dowson, Kanemaru, Kawahara, Kawakami, Kellerman, Larsen, Luiz, Nielsen, C. Rice, H. Rice, Serizawa, A. Trask, J. Trask, Wirtz, Wist, Anthony). Not voting, 9 (Bryan, Crossley, Ihara, Lee, Mizuha, Ohrt, Phillips, Silva, Woolaway).

The paragraph is deleted.

KELLERMAN: I have another amendment that I'd like to make to Section 11.

CHAIRMAN: Has it been printed?

KELLERMAN: I have it here for distribution. While it's being distributed I will read it: Section

> There shall be an executive secretary of the legislature - -

CHAIRMAN: Delegate Kellerman, wouldn't it be a good idea if we distribute this? The Chair could declare a few minutes recess while it's distributing.

(RECESS)

KING: I move that we take a recess until 2:00 o'clock p.m.

CHAIRMAN: All in favor signify by saying "aye." Contrary. So ordered.

Afternoon Session

CHAIRMAN: The committee will come to order.

HEEN: At the time we took the recess this morning we were considering an amendment that was offered by Delegate Kellerman.

CHAIRMAN: It has now been printed and is on the desks of the delegates. You offer that amendment, Delegate Kellerman?

KELLERMAN: I offer the amendment, Mr. Chairman.

> Section ___. There shall be a secretary of the legislature who shall be selected by the legislature in the same manner as the auditor and shall serve for a term of eight years. All employees of the legislature other than the chief clerk and sergeant-at-arms of each house shall be appointed by the secretary from lists of those who have qualified for the respective positions by civil service examination, and shall be supervised by the secretary.

DELEGATE: Second the motion.

KELLERMAN: May I make a slight correction in the draft which you have on your desks before we start discussing it?

CHAIRMAN: Has the amendment been seconded?

CASTRO: I'm waiting for the chance to second.

KELLERMAN: Insert the word "executive" before the word "secretary" in each of the three places in which the word "secretary" appears. That's line one, line six and line eight, "executive secretary."

CHAIRMAN: It would read "an executive secretary."

KELLERMAN: "There shall be an executive secretary," and then in the other two places the preceding word is "the" so that will not have to be changed. The word "executive" appears before "secretary" in line six and again in line eight or nine, whichever it is.

HEEN: Shouldn't that be "legislative secretary"?

CASTRO: I second the motion to adopt the amendment as changed by the movant.

KELLERMAN: If I may, I wish to speak very briefly on this. I don't think the point need to be belabored.

I think all of the expressed opposition to my preceding proposed amendment, which was eventually deleted, went to the fact - - two facts. One, that it would be impossible to estimate in advance what expenses, what the employees' compensation might necessarily become due to fluctuating value of the dollar. Also that it was bad constitutional drafting to write into a constitution a maximum dollar figure which would be very difficult to amend were that found to be inadequate due to now unforeseen circumstances either in volume of work or in the value of the dollar.

My proposed amendment deletes all reference to money. It incorporates the expressed statement of almost every speaker who spoke against the preceding amendment that he was deeply in sympathy with the idea of curtailing legislative expenses where they were unjustified, that we need persons who are qualified to perform the work and those unqualified should not be employed, that we needed to put this on a much more businesslike basis. It seems to me my proposed amendment accomplishes all of those expressed beliefs, intentions and ideas.

You will notice that this provision would authorize the selection by both houses of the legislature, in the same manner that it appoints an auditor, to select an executive secretary who shall serve for a term of eight years, therefore will not be subject to pressure by any one legislature, which was our reason for putting an eight year term for the auditor. He would serve as what I would call an administrator, a business manager of the legislature to get away from the evils of the political system of patronage, to get away from unnecessary expenditures of the tax dollar.

I think it may amuse the delegates and also be a point of interest that it has long been recognized that just plain political patronage is an evil of the political system. I have often heard it expressed that it is unfortunately a necessary evil. I would put that "necessary" in exactly the same position as the arguments that were made against women being given the vote when I was a child. I remember it very well. I wasn't too young, I'll admit that.

CHAIRMAN: How old is the delegate?

KELLERMAN: Old enough. I don't mind, we can call that personal privilege. I would just as soon tell you, but the point is this. I lived in a small town in Virginia and before women were given the vote, election day was a day when women and children stayed off the streets entirely. The men went to the polls, many of them got drunk. There were a great many fights around the polls, the election booths therefore were no places for ladies. During the evening there were torch light parades when the returns came in and there was more drinking and there were more fights. Now perhaps none of that ever occurred in the Paradise of the Pacific. It occurred in the good old states of Virginia and North Carolina.

Those very reasons were used against women getting the vote. They were necessary evils of the political system. On election day no lady who justified the title would be caught dead at an election booth because she would be disgraced to be in the presence of such drinking and such uncouth behavior which always went on. May I point out that since women have been given the vote the election booth has changed its character. It is now the place where children play all day with the campaigners' cards and have a beautiful time. I've seen no fights, I've heard no obscenity, and it is all very well behaved. I think the evil of patronage in the legislature can go the same way as the disgraceful election booth.

CASTRO: This gives to the delegates of this Constitutional Convention a chance to show the way to all of the sister states where they in their own time have failed. This attempt is not new. If incorporated into the Constitution it will be new. It will be the first incorporation into a constitution of its type, but to show you that the thinking is not new, I would direct your attention to the fact that Wisconsin's Constitution provides for selection of staffs - - only provides for election of presiding officer and chief clerk, and then a statute was followed up on the basis of a recommendation by the Convention that the staff of the legislature should be chosen on a merit basis. Now, that was Wisconsin's attempt to solve this situation of political patronage, milking the public fund.

California, the state which has given a great deal of attention in these latter years to the expenses that result from political patronage, has in its Constitution a rather newer amendment to the Constitution, the requirement that the legislature so far as advisable will select its employees and attaches under the provision of the law governing civil service, but the direction of the Constitution has never been followed by the legislature. And while I have not had the time to investigate into the debate of that particular - - when that amendment was adopted, I feel sure that those voters who could have gone along with a stronger provision were lulled away from it on the basis of the legislature will provide in view of the sentiments of the Convention.

Now six other states have attempted to meet the problem and their legislative session - - the provision in the legislative session as to what the merits shall be have always failed.

So, I think the delegates, if they feel that they would like perhaps to take an initiative in a new and rather prideful attempt to aid the citizens, whom all of us sooner or later have come around to saying we represent, in having his tax dollar spent wisely, then a provision - - the support of such an amendment would not only be wise in my estimation but on the basis of the statistics and the information we have, would indeed make history.

ARASHIRO: If it's acceptable to the proposer of this amendment, I wish to offer an amendment to this amendment by the insertion of the following words in the seventh line after the word "position," "by an examination given by the civil service department."

CHAIRMAN: That's already in, is it not, Delegate Arashiro?

ARASHIRO: No, the addition I am making is that "by an examination given" and then goes on "by the civil service department."

CHAIRMAN: It seems to be substantially the same thing to the Chair unless you can enlighten the Chair. Is that not right?

KAGE: I was going to second that motion. May I explain a little further on that?

CHAIRMAN: Will you please explain the difference?

KAGE: As it is here in the amendment here, these employees will become members of the civil service system of the state. But if you have it the other way, they take the examination from the civil service department but are not members of the civil service system.

KELLERMAN: I think I was asked if I would accept that amendment. May I speak on that point first? I think we might arrive at that proposal, which I think is a very good one, by a slightly different change of language there. If we say "respective positions by examinations prepared by the civil service department and given by the executive secretary," then that takes it entirely out of the civil service authority, and it also gets away from the difficulty of classification and classified pay schedule which you will observe in my amendment I have not proposed realizing that employees of the legislature work under such extremely different conditions from ordinary governmental employment. The usual even part-time employment for the government is so many hours per day but throughout the year, it is not limited to intensive work of 17 or 18 hours a day for two months, so that I have carefully omitted any reference to classification or pay schedule. And I think to make it even more clear that this does not place them under civil service, if we say there "respective positions by examinations prepared by the civil service department"—if that's the proper word; I don't know about the word department—"and given by the executive secretary."

CHAIRMAN: The Chair was going to suggest to Delegate Arashiro if the following - -

KAGE: According to the amendment there, it calls for a civil service department or civil service system. We do not have a civil service system in our Constitution. I think it's wrong. I think it should be amended in this particular fashion; strike out the words "civil service" and after the word "examination" insert "as may be prescribed by law," because you cannot call for an examination from a body which has not been created. And it serves the same purpose.

KELLERMAN: I think then if that language is advisable we have to say "who have qualified for the respective positions under a merit system by examination as may be prescribed by law." "Under the merit system by examination as may be prescribed by law" - - "such examination as may be." I would appreciate any further thinking on phraseology from the delegates to arrive at what is obviously what we're trying to get at. I don't know just the language to put it in.

CHAIRMAN: The Chair will suggest this language to Delegate Arashiro. If you will examine the line, third from the bottom of the proposed amendment, if it should

read "for the respective positions by a civil service examination which shall be supervised by the secretary," would that meet the delegate's point? "By a civil service examination which shall be supervised by the secretary."

C. RICE: I don't think this amendment is going to accomplish anything. I don't think so.

HEEN: May I ask -- rise to a point of information. What amendment is the speaker talking about? The last --

C. RICE: I am talking about the one under consideration.

HEEN: The one proposed by Delegate Arashiro?

C. RICE: No.

HEEN: Oh, the whole thing.

C. RICE: Delegate Kellerman.

CHAIRMAN: The delegate is talking about Delegate Kellerman's amendment to which there has been a suggestion of an amendment.

C. RICE: Nobody is going to say how many employees there are. You talk about the governor being all powerful, the secretary of the legislature is going to be the next all powerful. It's not going to curtail expenditures, just has someone to appoint. I was chairman of the Ways and Means Committee for several years. I always took a qualified man for my clerk. You mean to tell me that some administrator is going to send me a list, I've got to pick one from that? I can't see that this is going to accomplish what we want. We want to hold down the expenditures of the legislature. I don't think Mrs. Kellerman is getting at it the right way. I am opposed to this amendment.

LAI: As I see it here the position of the secretary will be a permanent position. Now what is the status of -- are they all permanent?

CHAIRMAN: Well, they'd be temporary employees, to serve during session presumably.

LAI: I am not saying I'm for it, but I think something to this effect "to serve during the term required" or "during the time required."

RICHARDS: I would like to move an amendment to this amendment, if the proponent would accept it. Instead of the words "selected by the legislature," delete those words and insert "elected by the qualified voters of the state."

FONG: Second the motion.

RICHARDS: If I may speak on that point? This particular little Napoleon --

CHAIRMAN: Mr. Richards, may the Chair get the parliamentary situation --

KELLERMAN: I do not accept that amendment.

CHAIRMAN: I didn't think you would. The Chair wants to get the parliamentary situation straightened out. As the Chair understands there was an amendment proposed by Delegate Kellerman to which there has been an amendment suggested by Delegate Arashiro. The Chair would like to get straightened out the status of Delegate Arashiro's amendment before entertaining your amendment.

APOLIONA: I appeal to the ruling of the Chair. Delegate Kellerman has already stated her cause to this Convention by saying that she welcomes any amendments to her amendment. I think Delegate Richards is offering an amendment to this amendment. He is perfectly in order.

CHAIRMAN: She did not welcome an amendment such as Delegate Richards gave.

KELLERMAN: I welcome the amendment of phraseology to bring out the point which we were trying to word. It had nothing to do with the election by the public body, I mean by the public at large of the executive secretary of the legislature.

KAUHANE: That being the case, I'd like to move that, if it is proper at this time, that this proposed amendment offered by Delegate Kellerman be referred to the Committee on Miscellaneous Affairs.

CASTRO: When I seconded this motion I was prompted to make a remark which I thought possibly would be considered impertinent, so I didn't, but in view of the ham stringing tactics going on at the moment I would like to make a statement; that the defeat of the previous amendment was based, with prefacing statements of sympathy with the attitude of the amendment, but the opposition was placing dollars and cents in the Constitution. Now here is an amendment which tries to go to the same evil, the same trouble, and I find that the speakers who were speaking against the amendment on the basis of dollars and cents are now finding a new way in which to trip up an honest attempt to --

RICHARDS: I rise to a point of personal privilege. Are those remarks directed at my remarks?

CASTRO: They're not directed to your remarks.

CHAIRMAN: Will you please state your point of personal privilege, Delegate Richards? You are recognized.

RICHARDS: I made my point. It was the fact that the remarks sounded as though they were directed to my remarks. I have been apologized to, or rather stated that they were not directed to me, therefore the point has been cleared.

CHAIRMAN: Proceed, Delegate Castro.

CASTRO: Possibly it would be better at this time to ask if it is really the sense of the delegates of this Convention that some provision should be put in the Constitution to try to --

FONG: Out of order, Mr. Chairman, out of order.

CHAIRMAN: The Chair's inclined to agree, Delegate Castro. The question is on the amendment. The Chair would like to get straightened out, if it could, the status of the proposed amendment.

KING: My understanding is that the amendment suggested by Delegate Arashiro and in essence accepted --

CHAIRMAN: That's what the Chair wanted to get straightened out.

KING: -- by Delegate Kellerman --

RICHARDS: Mr. Chairman, may I --

KING: Let me finish, please.

CHAIRMAN: Delegate King has the floor.

KING: Let me finish.

CHAIRMAN: Will you please give the delegate the floor, Delegate Richards.

KING: There was a further suggestion from Delegate Kage, but as a matter of fact there's no concrete amendment to Mrs. Kellerman's proposed amendment before the Convention. So in that case Delegate Richard's amendment is

in order. In other words, there've been suggestions and suggestions on top of suggestions. Now if Delegate Arashiro, Delegate Kage and Delegate Kellerman can get together and suggest to the Convention what language they would like to put in there after the words "respective positions," then we'd have something concrete to discuss.

CHAIRMAN: The Chair's understanding was that there had been a proposed amendment by Delegate Arashiro, which was seconded by Delegate Kage and it was in indefinite form, and the Chair was trying to find out what the purport of the amendment was.

KELLERMAN: I rose to that point.

RICHARDS: In order to clear the atmosphere I'm willing to withdraw my amendment temporarily until the other point has been decided.

CHAIRMAN: Very well, it has been withdrawn.

KELLERMAN: May I suggest this language then. Line nine, "the executive secretary, from lists of those who have qualified for the respective positions by examinations prepared by the civil service commission and given by the executive secretary, and shall be supervised by the executive secretary." I am very much afraid to leave to the - -

CHAIRMAN: Would you locate that amendment? The Chair did not follow it. I'm sorry.

KELLERMAN: After the word "positions" in the eighth line, I think it is, or seventh, insert the words "by examinations prepared by the civil service commission"—if the word commission is wrong, I'd like some one to correct that, I don't know the departmental setup—"by the civil service commission and given by the executive secretary, and shall," then the rest of the language follows as was originally prepared.

My reason for not accepting the language, "as may be prescribed by law" is because with the obvious dislike at least of the present members of the legislature, many of them, and the direction which that leads my thinking, I can see how the legislature could defeat most of this by not prescribing any examination if left to them by law. So I think perhaps it's better to spell it out. The civil service commission would prepare an examination. It would be given by the executive secretary who would do the grading and the analysis of it. It would not come under civil service. It would not be passed by civil service.

CHAIRMAN: Delegate Kellerman, inquiry from the Chair. Then the language, "by civil service examination and shall be supervised by the executive secretary," would be deleted, is that correct?

KELLERMAN: No, Mr. Chairman. After - - I will read again beginning with the word "position," "by examinations prepared by the civil service commission and given by the executive secretary, and shall be supervised by the executive secretary." Your confusion probably arises, the supervision means their work shall be supervised by the executive secretary. The other phrase is an insertion that would come in lieu of the word "by civil service examination."

CHAIRMAN: Is that acceptable to Delegate Arashiro?

AKAU: Point of information. I wonder if Delegate Kellerman means exactly what she's saying here. In view of my experience in correcting examination papers, being on one of the civil service committees, it does take a great deal of time, Delegate Kellerman.

CHAIRMAN: Delegate Kellerman, - -

KELLERMAN: I'm sorry.

CHAIRMAN: - - the statement is being addressed to you.

AKAU: I was wondering if you actually meant these words because in view of the fact that it takes a great deal of time to correct examination papers - -

DELEGATE: Address the Chair.

AKAU: I was wondering if you would eliminate "given by the executive secretary" the first time. In other words have what you have there, "by the civil service commission," and that's the idea. The civil service commission would prepare the examination and give it, but then the work itself would be supervised by the executive secretary. Isn't that actually what you meant?

CHAIRMAN: Do you care to comment on that, Delegate Kellerman?

KELLERMAN: I am trying to arrive at a basis by which these examinations will be given - - prepared and given on the merit basis and not bring the employees under civil service. That's the only - - I'm trying to arrive at a method of expressing just that.

CORBETT: I'd like to ask a question. I don't understand what the objection is to these employees being under civil service. As I understand civil service, any employee is paid a full day's wage and then time and a half for overtime, and so objection to the long hours seems to me to be out of line. I wonder if there is any other objection to their being members of the civil service? It seems to me a very sound basis for setting up this group of workers. Certainly those people who are habitually employed by the legislature would be at the top of every list because of experience and ability and some of the people who may wish to get on that list would have an opportunity to do so. That list would be constantly available to an executive secretary such as is set up in this proposal. I would like to ask the delegate who made this proposal, and is in the process of amending it, if there is any other objection to the employees being on the civil service list.

CHAIRMAN: Well, it's not a permanent position, you understand.

CORBETT: Do they need to be permanently employed to be on the civil service list? That is not my understanding.

CHAIRMAN: The Chair understood that they won't fall under any classification system. Delegate Kellerman, do you care to answer that?

KELLERMAN: That's the reason I had left out the classification system, because I thought there were too many practical difficulties. I think the civil service could certainly prepare the examination and they could - - but I had been led to believe by someone who knew more of the civil service than I that you have difficulty with your classification where your workers work at such unusual hours and under such difficult circumstances and different from the usual system, that you're just running into a headache and that it won't be practical, and I was trying to make it practical. I had no personal objections.

KING: Let me say frankly that I'm opposed to this amendment. Nevertheless, I would like to insist on clarifying the language so it may be presented to the committee in some form that they can vote for up or down. When we refer to a civil service commission, we're referring to an organization that does exist today but may not exist under the state, that

is, it has not been re-established by law. We're referring to an agency that has no being insofar as the Constitution is concerned. It seems to me the language that I think the Chair suggested, "who have qualified for the respective positions under a merit system subject to an examination," or something of that sort, "to be given by the secretary," and not refer to any agency of the government which now exists and which may or may not exist under the state of Hawaii.

Now, in view of the difficulty in arriving at satisfactory language, I'd like to move that we defer further action on Section 11 at this time and go to Section 10 and Section 22, both of which are pending. There's an amendment that Delegate Tavares has ready and has had distributed to Section 10 which seems to be one on which there may not be much controversy. So I move now, Mr. Chairman, that we defer action on Section 11 for the time being and take up Section 10.

BRYAN: Second the motion.

SAKAKIHARA: I would like to ask the introducer of this amendment - -

CHAIRMAN: Delegate Sakakihara, the motion is on the deferment which has been seconded.

SAKAKIHARA: I apologize to the Chair. I thought the second was not recognized.

CHAIRMAN: The second is Delegate Bryan. Are you ready for the question? All in favor of deferment, signify by saying "aye." Contrary. Deferred.

KING: May I ask the committee now to call up Section 10?

HOLROYDE: I move we consider Section 10 at this time.

BRYAN: Second the motion.

ROBERTS: May I have that put again, please? Are we going to reconsider Section 10?

CHAIRMAN: No, consider. That has been deferred. Section 10 was deferred by prior action of this committee. Am I not right in that, Delegate Heen?

HEEN: That's correct. There was a motion to adopt Section 10 as written in the proposal and that was seconded. Now it's up for amendment or whatever action the committee may decide.

CHAIRMAN: What is pending before the body is a motion to adopt Section 10 as prepared. It's open for amendment at this time.

TAVARES: I move to amend Section 10 so as to read as set forth in my amendment which is on the desks, entitled, "Proposed amendment to Committee Proposal No. 29, Section 10," and bears my name at the bottom thereof and the date of July 8, 1950.

> Section 10. Disqualification of members. No member of the legislature shall hold any other public office, nor shall he, during the term for which he is elected or appointed, be elected or appointed to any public office or employment which shall have been created, or the emoluments whereof shall have been increased, by legislative act during such term.
>
> This section shall not apply to the offices or employments of notaries public, reserve officers of the police, or of the armed forces of the United States, members of the State Militia or National Guard, or members of emergency organizations for civilian defense or disaster relief.

SAKAKIHARA: I second the motion.

TAVARES: May I explain that my amendment has this effect. If the members will look at the old Section 10, they will find that I have deleted the words "position" and "of profit," so that the first sentence reads, "No member of the legislature shall hold any other public office," that part; then further on I have provided, "nor shall he, during the term for which he is elected or appointed, be elected or appointed to any public office or employment which shall have been created, or the emoluments whereof shall have been increased, by legislative act during such term."

Now, Mr. Chairman, I believe that if you disqualify members of the legislature from holding office rather than employment before they take office, you can leave to the legislature any further disqualifications the legislature may want to lay down as a condition of public employment. It can be taken care of by statute.

Now, furthermore, the second paragraph of my amendment removes some of the objections or most of them which were made that the original provision disqualifies a legislator from holding any office, position or employment of profit. It, for instance, included notaries public and reserve officers and so forth and my amendment would exclude from the disqualifications notaries public who just get fees for work they do from time to time paid by the parties concerned and who don't get salaries or money from the government, reserve officers of the police who now are very important and will be increasingly so as the need for security increases—and who don't get paid by the way, Mr. Chairman, as I understand it—and reserve officers of the armed forces of the United States. Some of our legislators are reserve officers and they cannot resign, as I understand it, Mr. Chairman, without the consent of the United States authorities in some cases. Finally, I think it important that we encourage people to go into our state militia or national guard particularly at this time, and so I propose to exempt them. And, in deference to the atomic bomb and other weapons of the day, and the tidal waves and so forth, I've also proposed to exempt members of the emergency organizations for civilian defense or disaster relief. I think, Mr. Chairman, there is ample ground to exempt all those.

The only one I can think of any objection to would be the officers in the state militia or national guard, but I believe they're high officers, they probably won't run for the legislature. I can't imagine the general in charge of the national guard running for a legislative office.

APOLIONA: Second the motion.

RICHARDS: Point of information. In line three, the sentence reads, "during the term for which he is elected or appointed." I raise the question, would this prohibit a judge from resigning his position as judge and accepting the attorney generalship, or would this prohibit a senator whose term has not expired from resigning and accepting a cabinet position of the governor?

TAVARES: As I understand it, Mr. Chairman, the way this is drawn it doesn't apply to judges at all unless the judges - - Well, as far as the judges are concerned, their right to run for office is taken care of in another section under judiciary, entirely separate. But these are legislators and unless the pay has been increased or the job created during the legislator's term, he could resign and take the office, but if the office had been created or the emoluments had been increased by legislative act during his term, then he would be disqualified during the remainder of his term from taking those particular offices.

RICHARDS: I raise this particular question because of the fact that it will be perfectly possible to perhaps create a new department within the government during the time when a senator is a holdover member or rather would be a holdover member. Now the newly elected governor may desire that man's services. Now, is that man disqualified from accepting that position? Also the same point might be true of a judge. They might raise the attorney general's pay, or they might create some other job. Now, if he is appointed for a six or seven year term, does this language preclude his resigning his particular position and accepting such other position?

CHAIRMAN: The prohibition is addressed to the members of the legislature, Mr. Richards, not to judges.

RICHARDS: Well, if he is a senator then. Let's go back to just the first part of my remarks.

PORTEUS: As I understand this provision, it is the design of such a provision to prevent a member of the legislature or a holdover senator to push for the creation of a new position in order that he may be able to have it. He can assist in the creation of new departments and new positions, but he knows at the time that he does it he cannot hold it until after his term of office has expired. That's to prevent a legislator, after a number of terms, deciding that he hasn't a job in prospect and having other friendly legislators join him in creating a position which the governor agrees that he'll appoint this man to. I think it's specifically designed to prevent a man from taking such a position.

CHAIRMAN: The Chair will give you this suggestion. In the event the office of the attorney general is increased from $10,000 to $15,000, no senator who voted for that increase will be eligible for that office during his term of appointment, as the Chair understands it.

RICHARDS: I raise this point, not on any particular deal of a particular governor, but there can be assumption where a minority senator may have been in the minority and a new governor—he's a holdover senator—when a new governor comes in, and the new governor may wish to place him in another position. Now, is that new governor precluded from placing said senator in such a position?

CHAIRMAN: If it meets this prohibition, "which shall have been created or emoluments thereof have been increased by the legislative act during the term."

ASHFORD: I have another problem. As I read this—I think it is sometimes difficult to distinguish between an office or an employment—but let us say that the cadastral engineer in the Department of Public Works is an employee and not an officer for the purposes of pointing out what I think is a defect in this. He takes leave of absence, he runs for the Senate or the House and is elected. He takes leave of absence from his office, or his vacation, as the case may be, because he is not disqualified, being an employee, and in the legislature he increases very substantially the pay of that employment. He is not appointed because he goes back to the job which he held before and yet he has increased his own pay.

TAVARES: The reason why I don't put that in is because it's so difficult to handle all possible types of employees, and the legislature has under the civil service law now prohibited those people from running for office, so you don't need it. There is now a law prohibiting civil service employees from running for office and I think that it's such a minute thing. It's not in the Organic Act, we only prohibit officers. It's worked all right so far with supplementary legislation. I don't think it's necessary to put that provision for employment in, otherwise you, as they say, you're going into very great legislative detail.

KING: One small change of language, which I've discussed with Delegate Tavares. Where the second paragraph reads, "This section shall not apply to the offices or employments of notaries public, reserve officers of the police or of the armed forces of the United States," in the reserves of the United States there are more than officers, there are a lot of enlisted personnel who are members of the reserve of the armed forces. So I suggest that in the third line of paragraph two, after the word "or," insert "or members of the reserves of the armed forces of the United States, the state militia or national guard."

TAVARES: I accept that amendment. I ask my second to accept it also.

CHAIRMAN: "Members of the reserves," is that it, Delegate King?

KING: I would like permission to check the official designation and submit it to the Committee on Style, but it's merely to broaden that clause to include not only the reserve officers but reserve enlisted personnel of the Army, Navy and Marine Corps Reserve.

CHAIRMAN: Subsequent to your suggestion, would delete officers and apply it to officer and men, is that it?

KING: That's right.

TAVARES: That isn't quite accurate. In the third line of the second paragraph the delegate suggests we insert after the word "or" the words "members of the reserves," so that it will read in that line, "the police, or members of the reserves of the armed forces of the United States," in that line. We have accepted that amendment, Mr. Chairman.

CHAIRMAN: Will the word "officers" remain or not, Delegate Tavares?

TAVARES: Which officers, Mr. Chairman?

CHAIRMAN: Reserve officer.

KING: That would only apply to the police. It would read "reserve officers of the police, or members of the reserves of the armed forces of the United States, members of the state militia or national guard, or members of the emergency organizations for civilian defense or disaster relief."

HEEN: I rise to a point of information. I'd like to ask Delegate Tavares this question. Does the term "offices or employment" apply to members of the reserve officers of the police or did you cut out that phrase, "offices or employment"?

TAVARES: The way it reads now with the amendment is this: "This section shall not apply to the offices or employments." Those words "offices or employments" relate to every category mentioned thereafter, meaning offices or employments of notaries public, offices or employments of reserve officers of the police, offices or employments of the reserves of the armed forces of the United States, and so forth as the case may be, is what it means.

HEEN: When they are not on active duty, these reserve officers, are they in employment at that time or out of employment?

TAVARES: I still think they are officers. If they are either officers or employees I think they are covered by that terminology.

HEEN: Well, Mr. Chairman, I'm opposed to the amendment designed in the second paragraph of this amendment, except as to notaries public. Now reserve officers, if they are on active duty they should not be in a position to choose what they should do. They might find it difficult to legislate -- perform their functions as legislators. They might have orders to do something else contrary to what the legislature might want to do, and the military should be kept apart from the operation of the civil government. That's my stand.

APOLIONA: Looking over the language of this amendment in the second paragraph, I wonder if the introducer of this section will agree to this change? Now, we have no reserve officers of the police, what we have is members of the police reserve. I wonder if Delegate Tavares --

CHAIRMAN: You mean ordinary persons as distinguished from the officers of the police reserve?

APOLIONA: That's right. We are members of the police reserve. Will you accept that, Tavares?

TAVARES: A member of the police reserve is an officer. A police officer is an officer and nothing but an officer.

DELEGATE: Question.

APOLIONA: In the police department you have all kinds of ranks, from sergeants to lieutenants to captains and chiefs.

CHAIRMAN: Well, what Delegate Tavares is pointing out, they're all called officers. Flippantly speaking, we call them cops. They are all officers.

TAVARES: By way of further explanation I might say there is a distinction in law between a person who holds an office and a person who holds a mere employment as distinguished from an office. Now, within the police department they may be called flat feet and sergeants and lieutenants, but before the law they perform duties of officers of the law and therefore they are officers, no matter what they are called in the department.

CHAIRMAN: The Chair will put the question on the amendment.

HEEN: I would like to reiterate my stand. Anybody connected with the police force or connected with the Army should not be placed in a position where he might have to, under the command of his superior officer, do something against what he should do as a legislator. Those people should always be subordinate to the civil authorities.

PORTEUS: It is not often that I find occasion to differ with the senator and fellow delegate from the fourth district. However, I do have a great deal of sympathy with those people who went away in the armed forces of the United States and after their services, specifically let's take the last war, after their services in the last war have risen to a position where they may be members of an organized reserve of the United States of America. If those people have gone to war and come back, I think that they're entitled to hold a reserve commission or be a member of an armed reserve and still perform their other duties to the state which is, among those, that of running for office and serving in the legislature. If they are ordered to active duty, they no longer would be serving in the legislature.

I think members of Congress came up against this very same thing the last war. Those of them who had reserve commissions were finally given the choice of either getting out of Congress or going off to war. Some went off to war but they didn't stay in Congress subject to orders. I don't think the kind of man that is willing to run for office and get elected and the kind that has served his country is the kind that's going to take anybody's orders as to how he's going to vote in the legislature. I think we ought to give those men that consideration.

KING: In further reply to Delegate Heen's objections, a good many officers are reserve officers with retainer pay but not on active duty. Now I quite agree with Delegate Heen that the minute they go on active duty they should resign from the legislature.

Now the reserve officers who were serving in Congress at the time of the outbreak of World War II used to take leave of absence, serve on active duty, and then return to Congress. Then the President decided that it was improper procedure and laid down that no reserve officer would be called to active duty unless he resigned his seat in Congress. Senator Magnuson served out here when he was a representative, in the Pacific area. Representative Jimmie—the name fails me—also served on active duty a long part of the war while he was still a member of Congress. But I do agree that no officer on active duty should be a member of the legislature.

However, our medical officers and many other officers are reserve officers in the organized reserves, get some retainer pay, and might possibly run for office and serve in the legislature without impairing their ability to give first allegiance to their legislative duty. After they are ordered to active duty, then they should resign from the legislature.

HEEN: If the particular paragraph is amended to take care of that situation, then I would have no objection. But when they are on active duty they should no longer serve in the legislature.

CHAIRMAN: The Chair would suggest "members of the reserve, except during time of active duty," or some such language, if that is acceptable.

KING: I rise to another question entirely. A good many members have suggested that we are not in the mood to do any constructive work this afternoon and wanted to suggest that we rise, report progress and sit again. I feel that we ought to finish the legislative powers and functions, so I just raise the point now. Do we wish to continue or do we wish to rise, report progress and sit again.

CASTRO: I suggest we continue because from the headlines it's possible that Major Fong and myself and two or three other people won't be here in two or three days. We'd like to see that the amendment gets properly passed so that when we get back we'll be able to get into the legislature.

FONG: I second the motion.

CHAIRMAN: Delegate King, there has been a suggestion by Delegate Heen that in the event -- that he would welcome the suggestion or withdraw opposition if the membership of the reserve "except during active duty" was incorporated. Is that desirable or --

KING: If Delegate Heen will actually put it in writing, that is desirable. I agree with him that no officer of the armed forces on active duty shall serve in the legislative body.

SAKAKIHARA: May I move for the disqualification of reserve officers from participating on this amendment? They have a definite pecuniary interest.

DELEGATE: Out of order, Mr. Chairman.

CHAIRMAN: You are overruled. Delegate Heen, do you have language that will fix that up?

HEEN: Not right at the moment, but I can prepare one. I object, though, to reserve officers in the police force serving at any time.

WIRTZ: I'd like to suggest language.

CHAIRMAN: Delegate King, in the absence of Delegate Heen's suggestion of language, the Chair might suggest this, "members of the reserves of the armed forces of the United States while on active duty" or "except upon active duty." Otherwise the Chair will put the question without the suggestion.

WIRTZ: I suggest we take a short recess subject to the call of the Chair.

KING: May I just make this brief statement. I didn't propose this amendment but I did propose the language "or members of the reserves of the armed forces of the United States." The language suggested by the Chair is perfectly agreeable. The intent is that officers serving in the organized reserve, going to drills one night a week, going on a fifteen day active duty once a year shall be eligible to serve in the legislature. The minute they are called to active duty they shall not be eligible. That is my understanding of the purpose to be served.

CHAIRMAN: The Chair has no predeliction one way or the other. He just wants to get this put to the floor. In the absence of an amendment, the Chair will put the amendment as it now stands and it is in the absence of any qualifying language.

CASTRO: Just a point of explanation. I think there are a few who feel that possibly they couldn't vote for this amendment because they're afraid of members of the reserves, whatever reserve that might be, serving while on active duty. While I'm not completely familiar with the Articles of War or the Articles of the Navy, I believe there is a higher law than the State Constitution which forbids a reserve officer or a regular officer, when on active duty, from participating in the employment under any basis of another government, whether it be Federal or a subordinate government to the Federal government. So I feel that if we should look into this further, we would discover that there is a higher law that would keep your reserve officer on active duty out of the legislature even though no provision would be placed in our Constitution.

HEEN: I think I have the proper amendment here. Delete the words "or employments" following the words "offices," which word "offices" appears in the first line. Then after the word "public" in the second line insert "or to," Delete "reserve officers of the police or of" appearing in the second and third lines, then insert "members of the reserves of," after the words "United States," "who are not on active duty." Then delete the words "members of the state militia or national guard" in the fourth line, and after the word "or" in the fourth line add the word "to." So that that paragraph would read: "This section shall not apply to the offices of notaries public or to members of the reserves of the armed forces of the United States who are not on active duty, or to members of the emergency organizations for civilian defense or disaster relief."

CHAIRMAN: Is there a second?

HEEN: I move that amendment to the second paragraph of Section 10 as offered.

CHAIRMAN: Is the amendment acceptable to Delegate Tavares? It would save us putting the question twice.

TAVARES: No, Mr. Chairman, it isn't. I'd rather have the Convention vote the way it feels. I've made my suggestion and I'm not going to argue one way or the other.

CHAIRMAN: Very well, the Chair will put the question.

HEEN: I move that amendment.

CHAIRMAN: Yes, the Chair will put your amendment.

APOLIONA: Speaking against the amendment, especially to the deletion of the phrase "reserve officer of the police," I want to call to the attention of this Convention here that there are hundreds of us who are members of the Honolulu police reserves that do not go into active duty until such occasion arises where we are called by our country to active duty. We are subject to call twenty-four hours of the day. We are given our instructions as to the security of our country which I have not the power to make known at this time. We are called by the police department to perform functions in case of tidal waves, warnings, evacuation of people, and guarding the premises and property and health and safety of people. Without your Honolulu police reserve, Mr. Chairman, your police department is inadequate in numbers to take care of the safety of the people's property and public safety.

So, we as members of the police reserve put in our own time, we buy our own guns, we pay for our own uniform, we even supply our own car, and even take care of our own insurance so that the health of the people of this territory may be protected.

We, as members of the police reserve, have served this community faithfully during the war. Without our organization this Territory of Hawaii would be overrun by your Marine guards. That's what the Navy wanted to do, but because of the existence of your Honolulu police reserve, your commanding general of this Territory during the war saw fit that the Honolulu police department could actually police the entire territory and it was done so because of the existence of the Honolulu police reserve.

At this time I ask that this Convention do not delete the members of the Honolulu police reserve from having a chance of becoming elected in your state legislature.

CHAIRMAN: Delegate Apoliona, the Chair will ask Delegate Heen if this would be any prohibition against police reserves—the Chair does not so understand it—from serving on the legislature. Am I right about that, Delegate Heen?

HEEN: Well, if they are holding a public office, it might apply. If a reserve in the police force is holding a public office then this would apply.

RICHARDS: The Honolulu police reserves are a portion of the emergency organization for civilian defense and disaster relief. Now, why single them out as to be not permitted while other members of these other organizations are permitted.

HEEN: Then if they are members of the emergency organization, they are there because they are member of that organization, not because they are reserve officers in the police force.

RICHARDS: If that is definitely understood and so written in the committee report, that is all right. But I want to make certain that it is considered an emergency organization for civilian defense and disaster relief. The fact that it is being stricken out would tend to think it was otherwise unless the committee report so states.

J. TRASK: I might inform the chairman of the committee that the members of the police reserve receive no compensation whatsoever, that they just perform in the case of emergency. They have police powers as police officers but they receive no compensation whatsoever.

APOLIONA: That is why a few moments ago I wanted to change the wording "members of the Honolulu police reserve." Now we have a police department here, but we have a police reserve and a police reserve is a member of the emergency organization for civilian defense or disaster relief. Your reserve is a member of that. That's why I wanted to change the wording there, "members of the Honolulu police reserve."

ASHFORD: If, as it has been said here, the members of the police reserve are such really because they are members of emergency organizations for civilian defense or disaster relief, wouldn't they be covered even though you don't refer to them specifically? In other words, if you strike out this reference to police reserves they would still be protected under that last provision of the second paragraph.

CHAIRMAN: That was the Chair's view when it addressed that question to Delegate Heen. Would you care to comment on that, Delegate Heen?

HEEN: Well, I did. I said they would be members of the emergency organization for civilian defense not by virtue of being a reserve police officer but by being a member of the organization.

CHAIRMAN: Does that clear up your difficulty, Delegate Apoliona?

APOLIONA: Then, I see nothing wrong in retaining this phrase here, "reserve officer of the police."

BRYAN: That brings up another little point here, that I'd like to have the attorneys look at. I would like to have added at the end of this, or some language to do the same thing, the words "solely because of membership therein," In other words, some one may be disqualified for some other reason but he can go and say, "Well look here, I am a notary public and therefore I am eligible." Under this language it appears so to me.

CHAIRMAN: The Chair will put the question. The question - -

ASHFORD: In reply to that, doesn't the fact that it refers to offices, it doesn't refer to the people who hold the offices?

KING: The difficulty comes in the first sentence of Section 10, disqualification of members. "No member of the legislature shall hold any other public office." Now, we asked what's the interpretation of "public office." Does a commission under the Medical Corps Reserve of the Army become a public office? Yes, it does. Is a reserve officer in the organized reserve of the Marine Corps or the Naval Reserve a public office? Yes, it is. Well, then you are barring those men and there are many thousands in Hawaii who belong to the organized reserves of the Army, Navy, Marine Corps, Medical Corps Reserve and police reserve and then the civil defense. So the effort was made to qualify that disqualification by this second paragraph.

Now, the only difficulty there is the point raised by Delegate Heen that members of the armed forces should not serve in the legislature when they are on active duty. All we need to do is to say this section "does not apply to the offices or employments of notaries public, reserve officers of the police or members of the reserves of the armed forces of the United States who are not on active duty, members of the state militia or national guard, or members of the emergency organizations for civilian defense or disaster relief." The only thing we have done is to qualify the exemptions granted members of the organized reserve when they are not on active duty. That would seem to me to meet all of the points that have been raised.

TAVARES: Let me point out one thing more that causes difficulty, and that was my trouble in drawing this. You are going to have a lot of vacancies all of a sudden if a man is allowed to run as long as he is not on active duty and then in the middle of a session he is called into active duty. Then what's going to happen, a vacancy in his office. That's not desirable. You either ought to bar them entirely or not leave the legislature liable to be decimated by a call to active duty. That's the pilikia that I found in trying to make those exceptions.

KING: One point to answer that. When an officer in the reserve or enlisted man is called to active duty, if he's a member of the legislature he can almost invariably get a waiver of it or resign. He can take his choice just as they did in Congress when World War II broke out. The Navy Department or War Department would ask them, did they want to go on active duty. If they did so, they got their orders and resigned from Congress. If they did not, they resigned their reserve commission. None of the armed forces would require a man to leave the legislature under orders if he preferred to serve in the legislature. The armed forces are usually cognizant of the fact that service in the legislative body is equally important to the welfare of the country.

CHAIRMAN: The Chair will put the question. The question is upon the amendment offered by Delegate Heen, substance of which would prevent members of the armed forces while on active duty from being eligible to be elected or to hold a seat in the legislature. All those in favor signify by saying "aye." Contrary. The Chair's in doubt. All those in favor raise their right hand. Contrary. It's carried.

KING: I would have voted for the amendment but as I understood Delegate Heen when he read it, he cut out members of the state militia, national guard, members of the emergency organization and the reserve officers, is that correct? I wasn't able to follow Delegate Heen's amendment closely when he read it.

CHAIRMAN: Will the President hold just a moment to see if the Chair is correct in announcing the result. The Chair believes the motion carried. Evidently the Clerk is unable to get the call. The Chair thought the motion - -

DELEGATE: Roll call, Mr. Chairman.

CHAIRMAN: We'd better have a roll call on this.

PORTEUS: I think a roll call would take some time. A division of house would require the members to stand in order to make the vote quite apparent.

CHAIRMAN: Very well. All those in - -

KING: Point of information.

CHAIRMAN: Delegate King is recognized.

KING: Point of information. I request that Delegate Heen's amendment be re-read so we can all understand it. I'd like to vote for it because that would simplify matters and get this out of the way.

CHAIRMAN: Delegate Heen, before we take the vote will you re-state your amendment?

HEEN: As amended, this paragraph reads as follows:

This section shall not apply to the offices of notaries public or to members of the reserves of the armed forces of the United States who are not on active duty or to members of the emergency organizations for civilian defense or disaster relief.

CASTRO: In all respect to the senior statesman - -

CHAIRMAN: Elder statesman.

CASTRO: - - elder stateman, this amendment doesn't make sense.

CHAIRMAN: Well now, the Chair has got to put the vote, Delegate Castro.

CASTRO: I am about to ask - -

CHAIRMAN: I'm sorry.

CASTRO: - - that Delegate Heen reconsider this amendment.

CHAIRMAN: If it does not make sense, then you can vote against it. The Chair has no alternative.

KING: That's the problem. I would like to vote for it but he has stricken out "reserve officers of the police and members of the state militia or national guard." If that were included, I'd be happy to vote for it.

HAYES: Point of information.

CHAIRMAN: I don't understand why that was stricken out either.

HAYES: Point of order.

CHAIRMAN: Delegate Hayes.

HAYES: I voted on the opposite side, so I therefore move to reconsider the action.

CHAIRMAN: The Chair hasn't announced its ruling yet. It's in doubt as to what happened here.

DELEGATE: Let's vote on it.

HEEN: May we take a short recess.

CHAIRMAN: Two minutes.

HEEN: Two long ones.

(RECESS)

CHAIRMAN: The Convention will please come to order.

HEEN: I now withdraw the amendment that was offered by me, which was pending at the time the committee took a short recess. At this time I offer the following amendment: In the third line of the first paragraph after the word "office" delete the comma and insert after the word "office" in the third line the following: "under the state, except notaries public and reserve police officers," period.

CHAIRMAN: You don't want the period, do you, Delegate Heen?

HEEN: No, no period, comma.

APOLIONA: I second that motion.

CASTRO: The amendment isn't completed yet.

CHAIRMAN: Seconded anyhow.

HEEN: Delete the entire second paragraph. All officers designed to be covered by the first paragraph must be officers of the state. All officers in the United States Army, national guard would be officers not under the state but under the United States, so this section will not apply to those officers who are officers of the United States.

CHAIRMAN: Then, an army officer could be elected as legislator.

HEEN: That's correct. But as I understand it, I've been assured that if they go into active service, under some military regulation they must resign their office as a member of the legislature, if they are members of the legislature.

CHAIRMAN: Delegate Apoliona is recognized.

APOLIONA: I now second that motion.

ASHFORD: Then the United States District Attorney could be elected to the legislature and serve as United States District Attorney and as a member of the Senate at the same time?

CHAIRMAN: That is correct, or a colonel or a general.

KING: That would apply if the United States permitted them to do so. They could only do that if the United States permitted them to do so.

CHAIRMAN: That's correct.

TAVARES: I will accept the amendment and move to add a further amendment reading as follows: "The legislature may prescribe other disqualifications."

ASHFORD: I second that amendment.

CHAIRMAN: The Chair doesn't want to pile these amendments up. Is that acceptable to Delegate Heen?

HEEN: Not at the moment, without giving it some thought. Supposing we act on the amendment that was proposed by me first. Then we could take up the other.

CHAIRMAN: The question is on the amendment proposed by Delegate Heen. All in favor signify by saying "aye." Contrary. It's carried.

Delegate Tavares, you desire to make a further amendment, I believe.

TAVARES: I believe that I was in error. What I had in mind was this, as it stands now I do believe it's too tight. While I would like to have the legislature authorized to prescribe further disqualification, it seems to me when we don't exempt members of civilian defense organizations – we are all going to be called on to do civilian defense work – that means that any man who wants to run for the legislature or is in the legislature is going to have to stay out of these emergency wardens and disaster relief councils and everything else.

CHAIRMAN: The Chair understood that that language was deleted. Is the Chair in error?

HEEN: That's correct. Those who may become members of the relief organization become members not as officers but perhaps become members as employees only.

CHAIRMAN: The Chair's understanding was that section was deleted and your objection thereby will be met, Delegate Tavares.

TAVARES: Well, I was probably a little out of order. I want to point out that if we create a civilian defense organization and we make a man a warden and give him power to go around with a star and keep people from putting on their lights, he is going to be an officer no matter what you call it. He is going to be exercising the sovereign functions of

the state in defending the state, and you are not letting him act as a legislator if he joins one of these relief organizations. If that's what this Convention wants, that's all right. I think we have voted on it but I think it's too tight.

CHAIRMAN: Well, we can always fix it up if it is too tight.

CASTRO: I believe that the term "public office" has been given enough adjudication to indicate that it is properly an office of profit. Now civilian defense organizations, at least up to the atomic age, have not been offices of profit under the state, and I don't think that any of the civilian defense organizations are touched if the Committee of the Whole report will indicate that these various civic volunteer functions are not covered, are not within the intent of this prohibition. It seems to me that that is going to be adequate, but if we can't satisfy the motion now it probably would be better to defer until we can go into the history of similar constitutional provisions in other states, because there are, in almost all of the forty-eight states, there are similar provisions, and it would be interesting to find out whether or not there has been some court adjudication on these words. Is that the thing to do now or should we just push the thing through and be stuck with it?

CHAIRMAN: If Delegate Tavares desires to loosen it up, the Chair would invite suggestions. The legislature could add further qualifications as prescribed by law.

CASTRO: The objection to that provision, that the legislature may prescribe further, would be that a legislature in a fit of pique could prohibit from its membership the very people that we are trying to protect here who are the reserve officers of the United States of the various branches, so I don't think we could leave it to a matter of law, that is, a matter of statute. We have to be very well satisfied we are covering the ground here. I think possibly it would be better for us to defer.

HOLROYDE: I can't see the legislators barring the reserve officers from serving on the legislature. There are so many of them in the Territory it would be political suicide to attempt to do anything like that.

CASTRO: I quite agree that it might be political suicide but that isn't the point. The point is that the provision does not mend whatever illness might be in this section. It merely leaves it open at both ends.

ROBERTS: I have a further amendment to this section. At the end of that sentence add the following: "No person holding any federal or state office or position of profit shall be entitled to a seat in the legislature."

YAMAMOTO: I second the motion.

CASTRO: The objection to that is substantially the same as the previous one and that is that in the reserve corps, the Army and the Navy, the armed forces, there is a distinction between the volunteer reserve and the organized reserve. Now the volunteer reserves are those people who are furthest away from a call to active duty, but there is an in-between group.

I might even quote from the Honolulu Star Bulletin, the most current quotation I can find here, by way of an explanation of the current call for enlistment -- for volunteering that has come out in Washington today. The last paragraph of the article on page six, column four states: "The organized units of all branches are considered close to fighting trim. If the situation worsens they will be called into active service."

Now, the organized is a group of officers and men who are paid for their participation part time, usually once a week and two weeks active duty a year, and these are officers who are under the Federal government, offices of profit because they are paid, several hundred dollars up to and over a thousand dollars per annum for their duties, and this again would not mend the situation because in an era of peace you have this large number. In Hawaii today we have some three thousand, I think the number is larger now, organized reserve who would be barred by Delegate Roberts' proposed amendment. I don't think that cures it.

TAVARES: I think it's still necessary to defer this further and I think if we have another five minutes we can try to iron this out a little further. I still think the Heen amendment is not quite all that we need.

CHAIRMAN: The question is on Delegate Roberts' amendment. Is that -- what is the status of that? Does the delegate care to withdraw it to clear the decks?

ROBERTS: I will withdraw the amendment, but I might suggest that we're not saving any time by staying here and working on this. I suggest that we rise and report progress to give the chairman a chance to work on his report and we start fresh on it Monday morning.

FONG: Second the motion.

PORTEUS: The chairman of the committee, I might tell the delegates, informed me not long ago that he hoped we would be able to bring matters to a close so that he would know that he was finished with this and could write a complete report. I don't think that we have too far to go. I think, after consultation with the chairman of the committee, that language such as the following: "The legislature may provide for further disqualifications," would enable the legislature to take care of the situation where there are federal employees or federal district attorneys. We haven't, of course, said here just how far the legislature could go, but it would by necessity mean that they would operate by general law as to disqualification. They could then by statute spell out that reserve officers of the United States were eligible under certain circumstances or were not, depending on the conditions as they appeared to them.

CHAIRMAN: That would fill in the gap, would it not?

PORTEUS: That would fill in the gap. I make that as a motion, that the following language be added: "The legislature may provide for further disqualifications."

APOLIONA: I second that motion.

CHAIRMAN: It has been moved and seconded that the section be further amended that: "The legislature may provide for further disqualifications."

TAVARES: I would like to move a further amendment to that amendment by adding thereto before the period, the following language: "and may by general law provide for exemptions from such disqualifications with respect to members of emergency organizations for civilian defense or disaster relief."

CHAIRMAN: That wouldn't take care of the U.S. attorney situation, would it, Delegate Tavares?

TAVARES: That would be taken care of, Mr. Chairman, by the right to disqualify further.

FONG: I second the motion made by Delegate Roberts to rise and report progress and ask leave to sit again.

CHAIRMAN: That motion is out of order at this time.

FONG: Why is it?

CHAIRMAN: There is pending before the house a motion to amend, and under the Rules of this house - -

FONG: I now move that we rise, report progress and ask leave to sit again.

SAKAKIHARA: Second it.

CHAIRMAN: All in favor signify by saying "aye." Contrary. The motion is lost.

Delegate Tavares, you had the floor when you were interrupted.

TAVARES: I don't think anybody seconded my motion and therefore, apparently I am out of order.

CHAIRMAN: Not at all.

APOLIONA: Second the motion.

CHAIRMAN: Would you be good enough to restate your motion, Delegate Tavares?

TAVARES: May I have the Clerk read it. I gave my copy to Delegate Heen and I don't have it before me.

CHAIRMAN: Delegate Apoliona appears to have it.

APOLIONA: I have the language, Mr. Chairman. Delete the period and insert the following language: "and may by general law provide for exemptions from such disqualification to members of the emergency organizations for civilian defense or disaster relief."

CHAIRMAN: Are you ready for the question? All those in favor of the amendment signify by saying "aye." Contrary. It is carried.

The question is now on the amendment, as amended. All those in favor of the amendment signify by saying "aye." Contrary. It is carried.

The question is now on Section 10, as amended.

J. TRASK: Have we a motion to that effect, Mr. Chairman?

HOLROYDE: I make a motion to that effect.

J. TRASK: Second it.

CHAIRMAN: It has been moved and seconded that we adopt Section 10, as amended. All those in favor signify - -

CORBETT: Would you please read us the amended section? I think there are a number of us here who are confused about what we are voting on by now.

CHAIRMAN: It's a big order, Delegate Corbett.

SAKAKIHARA: May I rise at this time and ask that the amendments be printed before we take a vote on the amended section of Section 10, so that we may understand what the amendments are and how Section 10 will read with these amendments.

LYMAN: Second the motion.

CHAIRMAN: The Chair will declare a five minute recess to get that printed.

BRYAN: Before we declare a recess, wouldn't it be possible to defer this for printing, while we take up the last section that we deferred?

CHAIRMAN: I think that's highly advisable if the Clerk can attend to the printing. Just a moment. The Clerk advises me that it would be impossible to get it printed without a short recess, so the Chair will declare a few minutes recess.

(RECESS)

CHAIRMAN: The Chair will invite the committee's attention to the fact that there are only three matters pending, one of which is on the press or shortly will be, the other relates to Dr. Larsen's amendment and the other relates to Delegate Kellerman's amendment. I suggest that we defer action on the pending matter and take up Delegate Larsen's amendment, if that's agreeable to the body.

APOLIONA: I so move.

SMITH: Second it.

CHAIRMAN: All those in favor signify by saying "aye." Contrary. The motion is carried.

LARSEN: Just a few words, hoping we won't get too tired. This is again not the question of whether we're going to vote for a legislative council but whether we're going to vote for this type of holdover committee, a legislative council that will take the place of a holdover committee. It will limit the size to twelve, it will put on four laymen, one from each county. It will be the ear to the ground of whether legislation can be analyzed between sessions. They will have at their beck and call the research council and it is one more attempt to prevent abuse and to make law making more efficient and I move for its adoption.

Amendment to Committee Proposal No. 29.

Section ___. Legislative Council. There shall be a legislative council consisting of twelve members, not more than six from any one political party to be chosen in the following manner: four members to be selected by the Senate from its membership; four members to be selected by the House of Representatives from its membership; four members who are not members of the legislature, to be appointed by the governor, one from each county. The legislature shall provide by law for the selection, tenure and compensation of members of the council, and for such research staff as the council may require to perform its duties.

Section ___. Organization and Duties of the Legislative Council. The legislative council shall choose one of its members as chairman and shall adopt its own rules of procedure, except as such procedures may be established by law. It shall be the duty of the council to collect information relating to the government and general welfare of the state and to report thereon to the legislature. The council shall consider the desirability and efficacy of existing legislation, and shall receive for consideration suggestions of individual citizens and of citizen organizations for changes in the laws of Hawaii. Proposed legislation may be submitted to the council and shall be considered and reported to the legislature with its findings and recommendations. The legislative council may also recommend such legislation as in its opinion may further the welfare of the state and its people. Other powers and duties may be assigned to the council by law.

DELEGATE: Second the motion.

CASTRO: Prior to the defeat of the original section on the legislative council the Chair made a ruling which has permitted this amendment. I respect the ruling but I would like to say nevertheless that this is still a legislative council. The arguments have gone back and forth and I'm sure that every delegate here has them in mind and is weary of them.

But there is one argument that I would like to direct to the amendment as proposed by Delegate Larsen which was

not brought up previously because it was not pertinent to the committee proposal section, and that is as to this membership, the make-up of the membership. This morning I pointed out to the delegates that in Wisconsin the council started out in 1931 with twenty members, five senators, five assemblymen and ten citizens. That was a matter of statute. Then in 1933 that was changed down to three senators, three assemblymen and three citizens, and in 1933 they fired the citizens and replaced them by the heads of major state departments.

Now, the argument I have to make is this, that we should not—granting the legislative council is still in an experimental state and the efficacy of it and the proper membership make-up of it in Hawaii is still not known—we should not bind this council with a make-up of membership that we have no basis to prove will be efficient, and on that basis I feel that that particular point is not going to improve the council, and therefore all of the arguments against the council which this committee voted down still stand.

LAI: I am against this proposal for the same reason I have stated this morning. The abuses are just as great. The chances of the layman hiring his family and friends to work is just as great as the case of the legislator. After all a layman is just as human as a legislator.

CHAIRMAN: For convenience the Chair will identify Dr. Larsen's amendment as Sections 24 and 25. I believe that would follow in consecutive numbers, if that is agreeable to the delegates.

ROBERTS: I'd like to speak in favor of the amendment, I am going to vote for it.

CHAIRMAN: The Chair will now put the question. It is on the amendment offered by Delegate Larsen, Sections 24 and 25 relating to a legislative council.

DELEGATES: Roll call.

CHAIRMAN: All those in favor signify by saying "aye." Contrary.

PORTEUS: I think we should have a division of the house.

CHAIRMAN: I think we will have to have a division, as the secretary suggested. All those in favor will please rise. Against? The amendment is lost.

KELLERMAN: I think the delegates have on their desks a redraft, and I'm sorry to bother them by asking them to add one or two subsequent thoughts that I think improve it. In the second sentence - - I'll read from the beginning. Incidentally, this is not to amend Section 11 to read as follows, it is to amend Section 11 to add this paragraph. That should be in the record of the proceedings.

> Section 11. There shall be an executive secretary of the legislature who shall be selected, and be subject to removal, by the legislature in the same manner as provided for the auditor in Section 8 of Article ___, and shall serve for a term of 8 years.

That's a two-thirds vote of each house as you recall from that section.

> All employees of the legislature, other than the chief clerk, sergeant-at-arms, chaplain and attorney for each house shall be appointed by the executive secretary from lists of those who have qualified for the respective positions after examination prepared and administered in accordance with the merit principle. All employees shall be supervised by the executive secretary, and he shall perform such other duties as may be prescribed by law.

May I add that further duties, that I think would be highly feasible, have been brought to my attention and would be justified as follows. We know that the executive secretary would have to be on deck some time before the session convenes and some time after to carry through the full administrative or business management of the legislature for the work that is necessary to be done after the session closes. There is also the matter of holdover committees, the Legislative Reference Bureau accumulating facts and information in connection with that. There are various duties which can be performed and should be well fitted into the full legislative procedure. Remember we also have an annual session. The next session also has to be prepared, and so forth.

So I feel that this justifies the full time position and working in that administrative capacity. His salary will be well repaid by the amount of money that he can save justifiably in a good businesslike administration of the legislative process.

CHAIRMAN: Delegate Kellerman, in view of the fact that you have prepared several amendments to your proposed amendment, and in view of the further fact that the amendment to Section 10 is now on the desks of the delegates, would you care to have your amendment reprinted as redraft No. 3 and have that on the desks when it's voted upon? Or do you want to proceed now?

KELLERMAN: I don't think that's necessary. These amendments are very slight.

If you'll take the second sentence of the paragraph, "All employees of the legislature, other than the chief clerk, sergeant-at-arms, chaplain and attorney of each house" all right, then in the ninth or tenth line, "respective positions," instead of the words "by examination," if your copy has not been corrected change the word "by" to "after." In the beginning of the last sentence, "such employees" should read "all employees shall be supervised by the executive secretary," and add the following language, "and he shall perform such other duties as may be prescribed by law."

CHAIRMAN: The Chair feels there's been adequate debate on this, and accordingly will put the question. Is the roll call demanded? The Clerk will please call the roll. This is on the amendment to Section 11 offered by Delegate Kellerman.

Ayes, 23. Noes, 24 (Apoliona, Ashford, Bryan, Cockett, Doi, Fong, Gilliland, Hayes, Holroyde, Kam, Kauhane, Kido, King, Lai, Lyman, Noda, Porteus, Richards, Sakai, Sakakihara, Smith, St. Sure, Tavares, Yamauchi). Not voting, 16 (Crossley, Fukushima, Ihara, Kawahara, Kawakami, Kometani, Lee, Mau, Mizuha, Ohrt, Phillips, C. Rice, Shimamura, Silva, White, Woolaway).

The amendment is lost.

FONG: I now move that we adopt Section 11, as amended.

KAUHANE: I second it.

CHAIRMAN: It has been moved and seconded that Section 11, as amended, be adopted. All those in favor signify by saying "aye." Contrary? The ayes have it.

DELEGATE: Mr. Chairman, does that complete the business for this Committee?

HEEN: Section 10. The delegates have on their desks a copy of the amendment RD 1, dated July 8, 1950. I think this is almost the ultimate of perfection now.

CHAIRMAN: Got all the commas in there, Delegate Heen?

HEEN: No, there should be one "s" in the word "organization," in the third line from the last line, "organizations." That section now reads:

> Section 10. Disqualification of members. No member of the legislature shall hold any other public office under the State, nor shall he, during the term for which he is elected or appointed, be elected or appointed to any public office or employment which shall have been created, or the emoluments whereof shall have been increased, by legislative act during such term. The term "public office," for the purposes of this section, shall not include notaries public, reserve police officers or officers of emergency organizations for civilian defense or disaster relief. The legislature may provide for further disqualifications.

I move the adoption of the amendment.

APOLIONA: Second it.

CHAIRMAN: The Chair would like to ask the movant a question. Delegate Heen, this would permit army officers and the United States attorney to serve in the legislature, would it not?

HEEN: That's correct, but the last provision there, "The legislature may provide for further disqualification," would permit the legislature to bar district attorneys and the like.

CHAIRMAN: That would take care of that.

KING: It would permit army officers and the United States District Attorney and the United States District Judge to serve in the legislature provided he was a citizen of the State of Hawaii and could get elected and was not on active duty and barred from that office by Federal requirements, so I think the danger is very remote.

PORTEUS: And I might add, if the legislature didn't say he couldn't run.

RICHARDS: May I ask one further question? The statement, "The legislature may provide for further disqualifications," could the legislature provide for a disqualification of a man already elected and serving? I am thinking of a hold-over senator.

PORTEUS: I think the intent of that is to provide that the legislature may by putting in effect general law provide other disqualifications, such as being a Federal office holder, such as a district attorney or some one in that category, but that the legislature need not go all the way and say that a person who holds a reserve commission in the organized reserve of the United States is disqualified. So we are getting at the problem in that fashion.

RICHARDS: That does not quite answer my question.

TAVARES: I think I can answer that question. Would that not be an ex post facto law, that was made retroactive?

CHAIRMAN: I was going to suggest to Delegate Richards, any further disqualification would be prospective in its operation. While it's true that ex post facto laws only apply to criminal laws, it's unthinkable that the legislature would make its disqualification retroactively.

NIELSEN: I happen to be an officer in the Civil Air Patrol. Is that taken care of?

CHAIRMAN: Is that an office under the Territory of Hawaii?

PORTEUS: I believe under the Army Air Service, so I believe that's all right.

CHAIRMAN: This is only a prohibition against state office.

Are we ready for the question? All in favor signify by saying "aye." Contrary? It is carried. Unanimous. Excuse me, not unanimous. Still carried.

FONG: I now move that we rise and recommend that Proposal No. 29 be adopted.

CHAIRMAN: Delegate Heen, does that complete in its entirety our deliberations on this? According to the Chair's notes that completes everything.

HEEN: There's one more section, Section 20 of Committee Proposal No. 29. I believe there has been distributed to each delegate a copy of an amendment proposed by Delegate Sakakihara under the date of July 7, 1950.

WIRTZ: My recollection is that that was passed.

CHAIRMAN: We acted upon Delegate Sakakihara's amendment. That amendment, in substance I think it literally copied its section from the Organic Act, was adopted by this committee.

HEEN: Oh, did it pass?

CHAIRMAN: I invite the chairman's attention to that description—whether or not that should be acted upon. Committee Proposal No. 30, does that require any action?

HEEN: I don't know whether any changes were made in reference to these districts during the discussion. If no changes were made with reference to these districts, then there need not be any discussion on that. Is that the schedule?

CHAIRMAN: That is Committee Proposal No. 30 relating to a schedule describing representative districts. It is the Chair's recollection we did change one on the island of Hawaii.

HEEN: That's correct. The district of Keaukaha or that part of the area known as Keaukaha was eliminated from the first draft of the proposal, so that would just mean a correction in that regard to conform. I don't see the necessity for going through that.

CHAIRMAN: Would it be in order to adopt 30 -- Committee Proposal No. 30, the schedule, as amended to conform with our prior action in regard to the proposal itself?

HEEN: I so move.

WIRTZ: Point of information. The motion to conform to our prior action, that would take care of the situation of the change on Maui?

CHAIRMAN: That is correct.

HEEN: That is the other change. That's correct.

CHAIRMAN: Several minor changes in the motion, general in its terms, would take care of all of them. The President indicates there are four.

HEEN: Therefore I withdraw my motion and make it in this form: I move that Committee Proposal 30 be adopted with appropriate amendments to conform to changes that were made in connection with the adoption of Committee Proposal No. 29.

FONG: Second the motion.

SAKAKIHARA: Point of information. What is the status of the amendment to Proposal No. 29 relating to the redis-

tricting of the second district into two districts. Has that amendment been taken care of?

HEEN: That's not in the schedule. That's in the article itself.

NIELSEN: I don't know why, Mr. Chairman, Mr. Sakakihara is so interested in the second district.

CHAIRMAN: That's a private feud you have, I guess. I don't know either.
The Chair will put the question.

PORTEUS: I think possibly because we have always returned to the Committee of the Whole to clear the report that the motion would be to rise, report progress and ask leave to sit again.

CHAIRMAN: The Chair is ready to put the question. The question is that the proposal, as amended, together with Proposal No. 30 to be amended in conformity with the action taken by this body in committee, be adopted. All those in favor will signify by saying "aye." Contrary? It appears to be unanimous. Not unanimous, but it's carried.

PORTEUS: May we now rise, report progress --

HEEN: I would like to move for a reconsideration of our action in adopting Committee Proposal 29, as amended, for the reason that I would like to insert by way of amendment a matter that will take care of hearings of impeachment cases in a budget session.

OKINO: I so move.

BRYAN: I second it.

PORTEUS: I think that the motion to reconsider should only be directed to the particular section, rather than to the entire article, because we haven't adopted the entire article. What is the section number?

HEEN: Section 12.

CHAIRMAN: You have an amendment prepared, Delegate Heen? It has been moved and seconded we reconsider our action in regard to Section 12 in order to permit Delegate Heen to present a proposed amendment, simple in form, the Chair understands it. All those in favor signify by saying "aye." Contrary? The motion is carried.

HEEN: One minute recess, please, Mr. Chairman, just one minute.

CHAIRMAN: Half a minute recess.

(RECESS)

CHAIRMAN: The committee will come to order.

HEEN: Section 12, dealing with the second paragraph of that section, insert after the first sentence of the second paragraph of Section 12 the following:

> The legislature at such budget session shall also be authorized to consider and act upon matters relating to the impeachment or removal of officers.

FONG: I second the motion.

HEEN: That will then permit the legislature in a budget session to consider impeachment cases or cases relating to the removal of judicial officers. I move the adoption of the amendment.

FONG: I second the motion.

ASHFORD: May I ask whether that fits in with the amendment made the other day, which I frankly confess didn't make sense to me, which was designed not to relate to impeachment but to provide for expenses, as I understood, for the staff made necessary by reconvening to consider bills which the governor vetoed?

CHAIRMAN: That was defeated, the Chair recollects. Was it carried?

HEEN: No, it was an amendment to that first sentence in the second paragraph, which was added to the first sentence, reading as follows:

> and the special session to be convened thereafter in accordance with the provisions of Section 18 of this article.

So this amendment follows that period. Now if this amendment as I have proposed is adopted, then the class can be dismissed for the day.

CHAIRMAN: You've heard the amendment. All those in favor signify by saying "aye." Contrary? The motion is carried.
The Chair will now put the question on the adoption of Section 12, as amended.

HEEN: I so move that.

PORTEUS: Second it.

CHAIRMAN: It has been moved and seconded that Section 12 as amended be adopted. All those in favor signify by saying "aye." Contrary? The motion is carried.

FONG: I now move that we adopt Committee Proposal No. 29, as amended.

DOWSON: I second the motion.

CHAIRMAN: It's been moved and seconded that Committee Proposal No. 29 as amended be adopted. All those in favor signify by saying "aye." Contrary? The motion is carried.

HEEN: I now move that this committee rise, report progress and ask leave to sit again, that in the meantime a written report be prepared by the chairman of the Committee of the Whole in accordance with the actions taken by this committee.

FONG: Second the motion.

PORTEUS: Did the chairman announce the results of the vote?

CHAIRMAN: The Chairman tried to. It carried. Not quite unanimous.
Question? All those in favor signify by saying "aye." Contrary? It's carried.

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CHAIRMAN: Will the delegates please take their seats. Will the committee please come to order. As soon as we have order here, we can dispose of this in a few minutes. Delegate Lai is recognized.

LAI: Is it in order now, Mr. Chairman, to make a motion to adopt Committee Proposal 29?

CHAIRMAN: It is.

LAI: I so move.

BRYAN: I'll second that motion.

ASHFORD: Is the motion to adopt the Committee of the Whole report for recommendation out to the Convention as a whole, because I have a question on that report.

CHAIRMAN: That is the motion, Delegate Ashford.

ASHFORD: On page 27 of the report.

CHAIRMAN: Before taking that up, may the Chair make one statement. The Chair has not checked the proposal attached to the report. I am advised it has been carefully checked by the staff, and will endeavor to do it before it is presented to the Convention for second reading or third reading, but I do believe it's accurate. I just want to make that statement to the members.

ASHFORD: At the end of the discussion on page 27, just before the recommendation, there is a short paragraph which reads: "It is the further intent - -"

CHAIRMAN: Oh, could we have the page first? Twenty-seven? Proceed, Delegate Ashford.

ASHFORD: "It is the further intent of your committee that, should the legislature fail to convene on the day required, the bill nevertheless would not become law." Mr. Chairman, I do not think that that conforms with the language of the section. I think it is the intent that it shall not become law unless the Governor notifies the legislature or the members thereof that he intends to veto.

CHAIRMAN: You're suggesting an amendment?

HEEN: Point of information. May I ask the last speaker what page she is reading from.

CHAIRMAN: Page 27, Delegate Heen.

ASHFORD: Of the report.

CHAIRMAN: Of the report, and it's addressed to Section 18 of the proposal.

HEEN: That part of that particular section relating to pocket veto is not too clear in the language that was finally adopted, and because of that I have prepared an amendment that clarifies the situation and removes a great deal of the ambiguity that existed in the draft as adopted by the Committee of the Whole and which is now incorporated in the proposal attached to the report of the Committee of the Whole.

CHAIRMAN: Has it been printed, Delegate Heen? Your amendment?

HEEN: It has. It's ready for distribution.

CHAIRMAN: Committee may stand in recess while the clerks are distributing the proposed amendment.

(RECESS)

CHAIRMAN: Committee will come to order.

HEEN: I might state that this proposed amendment is an amendment to the second paragraph of Section 17 instead of 18. This was prepared before one of the sections of the committee proposal was deleted the other day, so I would ask the delegates to change the figure 18 to 17 in the second line on this RD 1 draft.

CHAIRMAN: You offer that as an amendment, Delegate Heen?

HEEN: I now offer this amendment.

HOLROYDE: I move we reconsider our action on that section so that Delegate Heen can present his amendment.

HEEN: Second that motion.

CHAIRMAN: It has been moved and seconded that we reconsider action upon Section 17.

HEEN: That's correct.

CHAIRMAN: All in favor signify by saying "aye." Contrary. Carried.

HEEN: I now offer an amendment to Section 17 as set forth in this written amendment which has been distributed to the members of this committee. Perhaps I should read it and read it slowly.

> The governor shall have ten days, Sundays and holidays excluded, to consider bills presented to him ten days or more before the adjournment of the legislature sine die, and if any such bill is neither signed nor returned by the governor within that time, it shall become law in like manner as if he had signed it.

That is in the Organic Act at the present time. Now the next paragraph reads as follows:

> The governor shall have 45 days after the adjournment of the legislature sine die, Sundays and holidays excluded, to consider bills presented to him less than ten days before such adjournment, or presented after adjournment, and any such bill shall become law on the forty-fifth day unless the governor shall have given by proclamation ten days' notice to the legislature that he plans to return such bill with his objections on the said forty-fifth day. The legislature may convene at or before noon on the said forty-fifth day in special session, without call, for the sole purpose of acting upon any such bill returned by the governor. In case the legislature shall fail to so convene, such bill shall not become law. Any such bill may be amended to meet the governor's objections and, if so amended and passed, only one reading being required in each house for such passage, it shall be presented again to the governor, but shall become law only if he shall sign it within ten days after presentation, Sundays and holidays excluded. No salary shall be paid to the members of the legislature when convened for this purpose.

The last one there is already in the bill, and perhaps should not have been included because this was designed to amend only the second paragraph of Section 17. The Style Committee, however, can take care of this situation.

I move the adoption of that amendment.

FUKUSHIMA: I second that motion.

ROBERTS: I'd like to have Delegate Heen explain the purpose of his amendment and the changes made from the from the one we previously adopted.

CHAIRMAN: Will you do that, Delegate Heen?

HEEN: In the form adopted by the Committee of the Whole in the third sentence there, "on the said forty-fifth day the bill shall become law notwithstanding the failure of the Governor to sign it within the period last stated unless at or before noon of that day he shall return it with his objections to the legislature which shall convene on that day in special session without call, for the sole purpose of acting upon bills returned by the governor, unless he shall

fail to give the notice hereinafter provided." It's a little confusing there with that second "unless" being in the picture. That's at ten days' notice.

ROBERTS: When we first amended this section it was to make sure that the legislators were given adequate notice to appear if the governor planned to return some of those bills with his veto. Ten days' notice having been given, they then knew that the governor was going to present that. Now, if he gave no notice, then it was the intention that the governor did not plan to veto any of the bills but adopted them all.

HEEN: Now, there's been a change of position of that "ten days' notice" and "any such bill." In the proposed amendment, "and any such bill shall become law on the forty-fifth day, unless the governor shall have given by proclamation ten days' notice to the legislature," when the ten days' notice is given then that bill does not become law.

ASHFORD: Mr. Chairman.

CHAIRMAN: Delegate Heen still has the floor.

HEEN: Then the legislature may convene on the forty-fifth day in special session without call for the sole purpose of acting upon any such bill. Then this goes on further to say, if "In case the legislature shall fail to so convene such bill shall not become law," notwithstanding the fact that it has not been returned to the legislature for failure of the legislature to convene. However, it shall not become law. Then the latter part of this makes it clear whether or not after making any amendments there should be three readings or one reading only. This makes it clear that the bill may be amended in order to meet the objections of the governor, which then will require only one reading by each house.

ASHFORD: I'm opposed to this amendment and I am opposed to it because of the insertion of that one sentence, "In case the legislature shall fail to so convene, such bill shall not become law." In effect that transfers the veto power from the governor to the legislature. In other words, the governor advises the legislature that he is going to veto certain bills. Now the legislature can then fail to convene to consider his reasons and to act in accordance with their desires upon the matter and the bill becomes law. In other words, a failure of a majority of the legislators to come can override the governor's veto, and to me that's wrong.

HEEN: That does not override the governor's veto.

CHAIRMAN: It's just the reverse.

HEEN: That sustains the governor's veto. If the legislature wanted to override the governor's veto, then, of course, they will meet, convene, and by a two-thirds vote override the governor's veto.

ASHFORD: I submit that that is an incorrect reading of the sentence. "In case the legislature shall fail to so convene, such bill shall not become law." In other words, they veto by a majority failing to convene.

CHAIRMAN: Wouldn't this be the situation. The governor would already have indicated his pocket veto by saying he wasn't going to sign it. So the failure to convene would simply uphold the exercise by the governor. Is that not the situation?

ASHFORD: No, not at all, because the law -- Oh, I'm wrong. I'm wrong. I'm wrong. I apologize and recede.

ARASHIRO: Does this mean then that the legislature is going to convene every time that the governor intends to veto a bill, which bills do not go to the governor all on the same day, and it goes on to the governor a different day, and every time he vetoes one bill we're going to -- the legislature is going to convene?

CHAIRMAN: No, no. This is designed to cure the so-called evil of the pocket veto. It will make the governor give ten days' notice within a forty-five day period after the adjournment that he proposed to do that.

HEEN: I think I can answer the delegate's question. We had in mind that these bills will be presented to the governor at different times where he can exercise the pocket veto. If he sends it on the ninth day before adjournment sine die, that's one bill that he can pocket veto. If he sends another bill say, ten days after adjournment, that's another bill that may be pocket vetoed. But all these bills become law on the forty-fifth day after the adjournment unless he notifies the legislature that he plans to veto the bill by sending the bill with his objections. They all have to go into effect, all on the forty-fifth day, the same day, no matter when they are presented to the governor by the legislature. That is, they must, of course, be presented not more than ten days before the adjournment.

ARASHIRO: That means that the last bill that goes to the governor, and the governor had the intention of pocket vetoing the bill, then the governor must notify the legislature that that bill is going to be pocket vetoed on the thirty-fifth day. Is that right?

CHAIRMAN: That's right.

RICHARDS: I have a question to ask the movant. The situation as I interpret the reading is that if a bill is returned by the governor on the forty-fifth day with some suggestions for amendment and the legislature does follow those suggestions, he still has the right to veto. Now a situation can arise where the legislature, who has the power to override his veto, would prefer to override his veto on the original bill and not conform to the governor's suggestions, Whereas, by conforming to the governor's suggestions, they give him a power to veto.

HEEN: That's correct.

CHAIRMAN: That's up to the legislators, isn't it?

HEEN: At the last stage of the proceedings, when the legislature sees fit to do so and amends the bill in order to meet the objections of the governor, the presumption is, of course, that the governor will approve that bill when it is again presented to him. Otherwise, it wouldn't make sense. If the legislature does not approve the objection or does not agree with the governor as to his objections, then they can override the governor by a two-thirds vote.

CHAIRMAN: I think what Delegate Richards is pointing out is that there's a certain amount of risk in amending, which, of course is inevitable as the Chair sees it. You may not override it.

TAVARES: For the purposes of the records, I would like to ask if the movant agrees with me that in the second line, the words "Sundays and holidays excluded" applies to every period of days thereafter mentioned. In other words, that interpretation, "Sundays and holidays excluded," also applies to the other periods mentioned later in the section.

HEEN: The second paragraph, I might answer that question, says, "The governor shall have forty-five days after the adjournment of the legislature sine die, Sundays and holidays excluded."

TAVARES: There is another provision, though, in the first paragraph, in the second and third lines. "The governor shall have ten days, Sundays and holidays excluded, to consider bills presented to him ten days or more before adjournment." I take it that ten days or more means Sundays and holidays excluded to coincide with the first portion. That's what I mean.

HEEN: Where about is that?

TAVARES: In the first paragraph.

CHAIRMAN: The first paragraph of the amendment, Delegate Tavares?

TAVARES: Yes, Mr. Chairman. It reads: "The governor shall have ten days, Sundays and holidays excluded, to consider bills presented to him ten days or more before adjournment." That ten days or more I presume, as I read it, means Sundays and holidays excluded also. I think that's obvious intent, otherwise those two periods wouldn't coincide.

HEEN: There is some slight -- it's a little indefinite there as to whether or not the second ten days --

CHAIRMAN: Don't we have a statute that covers this, Delegate Tavares?

TAVARES: Whether we have or not, if it's the sense of the Convention -- we take a sense vote that we mean Sundays and holidays excluded in all these other ten-day provisions mentioned, why we're -- that I think is sufficient. I think that is the intent I read from the whole section. Otherwise, some periods won't coincide. For instance, the forty-five day period, Sundays and holidays excluded, after the legislature adjourns, in order to have the ten days' notice come out properly, the ten days' notice the Governor gives before the forty-five day period expires should be ten days, holidays and Sundays excluded.

CHAIRMAN: Delegate Tavares, would it be your view that it'd be better to take it out of here and have a sense vote and have that situation apply to the whole amendment?

TAVARES: No, Mr. Chairman. I think if we take a sense vote that it means the same whether we put that "Sundays and holidays excluded" or not in each place. I think we've taken care of it. And I so move, Mr. Chairman.

ASHFORD: I don't believe that will do it. In other words, I don't think a sense vote will be sufficient where we express in two places the fact that Sundays and holidays are excluded, and then two other places we don't. My own suggestion would be to leave out "Sundays and holidays excluded" there, and then put at the end that the number of days in each instance shall exclude Sundays and holidays.

TAVARES: I believe that if we make that sense vote, the Style Committee will then make the proper adjustment, because the Convention will then have gone on record and Style can take care of that.

LEE: I believe with that understanding, in order to facilitate the work here, I second the motion made by Delegate Tavares with the understanding that the Style Committee will follow the suggestion outlined by Delegate Ashford which, I think, is a good one.

CHAIRMAN: In other words, for the purposes of dealing with this section wherever the period of days is contained, Sundays and holidays will be excluded.

MIZUHA: I rise to a point of information. In order to eliminate any headaches for our future attorney general, this convening of the legislature after the forty-five days, it's presumed and understood by the members of this Convention that they will be eligible for travel pay and per diem. Is that our understanding? I ask that question to the movant of the amendment.

FUKUSHIMA: If the delegate was present at the time when the Committee of the Whole met to discuss this matter, that question would be unnecessary because that was adequately discussed. It does not preclude the payment of travel expenses or any other expenses but the salary alone.

MIZUHA: This is a new amendment.

DELEGATE: Question. Question.

CHAIRMAN: The question is on the sense of the interpretation of this proposed amendment. All in favor signify by saying "aye." Contrary. Carried.

TAVARES: One more question. In the sixth line from the bottom of the second paragraph of this amendment, the sentence reads: "And such bill may be amended to meet the governor's objection, and if so amended and passed" and so forth. Now, the legislature may not want to amend it the way the governor wants. They may want to amend it some other way, and I don't think they should be forced to amend it just the way the governor wants to. And I, therefore, move to delete the words "to meet the governor's objections." And then the legislature -- if the legislature wants to take a chance on the governor pocket-vetoing it after that with those other amendments, they can do so. Perhaps, they'll meet the governor half way. This forces the legislature to either take everything the governor says or nothing. And if the legislature is going to convene again, I don't see any reason why, if they want to take a chance of a pocket veto, they shouldn't say, "All right, Mr. Governor, we'll give you half of what you ask but we won't give you all." And maybe the governor will sign it.

SAKAKIHARA: I second that motion to delete.

PORTEUS: I think that this is a reasonable scheme for permitting the legislature to come back and reexamine the various bills in order to see whether or not that in the opinion of the legislators the bill should become law despite the governor's objection. However, I'd like to point out if you don't look out, with the sixty day session one year, that's two and a half months; thirty day session the next year, that's at least a month and a half; it takes you two months to get elected; then you've got to come back after the general session; then you've got to come back after the budgetary session. Then instead of just dealing with the veto, yes or no, we want the bill as it is, and also instead of just saying yes, we'll meet certain of the governor's objection, the legislature apparently can write a new bill on the same subject. Now all we're doing is going to get into another extended legislative session, with no pay and only a per diem. And I don't like to see the legislature have to return and I don't like to see the opportunity of sitting down and taking a bill on a certain subject and rewriting the thing entirely differently and be there for I don't know how long.

It seems to me when the legislature has passed it, the governor points out the objections, the legislature wants to override his veto, they can try it. If they fail, that's the end of it. If they want to try to meet his objections, they may try. But to start writing new legislation is just providing that we'll have another session. Now if we're going to have another session, let's just have another session and start all over again. So that if we want to divide the

subject into two bills instead of one, why we can do it and start all over, but let's not get into a third session on top of the two sessions we've provided.

TAVARES: That argument sounds all right on the face of it but let me show you what it leads to. The governor often in his veto message sends back his objections in general terms, and if you leave this in here then the courts will have to decide whether the amendment actually adopted by the legislature and even signed by the governor actually did meet his objections, and if it didn't the law is void anyhow. You're bringing yourself a lot of trouble in the courts if you leave that statement in.

Secondly, the governor may be wrong in his objections. He may say that certain things should go in and they may actually be wrong grammatically and otherwise. And if the legislature does the thing substantially correct but not the way he wants it, but meets his objection substantially in a way a little different from what he said, again you have the question of whether their action is valid even if the governor approves it. And, Mr. Chairman, you're running yourself into an awful lot of trouble. I say that if you leave that in there, you're making it very difficult and you are making the legislature swallow everything the governor wants, word for word, even if the governor is wrong and even if he, upon being told, thinks it was O.K.

CHAIRMAN: The Chair would like to ask Delegate Tavares a question. Delegate Tavares, is it your opinion that under this language, if the two executive and legislative branches of the government would reach an agreement on a subject matter, that it would be a judicial question whether or not the legislature had then met the governor's objection?

TAVARES: I think that is a possibility there; that is, that the governor might agree to it afterwards. But the objections he made are made at the time he submits his report. Now here's what can happen. The governor says the legislature made a mistake. The legislature says, "Yes, we made a mistake and we'll correct it, but the correction you want isn't the right correction. We will correct it a little differently." Now they don't have time to go up to the governor, back and forth and get an absolute signed agreement that they have complied to his objections. They may want to pass several bills in succession and adjourn. And so they pass these bills admitting they're wrong to some extent, admitting the governor's right, but saying that the particular way he wanted it corrected isn't the right way to do it. And my fear is that in so doing they are running a question of whether they have complied with the governor's objections.

SAKAKIHARA: Will Delegate Tavares accept further amendment to his amendment by including in the amendment the deletion of, after the word "objections," "and if so amended." So that it will read, "any such bill may be amended and passed - - " I'm speaking on the amendment that Delegate Tavares offered here which I seconded.

TAVARES: Mr. Chairman, the veto - -

CHAIRMAN: There's been a request to see whether or not you accept that amendment.

TAVARES: The veto power is covered by another section which will apply if they override his veto.

CHAIRMAN: The answer is no, Delegate Sakakihara.

TAVARES: I don't think this would cover it. I think if it is amended, it should be made clear they can amend it on one reading. There is a protection. The bill must be one subject matter, which is always a restriction on the legislature going too far afield in making the amendment.

Suppose for instance, Mr. Chairman, the governor sends back an objection. "You want ten new teachers. We think that's too much." The Governor says, "You have got too many, ten too many." The legislature says "No, we'll make it five then." You have the question of whether they have complied with the governor's objection.

LEE: I wonder who's talking tweedle-de-dee and tweedle-de-dum right at this moment. It seems to me, Mr. Chairman, your question wasn't fully answered. When you asked a question, I believe you knew the answer. It was a political question.

CHAIRMAN: That's the Chair's view.

LEE: Furthermore the matter of meeting the objections of the governor, it's very plain when a governor vetoes a bill. He states his reason and if the legislature has to override it, they can override it or they can meet his objections. And some of his objections may be substantially met, they don't have to be met in full. We've got to take the word in its common sense meaning. We can't divide the word "objection" into 100 bundle of sticks and as long as one bundle, one stick isn't - - the objection isn't met, that therefore it might develop a judicial question. I can't see any objection to the present language.

HEEN: With a constitutional provision such as this, the governor is going to be very careful in stating his objections specifically. If the bill says that they must have ten teachers over in Hilo and he objects to that and says that they should have five, it's very easy to meet that objection by changing the ten to five. And if it's a question of policy which does not meet with the approval of the governor, he can say so, that this bill is not a sound bill. Then that question is one that can be overridden by the - - When a veto is based upon a matter of policy, then it's up to the legislature to either sustain him or override his veto.

ROBERTS: I think we ought to keep in mind the basic purpose of this section in the Constitution. As I understand its meaning, it cuts two ways. One, it is a basic prohibition against the legislature putting bills to the governor, passing bills and then going home and saying, "We passed a law and the governor has vetoed it." It puts a pressure on the legislature to submit bills and pass them only when they want them passed. It makes it quite clear that the governor can put them right on the spot by calling them back in session.

It also cuts the other way. It makes sure that the governor, when he has an objection, states it, and if he thinks that the veto is improper, then gives these individuals in the legislature a chance to override it.

It cuts both ways, but it seems to me that once you present a bill, once you pass it, you submit it to the governor, The governor then very clearly spells out in what specific ways the bill is objectionable. The legislature's hands ought to be tied, and to meet the specific issue, if they pass the bill, then they ought to be able to back it up and to override the veto of the governor. They ought not to write new bills. We provide here that there shall be only one reading. If they're going to write new statutes, then we ought to have at least three readings to make sure that it's properly understood. So that they can't pass the buck again to the governor, either you mean it specifically as you have in the present language or else you remove the entire section. You've got to put an end to the proposal some time along the way.

PORTEUS: I wonder whether or not we might be able to meet the difficulties that we seem to be discussing at the moment by the insertion of the word after "meet"--

CHAIRMAN: After what?

PORTEUS: After "meet," where it says, "Any such bill may be amended to meet the governor's objection and if so amended," etc., to insert the words, "any of" after "meet" so that it could be --

CHAIRMAN: The Chair can't hear you, Delegate Porteus.

PORTEUS: I'm sorry. In the last sentence of the second section -- second paragraph where it starts, "Any such bill may be amended to meet the governor's objections and if so amended," etc., I'd like to insert the words "any of" after the word "meet," so that it would read as follows: "Any such bill may be amended to meet any of the governor's objections," and then we would go on. By making an amendment such as that, I think that we could meet the difficulty posed by Delegate Tavares. I wonder if I might have his attention.

CHAIRMAN: It doesn't appear to the Chair, Delegate Porteus, that that would present any judicial question. I would doubt that very much.

PORTEUS: I'm speaking, Mr. Chairman, to the attention of the delegate here.

CHAIRMAN: The delegate was wandering around the floor.

TAVARES: Sorry, Mr. Chairman.

SAKAKIHARA: Mr. Chairman.

CHAIRMAN: Delegate Porteus has the floor.

PORTEUS: I think that the use of the words "any of" would meet the argument presented by my fellow colleague from the fourth district when he says that the legislature might want to meet some but not all of the governor's objections, as the legislature might determine that some of those objections were not well taken. I think the insertion of those words would completely dispose of that argument.

I think it would also be better to restrict, as Delegate Roberts has indicated, the activities of the legislature to meeting the objections—either overriding the veto of the bill as passed, meeting some or all of the governor's objections, or putting an end to the matter there. Because if you're going to go in and start amending, then we've got to really get into the whole legislative procedure, and I don't think we want to do that.

TAVARES: My only thought was this. The governor may not suggest the exact wording of the amendment. He may send the bill back with general objections. The governor may interpret it one way, as we do here, and the legislature another, and so they pass an amendment thinking they have met his objection. But if they are mistaken, if in fact, as interpreted properly, the governor's objections was not actually met by the amendment, the question in my mind is even if the governor thereafter approves the bill, is it going to be valid? I think there is a question unless you are going to say that when the governor approves it, he then signifies that his objections have been met. I am not sure the courts will so interpret it.

CHAIRMAN: Well, what better evidence of his approval could you have than that?

SAKAKIHARA: In order to shut off any further debate, I withdraw my second to Delegate Tavares' amendment.

FUKUSHIMA: I believe we've had enough debate on this. This was proposed by Delegate Heen as a perfecting amendment. So I now move the previous question.

CHAIRMAN: No, the question is on the amendment of Delegate Tavares, the Chair believes.

FUKUSHIMA: The second was withdrawn.

CHAIRMAN: Oh, it was withdrawn. Are you ready for the question? All those in favor of the amendment, signify by saying "aye." Contrary. Carried.

DELEGATE: May we have a short recess for the benefit of the clerks?

FUKUSHIMA: I now move the adoption of Section 17 as amended.

J. TRASK: Second the motion.

CHAIRMAN: It's been moved and seconded that Section 17 as amended be adopted.

SAKAKIHARA: That is as amended by Senator Heen's amendment?

CHAIRMAN: That is correct. Are you ready for the question? All those in favor signify by saying "aye." Contrary. The ayes have it. Carried.

Chair will declare a short recess.

(RECESS)

CHAIRMAN: Will the committee please come to order.

KING: I move that the committee rise and recommend the adoption of Committee of the Whole Report No. 24, and the passage of Committee Proposal No. 29 on second reading as amended, and Committee Proposal No. 30, without amendment.

NODA: I second the motion.

HEEN: I think the motion should be to adopt the committee report subject to the amendments which have been made.

KING: I accept the amendment. Pass second reading subject to amendment to the Committee Proposal No. 29.

ASHFORD: As I see it, the report will have to be amended by striking out the paragraph I objected to, to meet the amendment.

CHAIRMAN: The Chair would like to avoid that, if he could get your permission.

ASHFORD: That wasn't the intention of the Committee of the Whole. I didn't want that staying in the report.

CHAIRMAN: Very well. The action is on the report and proposal as amended.

HEEN: The motion is to adopt the committee report subject to the amendment made to the committee proposal.

KING: That will be all right. The adoption of the committee report is to be insofar as it is not inconsistent with the amendment.

CHAIRMAN: Are you ready for the question? All those in favor signify by saying "aye." Contrary. Carried.

TAVARES: One further motion, that this motion also includes leave to file a supplementary report setting forth the amendment recommended.

CHAIRMAN: I gather that is obligatory in view of the amendment.

Debates in Committee of the Whole on

EXECUTIVE POWERS AND FUNCTIONS

(Article IV)

Chairman: EDWARD C. BRYAN

JUNE 20, 1950 • Morning Session

CHAIRMAN: Committee of the Whole please come to order. The Chair will recognize Delegate Okino, chairman of the Committee of Executive Powers and Functions.

OKINO: I believe it is fair for me to assume that all of you have already read our Committee Report No. 67 and two other committee reports filed by the minority. I believe it is also fair for me to assume that you have read Committee Proposal No. 22, attached to the Standing Committee Report No. 67. May I at this time briefly refresh your memory and read two paragraphs of Committee Report No. 67.

> The fundamental principle upon which your committee proposal was drafted is that of concentration of executive power in the governor, which would give the best government. Consistent with this principle, your committee proposal provides for the election of only the governor and lieutenant governor and for the appointment of principal department heads to serve at the pleasure of the governor. There shall then be a very short ballot. The principle is comparable to that found in the management of corporate enterprises. Its advantages may be summed up in the statement that, in concentrating executive power, it fixes responsibility for the efficient conduct of governmental affairs and enables the electorate to judge the merits of the administration.
>
> Your committee has subscribed, by and large, to the principle that a constitution should state only basic fundamentals, and that many desirable matters, for which there is strong temptation to make constitutional provisions, should be left open for legislative treatment as future conditions may require. Your committee believes that it is only through such delegation to the legislature that the flexibility necessary to keep government in step with economic and social development is possible.

I suggest that we go to Committee Proposal No. 22 at this time and that we take the proposal section by section, and if any section contains more than one paragraph, then we take that particular section with more than one paragraphs -- more than one paragraph, by paragraphs.

CHAIRMAN: That is satisfactory. Just a second please, Delegate Lai. I'd like to ask the chairman of the committee if he has any recommendations on the method of taking up the minority reports. Can they follow afterwards or shall we take them up with any particular section?

OKINO: I suggest that we take it up together with the Committee Proposal No. 22. If you will study the minority report filed by Delegates Ohrt, Kage and Loper, it pertains to a new subject matter which is not covered in the Committee Proposal No. 22. It is an amendment offered to include a new section to be numbered 11, namely, for the establishment of the administrative manager. Now the minority report filed by Mr. Crossley pertains to only two paragraphs of Section 10 of the Committee Proposal No. 22. The committee minority report filed by Delegate White makes -- suggests amendments to various sections in Proposal No. 22, and for that reason, I feel it would expedite matters if Delegate White will offer his amendment as we proceed with each section of Proposal No. 22.

CHAIRMAN: Is that satisfactory, Delegate White?

WHITE: Yes.

CHAIRMAN: Is that satisfactory with the Delegates Kage, Ohrt, etc.?

OKINO: Yes.

CHAIRMAN: Is it? Yes, it is.

LAI: I move for the adoption of Section 1.

APOLIONA: I second the motion.

CHAIRMAN: It has been moved and seconded that Section 1 of Standing -- of the proposal attached to Standing Committee Report No. 67 be adopted.

DOI: I thought we had agreed a few seconds ago that we were to take it up paragraph by paragraph where one section contained more than one paragraph. Therefore, I think the motion is out of order.

CHAIRMAN: Well, can we do this? Can we consider paragraph 1 and when that is finished vote on it, and then consider paragraph 2? Or would you like to have a motion for each paragraph?

DOI: I think it's proper to go -- a motion for each paragraph.

CHAIRMAN: The Chair will so rule.

LAI: I so move. I move that we adopt the first paragraph of Section 1.

APOLIONA: I second that motion.

CHAIRMAN: It's been moved and seconded that we adopt the first paragraph of Section 1, Committee Proposal No. 22. Are there any questions?

TAVARES: For the record, I should like to have the reason explained for this provision: "The person receiving the greatest number of votes shall be the governor."

OKINO: That's paragraph 2.

TAVARES: Oh, I'm sorry.

OKINO: Mr. Chairman, that's paragraph 2.

CHAIRMAN: Are there any questions on paragraph 1?

MAU: Just a question, Mr. Chairman. Are we tentatively agreeing to paragraph 1? If we adopt it, in order to reconsider we have to move to reconsider. Isn't it better, because we don't know what the effect of other paragraphs would be in the other sections that we just tentatively agree without actually taking formal action so that a motion for reconsideration need not be made?

CHAIRMAN: Well, I think that in the paragraphs that are to follow, some of which may be little bit more complex, that if we don't move and vote on each paragraph, we'll never know when we're tentatively agreed on it. So if -- perhaps if Delegate Lai would change his motion that would satisfy you, but I think we should still have another motion in order to reconsider after it's been voted on. The delegate accepts that suggestion.

All those in favor of tentative agreement on Section -- the first paragraph of Section 1 say "aye." Opposed.

DELEGATE: I move for the tentative --

CHAIRMAN: That vote was carried incidentally.

LEE: I notice that one of the delegates sought to speak. We are in the Committee of the Whole. It seems to me that where a delegate desires to speak, the Chair should recognize the delegate before putting the vote.

CHAIRMAN: I'm sorry but I did not notice the delegate until after the vote had been called. Would you like to speak on that subject, Delegate --

[Delegate's reply inaudible.]

LEE: The delegate was standing up to be recognized.

CHAIRMAN: I'm sorry.

ASHFORD: Is the executive power vested in the governor? Won't there be commissions and other matters which are not, which are at least semi-independent from the governor and perhaps independent from the governor, who will have some of the executive power?

CHAIRMAN: I'd like to refer your question to the chairman of the committee.

OKINO: Maybe so, if the legislature should provide a special board and commission. By this -- by and large this particular power has always been vested in the governor of the Territory of Hawaii. The expression is found in the constitution of all the states, I believe.

CHAIRMAN: Is that satisfactory?

OKINO: The 48 states of the United States, and it also appears in the Constitution of the United States of America. Exceptions, special exceptions have been made at times by the legislature when a special board or commission has been created, which board or commission may be vested with special executive functions.

LAI: I move for the tentative adoption of paragraph 2 of Section 1.

APOLIONA: I second that motion.

CHAIRMAN: It's been moved and seconded that we tentatively adopt paragraph 2 of Section 1.

DOI: I would like to amend Section -- rather paragraph 2 of Section 1 by providing in lieu thereof one sentence to read: "The governor shall be elected as provided by law."

CHAIRMAN: Do you make that in the form of a motion?

DOI: Yes.

SAKAKIHARA: Second it.

CHAIRMAN: It's been moved and seconded that paragraph 2 be amended to read: "The governor shall be elected as provided by law." Any discussion?

DOI: A few words in favor of the motion. The sentence there, "The person receiving the greatest number of votes," to begin with is very ambiguous, is not clear. Also, the subject matter, as I gather, covered in this section can be easily covered by statute. It is a legislative matter. And I think the question of contested elections is partly covered in the suffrage section of this Constitution. Therefore, I think a short single sentence for this paragraph here is sufficient.

CHAIRMAN: Delegate Okino, did you ask for the floor?

ROBERTS: I have a question to ask the previous speaker. The proposal as I gather is to delete the paragraph and to substitute one sentence, "The governor shall be elected as provided by law." Law is established by legislature. I assume that the legislature that you have in mind under this Constitution will be elected at the same time that the governor is elected in the first Constitution. You don't have any law until the legislature meets.

DOI: If that is the problem we could provide for that in the ordinances and continuity section of the schedules.

CHAIRMAN: I believe that's correct. Any further discussion on this question?

PORTEUS: I take it that we are assuming that "The governor shall be elected as provided by law" means that the governor shall be elected by popular vote. That's not what this amendment says, however. If it says the elected governor shall be elected as provided by law, the legislature might elect the governor. It does not cover popular election, statewide election.

ASHFORD: In the event that we continue to have a primary and a general election, this would not be covered because the one receiving the greatest number of votes at the primary, even though not a majority of all votes cast, would still be the governor.

OKINO: It would seem to me that the legislature, in providing laws relative to election, would specifically provide that any candidate running for the office of governor in the primary election will not be elected governor of the State of Hawaii, and that the election will result from the result of the general election, and by reason of that fact, it would seem that this particular clause appearing in paragraph 2 of Section 1 would be so construed.

DOI: The suggestion made by Delegate Porteus is well taken and, with the permission of the Chair, the movant at this time would like to amend the amendment to read, "The governor shall be elected by the legally qualified voters of this State as provided by law."

CHAIRMAN: Is there any second? Just a moment, please.

SAKAKIHARA: Second it, Mr. Chairman.

OKINO: I'm sorry, what was that motion?

CHAIRMAN: Would you restate your motion please, Delegate Doi? I might ask that you withdraw your former motion.

DOI: That is right; I withdraw my first motion. The motion would read: "The governor shall be elected by the legally qualified voters of this State as provided by law."

HEEN: I rise to a point of information.

CHAIRMAN: Will you state your point?

HEEN: What is the purpose of having that phrase added, "as provided by law"?

CHAIRMAN: Delegate Doi, would you like to answer that?

DOI: I have been debating that question myself and probably Delegate Heen can help resolve the question.

CHAIRMAN: Do you have a suggestion, Delegate Heen?

HEEN: It seems to me it's not necessary there. Let the Constitution itself state how he is to be elected, that he is to be elected by the qualified voters, as stated now, by the qualified voters of this State. The New Jersey provision in this connection reads as follows: "The governor shall be elected by the legally qualified voters of this State." Going on beyond that particular sentence, I might read from the New Jersey Constitution. "The person receiving the greatest number of votes shall be the governor; but if two or more shall be equal and greatest in votes, one of them shall be elected governor by the vote of a majority of all the members of both houses in joint meeting at the regular legislative session next following the election for governor by the people. Contested election for the office of governor shall be determined in such manner as may be provided by law."

ANTHONY: I'd like to pose this question to the committee -- that is the Committee on Executive Powers. Should not the Constitution contain a section that'll have within its own framework the method of electing the governor, just exactly as the Constitution of the United States does, in order that we need not go to the legislature or any other place to establish by law that framework? I just pose that as a question to the committee.

OKINO: The constitutions of all 48 states, including that of the United States, have apparently given special attention to the election of the governor, who is the highest executive officer of the state. And it is for that reason that the method of election of a governor has been singled out by enacting a specific -- by enacting specific provisions with reference to that subject matter.

ANTHONY: That doesn't quite reach the question. The question is whether or not we should have in the Constitution, without resort to legislation, a method of electing the governor. In the Federal Constitution, like in the New Jersey Constitution, there is such a method, a constitutional method. In this proposed section, it is a method but it is to be provided by law. In other words --

OKINO: It's an amendment. That is the amendment offered by Delegate Doi. Then I take it you are speaking against the amendment. What the committee did was follow the provision in the New Jersey Constitution. Section 1 of this article, Committee Proposal No. 2, is basically from the New Jersey Constitution, the section with reference to a tie vote.

HEEN: This provides that the person receiving the greatest number of votes shall be the governor. Now, it may mean that the candidate running for election and receiving the greatest number of votes may not receive a majority of the votes. It might be a plurality vote, and therefore, is not an elected governor representing the majority of the votes. We, I think, were thinking in terms of there being only two parties, political parties, putting up candidates for election to the office of governor. There might be four parties in the field, four political parties, and when you split the votes up, the one receiving the greatest number of votes may not receive the majority of all the votes.

CHAIRMAN: I'd like to ask the delegate from the fourth who just spoke, Delegate Heen, do you have an amendment to propose?

HEEN: No, I have not. I thought I'd pose that question for the consideration of the Convention. If it's deliberately intended that a person receiving the greatest number of votes may be one who does not receive a majority of the votes, then this is all right. I don't know whether it was so intended.

OKINO: The committee did so intend. That particular question raised by Delegate Heen has been considered by the committee members. The history of -- the political history of the Territory of Hawaii has shown that there have been no more than two parties. We have studied the constitutions of other states wherein are more than one -- more than two major political parties, but history has shown that no third party has shown any strength to be considered in the matter of an election of a governor of that particular state.

ARASHIRO: I wish to at this time make an amendment to the amendment by inserting "in a general election" after the word "votes" in the third line of the second paragraph, to read as follows: "The governor shall be elected by the legally qualified voters of the State. The person receiving the greatest number of votes in a general election shall be the governor."

KAWAKAMI: I second the motion.

CHAIRMAN: It's been moved and seconded that the amendment of Delegate Doi be further amended.

ARASHIRO: I think that amendment will take care of the question raised by the delegate from the fourth district and also the question raised by the delegate from the fifth district, whether the governor will be elected in the primary or not. And the person receiving the vote, the highest number of votes in the general election, will mean whether we have three or four parties doesn't make any difference, because it is the final election when the person who receives the greatest number of votes in the general election should be the governor.

CHAIRMAN: I'd like to ask Delegate Arashiro to read his amendment once more, please.

CROSSLEY: Before he reads it, a point of information.

CHAIRMAN: State your point.

CROSSLEY: I believe that the amendment should be to the section rather than to the previous amendment, so it would be an amendment to the section.

CHAIRMAN: If it's an amendment to the section, I think the Chair will have to rule that it be held in abeyance until we vote on the pending amendment.

SHIMAMURA: May I speak to the original amendment proposed by the gentleman from Hawaii? If we proceed on the premise that our government is founded on the separation of powers, and if we believe in the fundamental doctrine of the separation of powers, then I feel that it's inevitable that we adopt within our Constitution a definite procedure of electing the governor, just as in the Federal Constitution the President is provided for in detail, the method of election and so forth. If we leave it up to the legislature, I feel that the chief executive may be at the mercy of the legislature.

CHAIRMAN: I would ask the delegate if he has an amendment to that effect.

SHIMAMURA: I am speaking against the proposed amendment by the gentleman from Hawaii.

LOPER: That was the point I wished to make when I rose to get the floor a moment ago, that the amendment which is being considered apparently is designed to do two things; one is to abbreviate this particular section, and the other is to leave it to the legislature. It would be quite possible to boil down this paragraph and the two following paragraphs into one sentence: "The governor shall be elected by the legally qualified voters of this State for a four year term, and he shall have such qualifications as may be prescribed by law." But if, as the previous speaker has said, we wish to provide for a separation of powers, it seems to me that the executive should not be left entirely to the legislature. It seems to me it's almost as important to provide for full coverage on the executive as for the judiciary.

TAVARES: Before voting on the proposed amendment I'd like to see if my understanding of this original set out paragraph is correct. As I understand it, the purpose of the second sentence reading: "The person receiving the greatest number of votes shall be the governor," is first to make it clear that the governor does not have to be elected by a clear majority of all of the persons voting at an election. That is one of the purposes.

OKINO: That is correct.

TAVARES: As I understand it, using the ordinary meaning of such terms, ordinarily the courts would understand that to mean the vote at a final election rather than a primary, because generally speaking a primary election is not really considered an election in the technical sense of the term under constitutional provisions. Just like our Organic Act. It has been held a primary election is not an election within the meaning of our Organic Act.

There is one more matter I would like to clear up and that is that speaking—although I'm a little out of order—to Delegate Arashiro's proposed amendment, I think since it's understood and will be understood in the courts that a final election is meant, we do not need to put this special wording in about a general election, because you may have to elect an interim governor if you have a special election, in which case that wouldn't apply.

CHAIRMAN: Is there any more discussion on the proposed amendment?

OKINO: Before we take action - - No, I shall hold the matter in abeyance.

DOI: I, too, believe in the separation-of-power doctrine. What has been said in that principle was very nice. But theory standing alone is meaningless. Theory here as propounded, applied to the several facets as is before this committee here, will show that insofar as the term of office of the governor is concerned, it's contained in a different paragraph than that we are considering here, and insofar as the qualification of the governor goes, it's also contained in different paragraphs before us. The paragraph we are dealing with only has to do with the method of election of the governor, and as to the method of the election of the governor, the amendment already provides that he shall be elected by the qualified voters. Therefore, the rest, if it should be left to the legislature, does not go to the basis of the power of the governor, does not affect it in such a - - does not affect his power in such a degree as to render the separation-of-power doctrine meaningless. Therefore, I think the amendment should be adopted.

CHAIRMAN: Delegate Okino, did you wish to speak?

OKINO: No, I wish to speak on another phase of the paragraph.

ANTHONY: I'd like to have the amendment read, if we could.

CHAIRMAN: I would like to ask Delegate Doi to restate his amendment.

DOI: "The governor shall be elected by the legally qualified voters of this state as provided by law."

ANTHONY: That's exactly what we don't want in the executive article. We don't want to leave the possibility of whether or not we are ever going to have a governor, namely "as provided by law," to any legislation. There should be provided in this Constitution the framework of electing the governor, and I don't know why we don't simply take Section 4 of the New Jersey Constitution which is perfectly clear. "The governor shall be elected by the legally qualified voters of this state. The person receiving the greatest number of votes shall be the governor, but if two or more shall be equal and greatest in votes, one of them shall be elected governor by the vote of a majority of all the members of both houses in joint meetings at the regular legislative session next following the election for governor by the people. Contested elections for office of governor shall be determined in such manner as may be provided by law."

Now in such an article you have complete constitutional framework for the election of the governor. The only time that you have to resort to legislation is in the event of contest. The suggested amendment would leave it to the mercies of the legislature to make a provision. In other words, you might get a legislature that wouldn't make any provision, then what are you going to do?

SMITH: May I ask a question of the last speaker? Is that an amendment you were just proposing?

ANTHONY: I was speaking in opposition to the amendment of the delegate from Hawaii. I don't think it reaches the fundamental problem here. We want to incorporate in the executive article complete workable framework for the election of a governor, and this does not do it.

CHAIRMAN: Are there any other comments on the proposed amendment? If not, all those in favor of the amendment as stated by Delegate Doi will say "aye." Opposed. The motion is lost.

ARASHIRO: I now offer my amendment, as I have stated previously, by changing the word "general" to "final election."

CHAIRMAN: Your amendment as I read it will be "The governor shall be elected by the legally qualified voters of this state as provided by law."

ARASHIRO: No, and - -

CHAIRMAN: "The person receiving the greatest number - -"

ARASHIRO: "The person receiving the greatest number of votes in the final election shall be the governor."

CROSSLEY: I would second that if I understand that the balance of the section continues as is. That's correct.

CHAIRMAN: It's been moved and seconded that the section be amended.

HEEN: I rise to a point of information. What does the word "final" mean? What is the intent of the using that word?

ARASHIRO: When Delegate - - when Delegate Tavares mentioned it, the thing that came into my mind was that probably there might be a special election, and in that special election they might have a primary and a general. Will that then be considered as a general election, or will "general" be more appropriate than "final"?

HEEN: As I understand it, the general election is the regular election that is held for the election of legislators and the governor. Now, you may have a special election for the election of a governor when the original governor dies or vacates his office. So I don't see the sense in using the word "final" in this particular paragraph.

TAVARES: I believe our committee report can make it clear enough so that we don't need to put another word or a few more words into this article. I think that if the explanation goes in, there will be no question about what is meant.

OKINO: I think that explanation has been adequately made by Delegate Tavares. The word "election" has been construed, as used in the Federal Constitution, to mean the final or general election of the governor. Now, in qualifying by putting in the word "final," to contra - - distinguish from the words "special election," the committee proposal does not contain any special election for the governor in the event of a vacancy by reason of the governor's death or resignation. The officer, namely the lieutenant governor, is to succeed to that particular office, and thereafter it is provided in the section relating to the succession of that particular office that the matter would be regulated or prescribed by law. So there is no - - there will never be a special election for the governor.

MAU: Do I understand that the movant of this motion to amend has withdrawn?

CHAIRMAN: I do not believe so.

MAU: And it has been seconded?

CHAIRMAN: It has been seconded. Is there any further discussion?

FONG: Do we understand - - I'd like to ask the chairman of the committee a question. Do we understand that the words, "The person receiving the greatest number of votes shall be the governor," does that mean that if there are ten persons running in the final election representing ten different parties that the person receiving the greatest number of votes, irregardless of whether he receives the majority of votes, should be elected governor? Is that the intent?

OKINO: That is the intent of the committee.

FONG: A plurality of the votes?

OKINO: Presupposing there are ten parties in the final election, general election with ten candidates running for the office of governor on each ticket.

FONG: Then that will be decided at that general election.

OKINO: Yes.

FONG: The vote for governor will be decided at the final election, which is the general election - -

OKINO: That is correct.

FONG: - - regardless whether he receives the majority of votes or not.

ARASHIRO: If the statement made by the chairman of the Executive Committee and the statement made by the delegate from the fourth district that an election means a general election is clearly understood by the committee and will be clearly understood in the future, I withdraw my motion.

CHAIRMAN: Delegate Arashiro's motion has been withdrawn.

ANTHONY: I move that this paragraph be amended to read as follows: "The governor"—and this is from Section 1 - - Article 5, Section 1, subparagraph 4 - -

CHAIRMAN: Is that going to be verbatim from that section?

ANTHONY: From the New Jersey Constitution. I will supply it later. "The governor shall be elected by the legally qualified voters of this State. The person receiving the greatest number of votes shall be the governor, but if two or more shall be equal and greatest in votes, one of them shall be elected governor by the vote of a majority of all the members of both houses of the legislature in joint meeting at the regular legislative session next following the election for governor by the people. Contested elections for the office of governor shall be determined in such manner as may be provided by law."

LOPER: I would like to second that motion, but in doing so I would like to ask the chairman of the committee, Delegate Okino, if he had some special reason for omitting this particular provision, that in the event of a tie the legislature in joint session should determine the one to be elected. My question is, did you have some special reason for modifying what is apparently taken from the New Jersey Constitution?

OKINO: I think you will recall, Dr. Loper, I mean Delegate Loper, that the purpose of rephrasing that particular sentence was to make it as brief as possible. You will know - - you will note that the sentence submitted in paragraph 2 of Proposal No. 2 [sic] is much shorter than that expressed in the New Jersey Constitution and yet the context or the idea is incorporated. That was the only reason why it was shortened.

RICHARDS: I would like to further amend the proposed amendment by the delegate from the fourth district by striking out the last sentence: "In a contested election, the selection of the governor shall be determined in such a manner as may be provided by law."

ANTHONY: I accept that amendment.

RICHARDS: The purpose of that is that in Committee Proposal No. 8, which we have already acted on, we state that the contested election shall be determined by the supreme court of the state according to law.

MAU: I'd like to ask the chairman of the committee what the situation will be in the event of a contested election. Does the governor who has been elected by a prior election continue in office until the situation is cleared by the supreme court?

OKINO: It is presupposed that the lieutenant governor will qualify on that particular day and carry on the office of governor because of inability on the part of the governor elected to serve and fulfill his functions.

CHAIRMAN: Is that a satisfactory answer?

TAVARES: I should like to point out that if the section as originally - - or paragraph as originally drawn by the committee is adopted, we will not be leaving a hiatus here because Section 173 of our Revised Laws takes care of ties. It may not be the best way, but there will be provision for a tie vote by statute. Now it says: "In case of the failure of an election by reason of the equality of votes between two or more candidates, the tie shall forthwith be decided by lot," and so forth.

OKINO: I have referred to that particular section in my report. But the only reason why it was left in is because the

particular statute now existing under the laws of the Territory of Hawaii may not be the law of the future State of Hawaii. The Chair was about to move that the matter of contested election be deleted from each proposal also. You will recall that the Chair was the one who raised that question when paragraph 5 of that proposal submitted by the Committee on Suffrage and Elections was debated on the floor.

CHAIRMAN: The motion before the house now is to amend paragraph 2 of Section 1 to read as the New Jersey Constitution with the deletion concerning contested elections.

CASTRO: Was that amendment seconded? I mean, it is before the - -

CHAIRMAN: The amendment was accepted by the original movant.

CASTRO: Oh, I see, it was accepted. I'd like to, for the sake of having a chance to read that, move on to the next paragraph while Delegate Anthony has a chance to get his amendment printed. So, if the Chair will accept the motion to defer action until the end of the section - -

CHAIRMAN: The reason that I did not suggest deferment is, I thought that most delegates had a copy of the New Jersey Constitution.

CASTRO: Do all of the delegates have a copy?

CHAIRMAN: That was my understanding.

CASTRO: Well, if there are copies around, I would like to request one from the Sergeant-at-Arms.

FUKUSHIMA: I'd like to speak in opposition to the amendment proposed by Delegate Anthony. It doesn't add anything to the proposal as submitted by the committee. The only thing it does is [cover] the situation when there is a tie vote, and that is determined by the vote of the legislature. The committee, as I understand it, when we took this up went through the New Jersey Constitution and the provisions very thoroughly and deleted that portion of a tie vote because that happens so rarely. And I believe that is the reason for this language here. The language as proposed by the New Jersey Constitution, as proposed by Delegate Anthony now, doesn't add anything to this. The tie vote is so remote that the committee felt that it should be left out and left to the determination by the legislature.

ANTHONY: I think that the last speaker is absolutely right, and I regret wasting the time of the Convention. I would like to withdraw my motion for amendment.

OKINO: Now that the offered amendment has been withdrawn, I should like to briefly explain this particular point. As one of the delegates called to your attention, the Chair has no objection to deleting that portion of sentence 3, "or a contested election," by reason of the fact that that matter is now covered by Section 5 of Suffrage and Election. Now, if we are certain that a matter of tie vote will also and likewise be covered by the statute of the future State of Hawaii, then it would seem to the Chair that that last sentence may just as well be deleted. Because of the fact that the Committee on Suffrage and Elections contained nothing with reference to a tie vote, the committee felt that that particular portion of the third sentence, "In case of a tie vote, the selection of governor shall be determined in such manner as may be provided by law," should be included herein.

ARASHIRO: Do I understand that there is no amendment right - - pending now.

CHAIRMAN: There is no amendment pending.

ARASHIRO: Then I move to the previous question.

DELEGATE: Second the motion.

CHAIRMAN: The previous question has been called.

KELLERMAN: I have an amendment to offer.

CHAIRMAN: Would you hold that? Mrs. Kellerman, you have the floor. The previous question was not seconded.

KELLERMAN: As I read this section, it provides that the term of office of the governor shall begin - - shall be four years beginning at - -
[Discussion in background inaudible.]

KELLERMAN: Mr. Chairman.

PORTEUS: Did the chairman of the Executive Powers Committee agree that the "or a contested election" should be deleted?

OKINO: Yes, Delegate Porteus. The matter is covered by article on suffrage and election.

PORTEUS: Well, if the chairman would care to make that motion, I would be happy to second it.

OKINO: I so move.

PORTEUS: And I second it.

CHAIRMAN: It's been moved and seconded that the words "or contested" - -

ROBERTS: I have a question to raise on that.

CHAIRMAN: - - that would be deleted.

ROBERTS: I have a question on that. That would be with the understanding that our Committee of the Whole report will show that that question is covered by another part of the Constitution.

CHAIRMAN: Right. Delegate Kellerman, did you wish the floor?

KELLERMAN: This amendment has come in now before I was able to make mine. I was discussing my proposed amendment by referring to the third paragraph, but my proposed amendment will be to the second paragraph, as soon as you take the vote on this one.

SHIMAMURA: Point of information, please.

CHAIRMAN: State your point.

SHIMAMURA: Does the last motion consist of deletion of the entire last sentence or only the words "or a contested election"?

CHAIRMAN: "Or a contested election," only.

SHIMAMURA: Thank you.

CHAIRMAN: All those - -

MAU: Point of information. If I understood Delegate Kellerman correctly, she wants to propose an amendment to paragraph 2.

CHAIRMAN: She has a further amendment to offer. The question before the house at the moment is the deletion of the words "or a contested election."

MAU: Oh, I see, Thank you.

CHAIRMAN: All those in favor of the motion to delete will say "aye." Opposed. Carried.

KELLERMAN: I have begun discussing the third paragraph to explain my motion. If you will read it through—and to understand it, you'll have to read through this section—it provides that the governor shall take office as of a certain Monday following or after -- next following his election. It doesn't say when the election is to take place. Now, if we should become a state say next July it's quite possible there would be an immediate special election to elect a governor. There is nothing in this provision nor in our provision on suffrage and elections which would not necessarily require that governor being re-elected four years from the date of that special election. There's nothing in the report and there's nothing in this section that says that the governor must be elected at a general election. So under the absolute language of paragraph 3, with nothing in here to the contrary, the governor's term would be four years from the date of that special election, and that four year term would continue at that odd time.

So, I, therefore, would propose an amendment to the first sentence of the second paragraph: "The governor shall be elected by the legally qualified voters of this state at a regular election." That makes possible the interim term to be provided for elsewhere under continuity of laws, but it would make it impossible for the interim term to be construed as the four year term referred to in the third paragraph.

LOPER: May I ask the previous speaker if it would not also make it impossible to elect the governor at a special election in the event of the death of the governor?

KELLERMAN: I think it possibly would, unless that is provided for elsewhere. I was under the impression that the lieutenant governor would take over the governorship in case of the death of the governor.

CHAIRMAN: That's the Chair's understanding.

KELLERMAN: It seems to me that if it is not so provided, that would have to be provided for separately. But this language, leaving it like this, leaves the interpretation that the four year term will be four years from the election of the first governor, whenever that may be, which may be at a special election at a time that does not conform with our general election period.

CHAIRMAN: Is there any second to the amendment?

KAM: I have the New York Constitution. It says here that the governor shall be chosen at the general election held in the year -- even number of years, and the person receiving the highest number of votes for governor shall be elected. So in the second paragraph, it just says that "the person receiving the greatest number of votes shall be the governor." It doesn't say what election, so I'll second Kellerman's motion, that we have the "regular election" there.

CHAIRMAN: It's been moved and seconded that the paragraph be amended to read, "qualified voters of this State at a regular election."

TAVARES: I think again this is a situation in which there are enough variations so that we had better explain in our Committee of the Whole report and not try to add too many words. I think it is proper, and that we should have an ordinance at the end of this Constitution which would take care of the special situation where, when we become a state, we may have to have a special election. And I think it'll be dangerous to try to cover every situation by putting a word here or a word there.

CHAIRMAN: Delegate Shimamura, chairman of the Committee on Ordinances.

SHIMAMURA: May I state that there is already a special election ordinance proposed. That situation is provided for.

CHAIRMAN: Thank you.

CROSSLEY: That situation was discussed in committee, and it was felt that that, as I understand it, was to be covered by a provision, an ordinance, or in the Committee of the Whole report setting forth the manner just so that we would not clutter this section up with language that we felt might be restrictive rather than helpful.

HEEN: It seemed to me that there should be a statement here somewhere that the governor is to be elected at a regular election, because there is no special election provided here for the governor in case of a vacancy. Of course, starting off, there may be, or shall -- I think there ought to be a special election for not only the election of a governor but also the election of the members of the legislature. If we state here that the governor is to be elected at a regular election, then the other matter can be taken care of by -- in the schedule or by an ordinance.

CHAIRMAN: The Chair understands that an ordinance section has been provided for that purpose. Is there any further discussion on the motion to amend? Delegate Heen, are you through?

HEEN: I'd like to have that amendment read again, please.

CHAIRMAN: Would you care to read it, Mrs. Kellerman? Delegate Kellerman.

KELLERMAN: "The governor shall be elected --" This is the first sentence of paragraph 2. "The governor shall be elected by the legally qualified voters of this State, at a regular election." Now I notice in just referring to Committee Proposal No. 8 which we have adopted on suffrage and election, they use the term "general election" rather than "regular election." So in the interest of uniformity, I would say change my -- the original language that I had given to read, "at a general election." "The governor shall be elected by the legally qualified voters of this State, at a general election."

CHAIRMAN: Thank you.

HEEN: I think that is correct. In the article on legislative powers, there is a section dealing with the sessions of the legislature and as I recall it -- if you'll bear with me for a moment. I don't know, it's not covered there, but I think in the article on elections and suffrage, I don't know what is used there in that article. May I ask what committee proposal that is, in the files?

RICHARDS: Committee Proposal No. 8.

KELLERMAN: You wanted the section on election?

RICHARDS: The last section.

KELLERMAN: May I read that section from elections -- suffrage and elections?

CHAIRMAN: Is that from elections? Is that covering election of the governor?

KELLERMAN: It just says, "General elections shall be held on the Tuesday next after the first Monday in November, in all even-numbered years. Special elections may be held according to law," and so forth.

HEEN: That's the correct term then. "General election" is the term.

CHAIRMAN: Is there any other further discussion of the proposed amendment?

SHIMAMURA: I'm not speaking against the amendment - -

CHAIRMAN: Are you speaking for the amendment?

SHIMAMURA: - - but I just wish to comment that the officers are all elected at the general election. They are not elected at the primary. So even if you left the word "general election" out, it means general election.

CHAIRMAN: I understand it that that question has been discussed.

SHIMAMURA: They are only nominated at the primary election.

KELLERMAN: My amendment does not go to the idea of a primary versus a final election. It goes to a general versus a possible special election. That's the reason for putting in "at a general election."

CHAIRMAN: All those in favor of the amendment as proposed by Delegate Kellerman will please say "aye." Opposed. The amendment is carried.

Unless there are further amendments, a motion to adopt the section as amended is in order.

LAI: I move that we adopt paragraph 2 as amended.

APOLIONA: I second that motion.

CHAIRMAN: May the Chair restate the motion that we adopt paragraph 2 tentatively of Section 1. All those in favor of the motion will say "aye." Opposed. Paragraph 2 is adopted, tentatively.

Paragraph 3.

LAI: I move for the tentative adoption of paragraph 3.

APOLIONA: I second that motion.

CHAIRMAN: It's been moved and seconded for the tentative adoption of paragraph 3, Section 1.

TAVARES: It is my understanding in voting for this, as I intend to, that this refers of course to what has just been said about the regular term of a governor. In other words, it is intended that that four-year term begins after a general election of a governor.

CHAIRMAN: That's the Chair's understanding. All those in favor of adoption of paragraph 3 tentatively will say "aye." Opposed. The paragraph is tentatively adopted.

LAI: I move for tentative adoption of paragraph 4.

APOLIONA: I second that motion.

CHAIRMAN: Any discussion on paragraph 4?

ASHFORD: I would like to amend that by substituting for the words "five years," the words "ten years."

SAKAKIHARA: I second the motion - - amendment.

ASHFORD: May I speak to that?

CHAIRMAN: You may.

ASHFORD: We provided in our courts not merely that the justices and judges should be residents for ten years, they must be residents for more than ten years, I think, because they must have been members of the bar for ten years, and they would have had to be residents for at least a year prior to that. Now when it comes to the chief executive, it seems to me that he should be a resident for at least ten years.

CHAIRMAN: It was moved and seconded that we adopt paragraph 5 tentatively. Is that correct?

DELEGATE: That's correct.

CHAIRMAN: Did we put the question on paragraph 5?

DELEGATES: No, no.

WIRTZ: We did put the question on paragraph 4, however.

CHAIRMAN: I stand corrected.

HEEN: We are now discussing the fourth paragraph and there has been a motion to adopt that tentatively.

CHAIRMAN: The Chair stands corrected. Thank you.

All those in favor of the amendment to paragraph 4 deleting the five years and substituting ten years in the next to last line - -

ROBERTS: I don't think we've given this thing adequate consideration. The committee reports out for the recommendation for five years and we move to amend for ten without, it seems to me, giving adequate consideration as to the recommendation of the committee. I'd like to hear from the committee as to their reason for the recommendation.

CHAIRMAN: The Chair has no way of knowing how much consideration the movants of various amendments gave the question.

ROBERTS: I recognize that, Mr. Chairman. It's not addressed to you. I think it's addressed to the delegation in terms of the problem.

OKINO: The committee considered the following facts. In the Organic Act of the Territory of Hawaii, the residential requirement is three years. There are only three states in the United States of America which require ten years' residential requirement. These three states are Louisiana, Missouri and Oklahoma. There are seven states requiring seven years' residence; there are three states requiring six years; there are 18 states requiring five years, which is the prevalent residential requirement. There is one state, four years; one state, three years; eight states, two years; one state, one year, and six states, not specified. The committee simply adopted the prevalent residential requirement of five years.

CHAIRMAN: Is that residential requirement of five years for office of governor or for - -

OKINO: Office of governor. This article is restricted for the office of governor.

CHAIRMAN: Is there any further discussion?

LEE: On a point of information from the chairman of the committee. Was it the conclusion on the part of the committee—I understand the committee was unanimous on this point because there was no minority view expressed on the five year limitation—that as we progress to a longer residential clause that it would be more of a definite step backward as compared with a shorter period for a progressive type of limitation?

OKINO: In reply to that question, I would like to reply, Delegate Lee, that the committee members felt that a resident should live here for a period of above five years in Hawaii before he would become familiar, become acquainted with the somewhat peculiar problems here of the State of Hawaii. It is not like the 48 states of the Union.

LEE: As I understand it then, your committee was unanimous on that point.

OKINO: After some debate, yes, the committee was unanimous.

FONG: I'd like to talk against the amendment. If this office was an appointive office, I think the amendment would be well taken. But due to the fact that this office is going to be an elective office and a man, if he's any good at all, and he can prove to us that he's a good man, I think if he's been here for five years, we should put him into office, and I'd like to say that ten years is a little too long. Five years, going along with the majority of the states, would be in good order.

CROSSLEY: I would like to concur with the remarks of the last speaker. As a matter of fact, that was one of the main considerations that was given to putting this at five years. It was the feeling of the committee. Some of us thought it should be only three, some thought seven, some thought ten. We all agreed that if any man can be elected after living here for five years, then he deserves to be elected.

MAU: I'm in agreement with that statement. If any citizen in the United States who desires to reside in the Territory of Hawaii comes here and becomes a good citizen and wants to run for office and can get elected after five years of residence, he must be a very good man.

LEE: I see -- I notice that all those that run for office many times concur in that viewpoint, because it is a handicap for those who have not been born and raised here to be elected to office. And I say I take my hat off to anybody who can get elected who hasn't been here for a long time.

C. RICE: The committee, in discussing this, felt that this Constitution was going to be looked over by the Senate and Congress of the United States, and if we put five years where the majority of the states had that, it looked as though we weren't trying to bar any malihini coming here, and we might have a little more favorable attention.

CHAIRMAN: Any further discussion of the motion to amend? The motion to amend is to delete the word "five" and insert the word "ten" next to the last line in paragraph 4. All those in favor of the motion will say "aye." Opposed. The motion is lost.

Are there any further amendments to paragraph 4?

DOI: I would like to direct a question to the chairman of the committee. That is, what reasons prompted the committee to decide on the age 35 as being the minimum age?

OKINO: In reply to that question interposed by the delegate from Hawaii, I should like to reply by furnishing him with the following facts. The Organic Act prescribes that the governor of the Territory of Hawaii shall be 35 years of age. There is only one state which requires the age of 31 years. There are 35 states which requires the governor, the candidate for governor, to be 30 years of age. There are four states requiring the candidate to be 25 years of age. There are eight states not requiring any particular age for any individual for the office of governor. We simply followed the Organic Act, that document which was given to us, the Territory of Hawaii, by the United States Congress.

CHAIRMAN: Any further discussion?

DELEGATE: I think it ought to be 60.

CHAIRMAN: I'm glad I did not hear you. The motion before the house is for the adoption of paragraph 4, tentatively, of Section 1. All those in favor will say "aye." Opposed. The paragraph is adopted tentatively.

LAI: I move for tentative adoption of paragraph 5.

APOLIONA: I second that motion.

CHAIRMAN: It's been moved and seconded that we tentatively adopt paragraph 5. Is there any discussion?

AKAU: Point of information from the chairman of the committee. Does this statement appear in any other constitutions regarding the governor holding office, "no other office for profit"? The reason I ask the question is, isn't it implied and understood that the governor who has, let us say, a great many responsibilities wouldn't be able to handle other work for profit. Is it -- I just raise the question, is it necessary to put it in?

OKINO: The expression "of profit," whether the same should be retained or deleted, met with considerable discussion. It was eventually resolved by the committee that the committee adopt the language of the -- basically the language of the New Jersey Constitution. If you will refer to the Constitution of New Jersey, you will find the following sentence in paragraph 3 under the executive department. "No member of Congress or person holding any office or position of profit under this State or the United States shall be governor."

AKAU: Does a statement appear in any other part of the Constitution and in any other section that would take care of -- in general of all the groups, judiciary, executive and legislative?

CHAIRMAN: Delegate Crossley, would you like to answer the question?

CROSSLEY: I'd like to answer part of that. There is a restriction, of course, on justices and judges in the section that we adopted the other day. That was spelled out specifically in that case.

RICHARDS: I would like to ask the chairman of the committee another question. Will this, if it is put into the Constitution, require the resignation of any elected official? For instance, if a member of the State House of Representatives or a member of the State Senate desired to run for governor, would it require his prior resignation?

OKINO: Is your question directed to this point; if the governor who is -- if an individual who is in office as governor seeks appointment to any other governmental offices, or if he would desire to become a candidate, say, to the Senate of the United States?

RICHARDS: Well, yes. That's stating my question in reverse, but both conditions apply.

OKINO: I believe my committee report explains that point in the following manner. If the governor should seek election to any other public office, there will be legally a resignation upon his part from the office of governor if he shall assume the new office to which he has been elected or appointed. That is predicated upon the principle of incompatibility of offices.

RICHARDS: I see. Then would that also take care of the situation of a holdover state senator who runs for the office of governor, that upon his -- that he will qualify but upon his assuming the office of governor he automatically gives up his state senatorship?

OKINO: Logically --

RICHARDS: If he loses the office he may retain his state senatorship? Loses the election?

OKINO: That's correct.

RICHARDS: Thank you.

CHAIRMAN: Are there any further questions?

ROBERTS: I'd like to suggest that as we go through the sections that we follow along with the committee report. The committee report is one of the best that's been put out on the floor so far and covers very adequately each of the points as they come up. I think if we follow through with the report, I think we can move along very promptly on it.

CHAIRMAN: The Chair would be very glad to second that motion. Is there any further discussion? All those - -

MAU: Point of information.

CHAIRMAN: State your point.

MAU: It might be that other offices are covered by the same type of prohibition, including the judiciary and the members of the legislature. I wonder if it would be wise to have a general clause. I was trying to think and I can't think of any officer who could possibly hold two offices under authority of the State on the theory of incompatibility of offices. Should we give some consideration to that?

HEEN: In the proposed committee proposal of the Legislative Committee we have this provision: "Disqualification of members of the legislature. No member of the legislature shall during the term for which he is elected or appointed, be elected or appointed to any public office, position or employment which shall have been created or the emoluments whereof shall have been increased by legislative acts during such term."

CHAIRMAN: The Chair feels that possibly the Committee on Style could take care of them if they are identical provisions.

TAVARES: I think that the question of incompatibility is a common law question which is determined by the courts on the basis of the facts as they exist, as to whether the duties of one office actually conflict with the duties of another. And it's quite possible, and it is done in this Territory, for a person to hold more than one office, providing they are not incompatible. For instance, there are many officers who are also notaries public and that's an office.

CHAIRMAN: Is there any further discussion?

HEEN: In the report, I see no remarks on paragraph 5 of this Section 1.

CHAIRMAN: Can someone supply the page reference.

ROBERTS: On page 3, I think, on paragraph 4, "Under the provision set forth in the last paragraph of Section 1, a person holding any other office under the State or United States could seek election to the office of governor, but will be required to resign such other office before qualifying as governor. Conversely," and so on.

CHAIRMAN: Does that answer your question, Delegate Heen?

HEEN: It seemed to me that paragraph 5 really controls. "The Governor shall not hold any other office or employment of profit under the State or of the United States during his term of office." In other words, he may seek election to the United States Senate, but as soon as he takes that office, which is an "office of profit," then he can no longer remain as governor under this very provision, this paragraph 5.

DELEGATE: Second the motion.

CHAIRMAN: I think that is the understanding of the chairman of the committee. Is there any further discussion?

ROBERTS: I have a question on that. Is it the intent of the article that if a person who is governor runs for the United States Senate that he may run and still retain his office as senator [sic] until he qualifies as senator of the United States? I just want that in the record. Is it clear?

OKINO: That is the intent of the committee.

CHAIRMAN: Is there any further discussion?

TAVARES: To correct an obvious error, he would still retain his office as governor while running for the Senate. The gentleman said, "He would retain his office as senator."

CHAIRMAN: The record will show the correction.
Is there any further discussion? All those in favor of the tentative adoption of paragraph 5, Section 1, will say "aye." Opposed. So carried.
The Chair without objection will declare a five minute recess.

CROSSLEY: Second the motion.

(RECESS)

CHAIRMAN: The Committee of the Whole please come to order. When we had recessed, we had completed Section 1.

CROSSLEY: I would at this time like to move the adoption of Section 2.

APOLIONA: I second that motion.

LAI: I think - - Point of order. I think we'd better adopt Section 1, entire section as amended. I so move.

J. TRASK: Tentatively, Mr. Chairman.

SILVA: Point of order is out of order.

CHAIRMAN: The Chair will recognize Delegate Lai's proposal.

J. TRASK: Second the motion.

CHAIRMAN: It's been moved and seconded that we adopt Section 1, tentatively, in its entirety.

DELEGATE: As amended.

CHAIRMAN: The Chair stands corrected. All those in favor say "aye." Opposed. Carried.

CROSSLEY: Mr. Chairman, I now move that we adopt Section 2 in its entirety.

CHAIRMAN: Tentatively?

APOLIONA: I second that motion.

CHAIRMAN: It's been moved and seconded that we adopt Section 2 tentatively in its entirety. Is there any discussion?

A. TRASK: I move for an amendment. In the second sentence, at the end of the third line, after the word "elected," insert the following words: "from the same party as the governor."

CHAIRMAN: Delegate Trask, where would you insert your amendment?

A. TRASK: After the word "elected," at the end of the third line of Section 2, Committee Proposal No. 22, insert the words "from the same party as the governor."

J. TRASK: I second the motion.

CHAIRMAN: It's been moved and seconded that the words "from the same party" be inserted in the line -- after line 3 -- at the end of line 3, after the word "elected."

CROSSLEY: Point of information. I'd like to ask the movant of that last motion if he could explain just how it would work.

CHAIRMAN: Are you referring to the present situation?

A. TRASK: Well, the suggestion only recently came from President Dewey of a certain American political party. I haven't yet communicated with him, but I do think that the suggestion, however impromptu it's now proposed, should be worked out.

My reasons are as follows: first, the very theory upon this executive article is to have a strong executorship. It's based upon the theory that there shall be harmony in the administration of the executive department. Consistent with that, it is almost inconceivable to have the governor of one party and a lieutenant governor of another party, particularly when there is some thinking here in the Convention that the lieutenant governor perhaps should be the president pro tem of the Senate, so that the number in the Senate instead of being 21 should be 20 by -- because of economy. As recent as last week, Governor Dewey did suggest the situation of the governor and lieutenant governor being of the same party. I'm almost convinced he's right.

I think, thirdly, that we must certainly provide for continuity upon the death of the governor with the same people in office continuing. Otherwise, we would have quite a wide open breakup of the spoils system, of course, which we don't want to have unless done by the proper party.

C. RICE: May I ask him a question?

CHAIRMAN: Would you yield to a question?

A. TRASK: Yes, indeed.

C. RICE: If he belongs to the same party, should he belong to the same wing of the party?

CROSSLEY: Would the gentleman yield?

CHAIRMAN: Delegate Trask has the floor.

A. TRASK: I refuse to give myself further embarrassment.

CROSSLEY: Well, I will not embarrass him. I wonder if he will yield to a question.

CHAIRMAN: Delegate Trask has the floor. Would you yield for a question?

A. TRASK: I will yield to another party.

CROSSLEY: The question I had is this. Would you consider that the governor should be the one who would run for office and the lieutenant governor would simply be an associate name on the ballot, not running separately? They would thus be joined together and they could both campaign but the vote itself would need to go only to the one office.

A. TRASK: It would be in the theory of the closed primary. You vote for one, you stay on that side. That would be the theory.

HEEN: May I make --

CHAIRMAN: Delegate Trask, do you yield?

HEEN: -- a little contribution to this discussion. I think it is a very serious problem because if you elect a Republican governor and a Democratic lieutenant governor, you can rest assured that the governor will appoint persons to his cabinet or to the various offices created by law from his own party. Now in case of a vacancy in the office of governor, the Democratic lieutenant governor will succeed under the terms of this article. And where these cabinet officers and other officers hold their term at the pleasure of the governor, you can see where the lieutenant governor is going to throw them all out and elect -- and appoint members from his own party. So there you create confusion, chaos and lot of political skulduggery.

It seems to me that we should follow the idea that was stated by Governor Dewey the other day, and I believe he's right. I don't say that I almost believe he's right, I think he's right, I believe he's right, even though he is a Republican governor.

The way to handle that seems to me would be in this manner, by a separate section, "The governor and the lieutenant governor shall be voted for together upon the same ballot."

CHAIRMAN: Delegate Heen, did you make that as a motion?

HEEN: Sure, well as a suggestion. I'd like to have a little -- some views expressed upon that, but the idea is a good one.

A. TRASK: May Delegate Heen yield to an inquiry on that? Maybe paragraph 2 of Section 1, Delegate Heen, where you say that the selection of the governor shall be determined in a manner as may be provided by law would do it, inasmuch as Section 2 refers to the governor -- the lieutenant governor being appointed in the same manner as the governor.

HEEN: I think it should be a new section. We can designate it as Section 2A for the time being.

A. TRASK: In view of this, as I say, impromptu suggestion coming up at this time, may we defer action on Section 2 so that we may have something prepared on this point?

CHAIRMAN: You may so move.

PORTEUS: I wonder if I could speak --

CHAIRMAN: Are you through, Delegate Trask? Are you through?

A. TRASK: Yes.

PORTEUS: I wonder if we can speak to -- for the moment, to the suggestion before the matter is deferred. I'd like to point out to the delegates here that this was a subject wrestled with by your subcommittee in the Statehood Commission, and also by -- and also wrestled with by your committee here in the Constitutional Convention. The scheme as presented provides that there shall be a governor and a lieutenant governor, the only two elected offices of the executive department. If you say that both shall run on the same ticket, it means that you do not have a popularly elected lieutenant governor. What you will have is the man who is nominated on the ticket with the governor automatically carried into office by the election of the governor of that particular party. There's no point in allowing the voters to vote, one for the governor, next for the lieutenant governor, because if you elect a Republican governor but the Democratic lieutenant governor has by far the vast number of votes, you then have to say those votes don't count because he's not of the same party. Therefore, the Republican lieutenant governor is elected though he got but a few votes. Now, therefore, if you have a situation such as that there's no point in letting the people vote on the lieutenant governor.

A. TRASK: Mr. Chairman.

PORTEUS: A point of order, Mr. Chairman, will the gentleman please sit down till I've finished.

You might just as well - -

CHAIRMAN: I do recognize the point of order.

A. TRASK: I'm afraid that's an extraordinary request.

CHAIRMAN: The Chair has so ruled.

PORTEUS: Under those circumstances, therefore, you will find that it will only be necessary to cast a ballot for the governor, and the lieutenant governor will automatically go into office with him.

Now under the scheme as presented here, you will also have no special election in case the governor goes out of office. If there is to be no special election, the lieutenant governor succeeds to the office of the governor. He then becomes the governor. If you have a strong executive, it is right that he should choose the heads of the departments. From then on out it is his responsibility to the people of the Territory for the administration of the executive branch of the government. Now, how in the world is a man going to be responsible for the executive branch of the government if he is of one political party and all the heads of the departments are of another political party. He's not going to be able to have a controlled administration carrying out his particular policies. He's the one that must answer. Therefore, he should have the right of making the choice.

And I think the scheme as presented by the chairman of the Executive Powers Committee and of the members of that committee to be a wise one. Certainly, we haven't provided for the election of very many people to the - - in the executive department and it seems to me that we would - - could reasonably leave a vote on the governor and a separate vote on the lieutenant governor.

CROSSLEY: I'd like to address myself to the amendment that was offered. The reason I asked the questions that I did as to how it would be put on the ballot, was because—to carry out the thought so well expressed by the Secretary—it would seem to me that if you did that, if you put both men on the same ballot from the same party, that you might do what I advocated in the very first instance, that is appoint the lieutenant governor or the secretary of state or the man who will perform both of those duties, because that is in effect what you would be doing.

I'm not sure that isn't a better way than to have the confusion because I agree with the delegate from the fifth district that there is something to be said for continuity in this office, once the people have made their choice. And the only way that you can assure yourselves of that continuity is by having a man of the same political faith go along with you. That can be done in two ways. You can either have it on a joint ballot or you can have the office not an elective office but an appointive office and you will be sure then that the governor would be appointing a man of the same political party.

I even went further in the committee in suggesting that the lieutenant governor so appointed only serve until such time as a new election could be held to determine who should be governor. In other words, when people vote for the governor they should be voting for the governor, and in that manner they would have an immediate chance to vote again for governor, and in doing so would get the continuity of office the governor would bring with him.

At the proper time I would like to offer an amendment but I would like to hear the debate on this subject before I do.

HEEN: What the last speaker said, I think, is quite in order. In other words, if you want to have continuity of policies the lieutenant governor or the secretary of state should be appointed, but if you are going to elect two officers, one a governor and one a lieutenant governor, then it seems to me that they should represent the same political party. That's what is being done with reference to the office of President and Vice President of the United States. They vote in such a way that there's always an assurance that they belong to the same political party, and I think this can be taken care of by this language: "The governor and the lieutenant governor, representing the same political party, shall be voted for together upon the same ballot." In other words, you put the name of the governor, and the lieutenant governor below that of the governor, and then have just one box for one cross only, voting for those two at the same time. I think that'll take care of that - - this situation.

TAVARES: I don't think that will work either. Are we going to permit no non-partisans to run? As long - - as soon as you have a non-partisan on the ballot, that whole thing goes out of the window anyhow. I don't think it's practical. I feel very much the same way as the delegate from Kauai. If we are going to have a popularly elected lieutenant governor and have him something more than a mere nonentity, dictated and controlled by the governor, we've got to give the people the right to choose which man they want.

I can imagine the situation where you'll have a very strong man running for governor, a very weak man running for lieutenant governor on the same ticket, and on the other hand a weak man running for governor on the other ticket and a very strong man for lieutenant governor. And if the people are going to be governed by those - - have the possibility of being governed by the lieutenant governor, they may not wish to elect that lieutenant governor. You're not giving them the right to choose. I would rather see an appointive lieutenant governor than this situation.

A. TRASK: I'd like to forthwith reply to the Secretary who made the observation that you would, should you have the governor and lieutenant governor on one ballot, you'd be taking away the right of popular selection. I think that's erroneous and invalid, for this reason. When people vote, they vote for a certain particular political theory at that particular time. Now we're well aware what took place in 1933 when Roosevelt was swept into office. The people of America voted for one political theory as against another. It wasn't so much the person as it was the revolt of the people against a certain theory of government doing nothing. Now, it is on the theory of government, it's the theory of action or inaction, it's the theory of policies, the policy of one political party as against the policy of another political party.

The observation has been made by Delegate Tavares that you might have a lieutenant governor who might be weak. Well, we have the situation of President Truman who they thought was weak, but certainly not even the Republicans today would say, "He is weak." I say to that observation that the people have a right in a democracy to make their own mistakes and we have - - we're not endowed by any appellate jurisdiction to say that they shall not make their mistakes.

So I cannot help but feel strongly that when we all observe as we do that the political party is bigger than the man, why is that political axiom so strong? It is because people who are of political parties advocate a certain philosophy. And how wrong it would be to the people if after the people vote for a certain philosophy followed by a certain governor to have upon one week later this same governor dying and another person with an absolutely different faith taking over

and denying the people the continuity of their philosophy at that particular time.

So I again move, with Senator Heen agreeing, that we defer action on this matter so that his amendment may be printed and distributed. And I move for deferring Section 2 at this time.

LARSEN: I sit here listening to this political chatter. Actually, it seems to me the one weakness in American government is that parties can take control and subvert the good of the people. Let the people choose. Why should we write this in the Constitution. If a political party puts up a very weak man as a lieutenant governor, that political party doesn't deserve to stay in power if their strong governor dies. Let the people choose. Why should we try to manipulate for the people. It seems to me if we're going to have an elective office, then let the people choose it and make the various political parties see that they put up just as strong a man for lieutenant governor as governor, and if they put a weak one up just because they want to give him a political plum, then they deserve to have it taken away from them.

So, as far as I'm concerned, it seems to me we are leaving so little to the people that we hear this cry, "Let the people do it." In this case let the people choose and let's not write it into the Constitution.

LEE: I believe there's been enough debate on this matter and having considered out the people's feelings here. There're only two persons in the entire executive branch of the government we'll be providing an election for, and I am ready to move the previous question.

LARSEN: Second the motion.

CHAIRMAN: Previous question has been called.

A. TRASK: Point of information. What is the previous question?

CHAIRMAN: The previous question is your amendment. There was no second to the motion to defer.

A. TRASK: At this time I withdraw my amendment in favor of the amendment suggested by Delegate Heen, and I do second his motion, and I ask that his amendment be printed so that we may have the benefit of his thinking on it so that we can more intelligently vote on the amendment.

HEEN: I only made a suggestion which I thought merited some discussion and thought, and I think it does.

Now, the gentleman from the fourth district, the one who spoke before the last speaker, didn't express any views as to the chaotic condition that might come about if the one governor -- if the governor represented one party and the lieutenant governor represented another party, and the lieutenant governor succeeds the governor upon a vacancy existing in the office of governor. There's no question that there would be a condition of chaos and confusion if that were to occur. He expressed no views upon that at all. That's the meat of the whole situation.

CHAIRMAN: Delegate Heen, would you care to read your suggested amendment?

LEE: On a point of order. Do I understand then the movant of the amendment has withdrawn his amendment?

A. TRASK: I've withdrawn my amendment in favor of the amendment suggested by Delegate Heen, and I do second his amendment.

LEE: Well now, Mr. Chairman --

CHAIRMAN: Just a moment. The Chair will have to rule that you have withdrawn your original motion and have substituted therefore the language proposed by Delegate Heen.

A. TRASK: That is correct.

CHAIRMAN: Therefore, I wanted him to state that so a second would be in order. The withdrawal of the motion by Delegate Trask to me indicates that the motion for the previous question has also been withdrawn.

HEEN: I will make that as a direct motion, if I may. I move that a new section be added to this Committee Proposal No. 22, after Section 2, to be designated Section 2 A, reading as follows: "The governor and the lieutenant governor shall be voted for -- " I withdraw that. "The governor and the lieutenant governor representing the same political party, shall be voted for together upon the same ballot."

A. TRASK: Mr. Chairman.

CHAIRMAN: Just a second, the Chair is trying to record the motion.

A. TRASK: I second the motion.

CHAIRMAN: I think it will be up to Delegate Heen to second the motion. The motion is your motion. You made it. Unless you wish to withdraw.

A. TRASK: Well, whatever way the Chair, the Chairman rules.

CHAIRMAN: Would you second that motion, please.

HEEN: I'll second that motion.

TAVARES: It has just been stated that I said nothing about the supposed chaotic conditions that will exist if there's a change of parties in the middle of an administration. Although this is the first time I've mentioned it, I don't like to be goaded into political talks. But although I have been a Republican for a long time, I am not one of those people who thinks that there are not good people in both parties. So, first of all, there won't be chaos because I assume that the Senate will not lie down on its duty, and if the governor removes people of the opposite political faith, the people he puts in will be approved by the Senate and they'll have to be good people or reasonably good. So that I do not think there will be chaos at all.

Furthermore, I am still naive enough to believe that if a lieutenant governor of the opposite party is a good enough man to get elected when his opposite is elected governor, he'll be a good enough man to have the courage to keep some of those people in for the sake of continuity, and I don't think there will be chaos.

ANTHONY: I would like to speak for a moment to the amendment. The difficulty with the Federal Constitution was that it initially framed a perfect frame of government which was completely unworkable, unworkable because at the time of its adoption there were no political parties. It wasn't until after the Jefferson administration came in, and from then on, that political parties began to play the part which they now play in our government, thus making the Federal Constitution a workable instrument.

Now, to my way of thinking, it would be impossible, an impossible situation to have a governor and lieutenant governor of different political faith. The governor would step out of a state and his duties would devolve upon the lieutenant governor and then you'd have all sorts of back fighting and what not.

I certainly believe that this amendment is a valid one. It will make our Constitution work, it will make our governorship work, it will have two men of the same political faith, one to succeed the other in the event of a death or a vacancy.

AKAU: Regarding this amendment, perhaps if we got some information, maybe the chairman of the committee could give it to us so that it could clarify our thinking before we voted. Regarding the lieutenant governor, in most states, is he elected?

OKINO: In each of the 37 or 38 states where you find the office of lieutenant governor, the lieutenant governor is elected by popular vote.

AKAU: All right, thank you.

Now then, if he is elected by popular vote, then it seems to me in regarding this amendment that those of us who are feeling as the delegate from the fourth, as Mr. Tavares, that we should have an opportunity as people of the State of Hawaii to vote for the fellow we want, not to have him shoved down our throats.

DELEGATE: Question.

FONG: I'd like to talk against this amendment. Now, we're going to make the lieutenant governor run for office and say that we should put him on the same ballot with the governor. I think it is meaningless. If you're going to do that, why don't you put the attorney general, the auditor and the treasurer and all the other offices and say, "Well, we'll lump them together and we'll all throw them together and you can cast one ballot and all of those people will be declared elected." Now, if we're going to have an election, let's have an election. If we want him of the same political faith, let's appoint him. Now, I have stood consistently for the election of our public officals, but I think that this method by which you say that you elect two men with one ballot is sort of an empty gesture. I think if you're going to demand that this man be of the same political faith as that of the governor, then let us appoint him. But if you feel that he should be elected, then let us elect him by popular vote and let us leave it to the people and let the people choose and I think that the people will not make a mistake when they are given a choice on the ballot.

H. RICE: I'd like to ask the delegate from the fourth, to spoil this amendment, wasn't there a kind of a chaotic situation in California when they had a governor of one party and a lieutenant governor of the other? Wasn't the governor afraid to leave the state because the lieutenant governor might change things considerably?

ANTHONY: That has occurred not only in California but in Connecticut and several other states. And I might state that I have just discussed this very problem with three learned gentlemen that are sitting in the audience, all representatives of government, professors at the university, and they are of the view that they should be of - - the lieutenant governor and the governor should be of the same political party. I think it would be very unwise to have anything different.

KING: I'd like to speak against the amendment for two reasons. One is if you elect the governor and the lieutenant governor from the same party, there's no assurance that the lieutenant governor isn't going to do things that are against what the governor would do if the governor were present. The lieutenant governor might have aspirations to succeed his chief, and electing them from the same party doesn't solve the problem. On the other hand, if the governor and the lieutenant governor were of opposite party and the governor should die or otherwise become incapacitated for his office very early in his session, then the lieutenant governor should be entitled to change the administration and make new appointments. He might succeed to the office with three years and nine months to go and would have the right to make changes.

Now I don't anticipate there'll be chaos or any other jam-up for the government, and if the lieutenant governor was serving temporarily he'd have to be a pretty bold man to upset the policies set by his senior in office for a temporary period of three months or so. On the other hand, if he succeeded to the office for a long period, he ought to be entitled to make such changes as might seem best in his judgment with the advice and consent of the Senate.

So I feel the amendment doesn't accomplish any useful purpose and it anticipates a situation that will probably never exist in a hundred years of history.

SILVA: I move the previous question.

GILLILAND: Mr. Chairman.

A. TRASK: Will the gentleman from Hawaii yield for a moment? I'd like to reply to the President.

CHAIRMAN: I think he yields, there's been no second. The Chair recognizes Delegate Gilliland. He was up before you.

GILLILAND: I am against this amendment for the reason that I don't believe in electing, for instance, the president of the bank and the janitor of the same bank on the same ticket, or having the vice-president riding on the shirt tails or coat tails of the governor.

A. TRASK: In replying to the remarks of the President, after all, the main thing we're concerned about is security in our governmental operations. Now let's look at this thing with realistic eyes. A governor is appointive of one political faith, the lieutenant governor is of another political faith. The immediate job, therefore, is to secure people as heads of the departments. Now I'm concerned about one particular situation. What would be the attitude with respect to security of people who may be selected as department heads? Let's take the attorney general, for instance. Now if I had the good opportunity to be a candidate for attorney general under a certain setup, and I see where the governor is a Democrat and a Republican is - - the lieutenant governor is a Republican—the observation is, this situation won't occur in a hundred years—but the immediate situation is, what would be the thinking of those people who would be available as department heads? The governor who would be elected, say, as a Democrat, would be about 80 years or 75 years of age and the Republican is a young fellow 35 years of age, and I have the opportunity to probably be attorney general. I would not consider going into a situation knowing full well of the precarious health of this Democrat and knowing full well that the lieutenant governor is a Republican. It doesn't make for security, gentlemen and ladies. We must have something whereby we could carry through securely in a shape and a form of government, and it's all a question of degree. But certainly the opportunity of the lieutenant governor to break down the program is greater than it would be if the lieutenant governor was of the same political faith.

CROSSLEY: I would like to speak against the amendment, and I would like to say for the benefit of the delegate from the fourth district that what I have to say is not "political chatter." I have an amendment to offer which I think, far from being in line with "political chatter," is something that is designed to make a stronger executive department, and that is the only thing to which I have been speaking. The

amendment that I have to offer reads as follows:

> There shall be a lieutenant governor who shall be appointed by the governor and whose term of office shall be the same as that of the governor. In the event there occurs a vacancy in the office of the governor, the lieutenant governor shall assume the duties of the governor until a successor has been elected, such election to take place within sixty days unless the unexpired term of the governor shall be less than six months.

Now, that is not finished language; I have just jotted it down here while the debate's been going on, but I would like to offer that amendment in place of the section that now stands - -

RICHARDS: May I second that?

CROSSLEY: - - as an amendment to the amendment that has been made.

RICHARDS: I second that.

PORTEUS: Point of order.

HEEN: Is that point of order - -

CHAIRMAN: Who has a point of order? Delegate Heen.

HEEN: I don't think that can be made as an amendment to the other. It doesn't seem to be germane to the other one. I think it's a separate amendment that might be offered depending upon what action is taken upon the first amendment.

CHAIRMAN: The Chair feels there's some merit in your point.

CROSSLEY: I would like to speak against the suggestion. I think it is germane. We're talking now about the office of the lieutenant governor, as to how he shall be elected on a same ballot. It seems to me that we're - - that the amendment that I have proposed is germane. It's certainly to the office, it's to the method.

CHAIRMAN: The Chair feels that the question before the house actually is whether or not the lieutenant governor shall be of the same political faith, and the amendment to that only went further in that it set up the mechanics for obtaining that end. Therefore, I feel that your motion should be held in abeyance and we will vote on the present motion unless there is further discussion.

ARASHIRO: Point of information.

CHAIRMAN: State your point, please.

ARASHIRO: Does that mean that we are not adopting tentatively Section 2 but we are only voting on whether the lieutenant governor should be from the same political party or not?

CHAIRMAN: The amendment reads, as I recall, "The governor and lieutenant governor shall be members of the same political party and appear on the same ballot."

MAU: It is a new section, designated Section 2A.

CHAIRMAN: A new section, correct.

C. RICE: I'd like to speak against the amendment. It doesn't matter whether the lieutenant governor and governor belong to the same party. If the lieutenant governor takes office, he will have his own ideas. You take when McKinley died, was shot, and Theodore Roosevelt went in. It wasn't very long before he had all his own way. They belonged to the same party. If the lieutenant governor is a strong man, he'll have his own ideas, and I believe that the man should be voted for by the people. I was the one that put in there, in the Committee, that he should be elected, and I think as it reads in here in our proposal is right. I'm against all these amendments.

CHAIRMAN: There's only one amendment before the house.

SMITH: I'd like to speak against the amendment for the simple reason that if we are to vote for a - - or have an elected governor and lieutenant governor, I am strongly in favor of the sentiments of President King in the very fact that any governor or lieutenant governor that is elected by the people in the State of Hawaii, I'm quite sure will have to be impartial, very much so, if he wants to stay in. And I think only in fairness to the popular vote that the section as read is sufficient, and if - - I am strongly in favor of that. If there are amendments where they are trying to tie it down, as this last amendment, why then I would go very strongly for the amendment of Mr. Crossley.

HOLROYDE: I'll second the motion for the previous question that was made a while ago.

CHAIRMAN: I'd like to call attention, there are a few delegates who have not spoken on this question.

MIZUHA: In order to assist me in voting, I'd like to ask a question of the exponents of Section 2 as it is written in the proposal. The arguments that they have advanced, would they consider those same arguments in favor of an election of the attorney general of the State?

CHAIRMAN: I don't think that that subject pertains to what we have before us particularly. Would you care to answer that, however?

OKINO: I'm willing to answer that question. There is a big difference between the office of attorney general and that of lieutenant governor. The office of lieutenant governor apparently was created with the idea that a man who is to succeed the governor elected by the people should be an officer elected by the people. The office of lieutenant governor is an independent office, not like that of an attorney general whose function is one that will concern purely or strictly administrative matters, more technically, legal matters. An attorney general should be one who should work in absolute harmony with the governor.

CHAIRMAN: Does that answer your question?

A. TRASK: Point of order. The amendment as offered by Delegate Heen and I together - -

CHAIRMAN: By you.

A. TRASK: - - is Section 2A, so the immediate question, wouldn't it be, for consideration and vote, wouldn't it be a vote on Section 2 as such, and then later proceed to the second paragraph as offered, Section 2A?

CHAIRMAN: I don't believe - -

KING: Point of order. The amendment - - excuse me. Am I recognized on a point of order?

CHAIRMAN: You are.

KING: The amendment was offered to Section 2 by the addition of a new section to be numbered 2A and it won't be 2A later when it's revised and renumbered. It will be 3 or something else. But it was offered primarily as an amendment to Section 2.

CHAIRMAN: The delegate, I mean, the Chair does not wish to limit debate. However, I would like to recognize

only those who have not spoken on this subject. I think there's been sufficient said.

MIZUHA: I rise to a point of information.

CHAIRMAN: State your point, please.

MIZUHA: I would like to ask the delegate from the fourth district who is the movant for this amendment whether his amendment applies only to general elections or do - - are we going to have just a single election for the governorship and the lieutenant governorship, or will we have a primary election and a general election?

HEEN: The provision of course, in the Constitution, relates only to the general election. Primary elections are matters taken care of by legislation.

Now the language that was mentioned in the amendment reads as follows, a little different from what the Chair stated.

> Section 2A. The governor and the lieutenant governor, representing the same political party, shall be voted for together upon the same ballot.

That's the language of the amendment that was offered - -

LARSEN: May I ask, with only one X - -

HEEN: - - by Delegate Trask and seconded by myself.

LARSEN: Question. May I ask, with one X for the two of them?

MAU: Point of information.

HEEN: Yes, one cross instead of a double cross.

MAU: I wonder if the chairman of the committee could give us some idea as to the other offices of the states. How many of those offices are elected or appointed? He was speaking in answer to a question put to him on the office of attorney general. I think it would have some bearing on how we vote on this amendment and Section 2 of the proposal itself. The offices of attorney general, treasurer, and other offices. How many states provide for the election, the appointment or other methods of selection?

CHAIRMAN: With reference - -

NIELSEN: Point of order. I think we're discussing - -

CHAIRMAN: Will you state your point.

NIELSEN: - - lieutenant governor now.

MAU: It would have a direct bearing as to whether or not we would vote for Section 2A which is an amendment proposed to Section 2, or whether we would stand by Section 2 because it provides for an election, or whether we would vote for Delegate Crossley's - -

KING: Point of order.

MAU: - - proposed amendment.

CHAIRMAN: Will you state your point, please, Delegate King.

KING: The gentleman can read the Proposal No. 22 and the committee report that goes with it. All of the other executive offices are to be appointed and the answer's right there. In the meanwhile, he's not discussing the amendment.

MAU: We know that, Mr. Chairman.

CHAIRMAN: The Chair's understanding of this question was - -

MAU: That's true, we know that. That's the report of the committee. But we're trying to find out how - - what the other states provide for in their other offices.

CHAIRMAN: Delegate Okino, do you have an answer to that question?

OKINO: Mr. Chairman, I am sorry I have been interrupted and not been able to - -

CHAIRMAN: The question as I understand it is in the other states, how many of them have elected officers other than the lieutenant governor and governor. Is that correct?

OKINO: I can give you a very general answer for that question, Delegate Mau. In many states of the 48 states there are constitutional officers elected by the people just like the governor. Now, most of the officers elected in the majority of the states are the attorney general, secretary of state, auditor and superintendent of public instruction. Now, if you can give me say about thirty seconds, I may be able to refer to the manual prepared by the Legislative Reference Bureau. But insofar as this Committee Proposal No. 22 is concerned, you will note from Section 10 thereof that all other administrative offices, boards and commissions are to be created or established by the legislature. There will be no other elective officers in connection with the executive branch of our government.

MAU: Thank you very much.

LEE: I'm wondering whether that information is correct. Isn't there a clause which says "unless provided by law" in Section - -

OKINO: "As may be prescribed by law," I think that is the language, is it not?

LEE: No, the word is "unless." Page 4 of your proposal. "Each principal department shall be under the supervision of the governor. The head of each principal department shall be a single executive unless otherwise provided by law."

OKINO: Yes, the legislature will retain the control in the first place to determine whether or not that that department shall be headed by a single executive, that depending upon the nature of the functions; and if not, the legislature would have the discretion to set up a board or a commission department.

LEE: I see, so it was the intention of the committee that all other officers shall be appointed by the governor. Is that it?

OKINO: That was the consensus of your committee.

CHAIRMAN: I think there has been sufficient debate and other comments on this section. All those - - on this amendment rather. All those in favor of the amendment made by Delegate Trask, seconded by Delegate Heen, will please say "aye." All those opposed. The amendment is lost.

The only thing before the house now is the adoption of Section 2 as written.

CROSSLEY: I now offer the amendment that I offered a moment ago that was ruled out of order at the time.

CHAIRMAN: Have you had time to have that printed?

CROSSLEY: I haven't even had time to review it. I believe the clerks have it. I can read it from here again.

CHAIRMAN: Unless there is any objection, we'll take it from the reading. If there is any objection, we'll defer and have it printed.

A. TRASK: I think that's out of order, your -- Mr. --

CHAIRMAN: I said unless there is any objection. Do you wish to object?

A. TRASK: I certainly object.

CHAIRMAN: Delegate Trask, what is your objection?

A. TRASK: We haven't been shown the same courtesy that is now being shown here.

CHAIRMAN: I beg your pardon.

A. TRASK: I said, we haven't been shown the equal treatment here with respect to the other. I've asked for a deferment and the attitude of the Chair has been more or less against it, and now the Chair very, very softly says, "If there's no objection." I think the treatment is unequal.

CHAIRMAN: I believe the delegate misunderstood the Chair. The delegate misunderstood the Chair, I believe. My point was that if it was sufficient for the rest of the committee, they could take the amendment as read. If they did not want to take it that way, it would be necessary to move for deferment.

CROSSLEY: I move that this section be deferred till the end of the total proposal.

A. TRASK: I object to such action.

LEE: I believe we should proceed. We're going along at a snail's pace here and since we've already considered and acted upon a proposed amendment on this matter, let's hear what this amendment is so that we may act on it and pass on the section before we go to lunch.

WOOLAWAY: I'll second the amendment to speak on it.

CHAIRMAN: Will you read the amendment please.

CROSSLEY: The amendment is an amendment to Section 2, amending the section to read:

> There shall be a lieutenant governor who shall be appointed by the governor and whose term of office shall be the same as that of the governor. In the event there occurs a vacancy in the office of the governor, the lieutenant governor shall assume the duties of the governor, until a successor has been elected at a special election to take place within sixty days unless the unexpired term of the governor shall be less than six months, in which case the lieutenant governor shall serve the balance of the term.

HEEN: May I suggest an amendment to that, and I hope you'll accept it, that instead of "lieutenant governor" it'll be the term "secretary of state."

CROSSLEY: I accept that amendment.

CHAIRMAN: The word "lieutenant governor" has been stricken from the amendment, and the word "secretary of state" put in its place.

LEE: I would like to speak in opposition to the proposed amendment. It seems to me that if that amendment is accepted there will be only one person elected representing the executive branch of government. It seems to me also that those of us who may believe in a certain amount of efficiency in the executive branch of government, to have other offices such as the attorney general, the superintendent of public works, the land commissioner and all other heads of the departments to be appointed by the chief executive where in many other states they call for the election, would be prone to object to fastening the mantle of so great an authority upon one man. And after all, this one man is a human being who will serve for a period of four years. Not only will the matter of a great political machine be built but it would seem to me that this Convention, which has been characterized by some of the other speakers as being anti-people, will certainly end up with that symbol. I for one believe that the Committee on Executive Powers and Functions as well as the Statehood subcommittee which has gone into this problem, realize that it is a tough problem, but, believing that the authority should finally rest in the people, supported this proposal which called for the election of the governor and the lieutenant governor. Therefore, Mr. Chairman, unless there is further debate on this matter, I would like to table the amendment.

CHAIRMAN: The Chair will rule that in Committee of the Whole, the motion to table is out of order whereas the motion to the question itself can be put and won or lost.

KING: I desire to speak in opposition to the amendment also. The model we are following on the whole is the election of the chief executive and one standard. The President and the Vice-President of the United States are elected by the people of America. Should the President be incapacitated, then the Vice-President takes his place. That's the model we're following in the State. I certainly believe the lieutenant governor should be elected. I don't think it matters whether he's of the same party or of the opposite party. And then there'll be two persons elected by all of the people of Hawaii to act, one in the capacity of chief executive and the other to stand by to fill that place should the first one be unable to fulfill the duties of his office.

Now, we've heard a good deal here about this Convention being against the people. I rather resent that, I think that goes to the privilege of the Convention. There are 63 of us here and we're all working for the people. We're all elected by the people, and I feel that this implication that because we do not want to elect the janitor and the gardeners and somebody else down the line in an administrative position then we are against the people. We elect the governor and the lieutenant governor, we elect the legislature, and this Constitution will grant that legislature very great powers. The other night I was in sympathy with most of the action taken in striking out of the report of the Committee on Taxation and Finance several powers that would have been given to the governor at the expense of the legislature. If it had come to a voice vote, I mean a roll call, I would have voted in favor of deleting those particular powers. But, the question now we have is whether the number two man in the State shall be appointed or elected and I certainly do believe he ought to be elected.

LEE: Point of personal privilege.

CHAIRMAN: State your point, please.

LEE: I'd like to state that the remarks which I used came from the remarks which were made by a former speaker at a former debate, one of the vice-presidents of this Convention, a Republican.

KING: Mr. Chairman, also a point of personal privilege.

CHAIRMAN: State your point.

KING: I was not referring to the last speaker when I said I resented the implication that we're working against the people, but that remark had been made several times, not only today but in previous days, and I think it's about time we forget imputing the motives or the character of our fellow delegates and say we're all working for the people.

HEEN: The President of this Convention relies upon the fact that the President and the Vice-President of the United

States are both elective officials. That's all right so far as it goes, but he overlooks the fact that they run upon the same -- from the same political party. That's where the big difference comes in.

CHAIRMAN: I believe that question's been settled, however.

FUKUSHIMA: I'd like to speak in opposition to the amendment. It will be very brief. I do not believe in a pseudo-Democratic government or a pseudo-Republican form of government, and I also do not believe in a government by "cocktail appointment."

FONG: The proponents of this amendment presuppose that the governor and the legislature are going to be of the same political faith. Now, they are talking about the party affiliation of the governor and the lieutenant governor. They assume that by appointment the lieutenant governor will be of the same political faith as that of the governor. We are giving to the legislature the right of confirmation, that is to the Senate. It is to be conceived that the governor may be Democratic and the Senate, Republican. Now, under those circumstances, are we to assume that the Democratic governor is going to have a Democratic lieutenant governor, and vice versa? There is no assurance that the lieutenant governor is going to be of the same political faith as that of the governor because the confirmation power lies with the Senate.

I would like to state that I'm beginning to get a little worried about this governor, the position that he is going to have in this State of Hawaii. We are building here in Hawaii the biggest political machine that the State will ever see. In no other state has the responsibility been placed upon one man and one office, and in this Convention we are going to give that man superhuman powers. Where is this superhuman person that's going to guide this State of Hawaii? Who is this superman that will have the intelligence of a Solomon, that is going to solve all the problems of this Territory by his appointments? And I'm beginning to get a little worried about this superhuman governor that we're going to have, who's going to appoint all the other officers, who's going to run this State the way he sees it, only subject to the weak confirmation of a weak Senate.

ANTHONY: I was one of those who was in favor of having the governor and lieutenant governor run on the same ballot and be from the same political party. I still think that that is wise, but I would vote against this amendment because, as the delegate that last spoke has pointed out, in this Constitution we are concentrating the executive powers of government in one man. Now suppose the governor dies, what we are doing in effect is to say, not only during his term of office may he exercise all of these powers but in effect by his last will and testament he can pick out the fair-haired boy that's going to be the heir apparent. I think that the people ought to have some voice in who is going to succeed the governor in the event of a death or a vacancy. Therefore, I vote against the amendment.

APOLIONA: I'm not going to make a political speech but I agree very heartily with the findings of our future judge of Hawaii and his committee. And at this time, I'm going to vote against the amendment and I call for the previous question.

ARASHIRO: I second that motion, Mr. Chairman.

RICHARDS: Mr. Chairman, may I ask the --

CHAIRMAN: The previous question has been moved and seconded.

WOOLAWAY: Point of order.

ROBERTS: Point of order.

WOOLAWAY: You allow the others --

CHAIRMAN: State your point. The Chair would like to state that I didn't have a chance to allow these speakers to speak because I was interrupted by a point of order from the delegate from Kauai -- Maui rather.

ROBERTS: Point of order.

CHAIRMAN: Will you state your point, please.

ROBERTS: I think we're still in the Committee of the Whole. I haven't raised any objection to questions put before on the previous question in the Committee of the Whole. That motion is an entirely improper motion in the Committee of the Whole.

CHAIRMAN: The Chair did not have a chance to rule on that motion. I will ask the --

ROBERTS: I'll wait until the ruling of the Chair.

CHAIRMAN: Thank you. I will ask the person who seconded the motion if they would withdraw to allow speakers who have not spoken on this question to speak. Delegate Arashiro.

ARASHIRO: I'm just wondering, but I will withdraw for the sake of those that want to express their views on this matter.

CHAIRMAN: Thank you.

GILLILAND: I am opposed to this amendment, proposed amendment on the ground that the people of the Territory have enough confidence to elect the man as the lieutenant governor, and if anything happens to the governor, why shouldn't he fill out the rest of the term. I think we should not make a puppet or a rubber stamp or a dummy of the lieutenant governor if we're going to elect him the same as we elect the governor.

CROSSLEY: In order to stop all of this debate, I withdraw my amendment.

WOOLAWAY: I shall withdraw my second.

CHAIRMAN: The amendment and its second has been withdrawn.

TAVARES: I rise to a point of special privilege.

CHAIRMAN: State your point, please.

TAVARES: It is my privilege to announce that the Bar Association has endorsed Delegate Okino for the appointment to the Third Circuit judgeship.

DELEGATE: Tom Okino happens to be absent for just a moment.

CHAIRMAN: I will call on the delegate from the fourth district to make that announcement. We'll have a short recess in a minute. I think it's time to vote on this question.

A. TRASK: Point of information, please.

CHAIRMAN: You have a point of information. State your point, please.

A. TRASK: Will Delegate Tavares give us the score, if he desires.

CHAIRMAN: I would like to have that held until we vote on this section, please, since Delegate Okino is not here.

APOLIONA: I'd like to correct Delegate Tavares. I made the announcement before he did, when I said "the future judge of Hawaii."

CHAIRMAN: The question before the house is the adoption of Section 2, committee report. Is there any further discussion on this section?

DOI: I would like to direct a question to the chairman of the committee. I would like to have an explanation of the meaning of the last clause there, the last line of Section 2, "or as may be delegated to him by the governor."

CHAIRMAN: Delegate Okino, would you care to answer that question?

DOI: Probably I should venture another step and say, does that create indirectly a two-headed executive?

OKINO: The purpose of including that particular phrase in that Section 2 was to empower the lieutenant governor with functions which normally would not be delegated to him by the legislature. It is on the strength of the recommendation of the subcommittee of Hawaii Statehood Commission that that clause was incorporated. On page 29 of this report, under the title of "Lieutenant governor," the last sentence of the first paragraph, you will note that he should also be acting governor at such other times and with such power as the governor might delegate to him from time to time.

CHAIRMAN: Is that a satisfactory answer to your question?

DOI: Another question. Does it mean that the governor may delegate such duties such that after the duties are delegated, the lieutenant governor becomes fully responsible for the execution of those duties and that it removes the governor from responsibility as to the execution of those duties?

OKINO: I do not think so; I think the governor is still responsible [inaudible] if he does delegate any particular administrative functions or duties to a lieutenant governor.

ROBERTS: I have a question. Does that clause give him powers which he would not have if that clause were absent?

OKINO: I believe that is the real reason why that clause is incorporated. You will note that most of the duties will be prescribed to the lieutenant governor by legislative act and there may be some question - -

ROBERTS: I have a question on the matter of delegation of power. It's one thing when the governor leaves the state and asks the lieutenant governor to take charge, he has his functions. It's something quite different if, for example, the governor should turn over to a lieutenant governor certain jobs which are, let's say, a little "messy." The lieutenant governor is - - suppose he happens to be of a different political faith, he'll do the dirty job for the governor and the governor says, "I have the authority to delegate this job to you, you do that," even though it may mean that this individual has jobs to perform which the governor should be performing as the head of the government. Now, I think that the governor does have power where the lieutenant governor is there, to turn over certain ministerial tasks. But when you delegate the power to the lieutenant governor, the governor is giving up his basic rights.

OKINO: I do not think that the governor is giving up any basic rights, but I shall yield the floor to Delegate Porteus. He, I believe, will be able to give a more detailed explanation of this particular clause.

PORTEUS: We felt that if we were going to have an elected lieutenant governor that the governor ought to be able to delegate to that man a number of the duties that he is performing today. There are here in the islands, of course, separate islands. It is often necessary for the governor, or I think the governor should, visit the other islands and spend some time on them. During the time that he is absent from the island of Oahu, if the capital is here, he ought to be able to delegate certain ministerial duties to the lieutenant governor. If he's on the island of Hawaii and there's certain routine business which requires his signature, I see no objection to the governor having the clear power to delegate certain authority to the lieutenant governor for him to exercise certain ministerial duties when he is absent.

I think that this provision enables the governor to delegate such powers as may be consistent with the abilities of the lieutenant governor. If we tried to describe those duties by law, we may find that the particular abilities of the particular lieutenant governor do not lend themselves well to the assumption of certain of that authority. There's no doubt that in the delegation of the authority, the governor remains the one that is responsible. He hasn't forfeited his right. Such duties as he may assign he may take back to himself. But this allows for a little more ease of administration in the delegation of certain functions to the lieutenant governor. The subcommittee thought that this was a very desirable thing from an administrative point of view.

It does not rule out, however, the idea that somehow, that the governor should have an administrative assistant. That's perfectly all right. But we do know from our experience with past Secretaries of the Territory that there have been people of particular abilities who are able to handle certain situations and it ought to be clear that the governor can utilize those people fully in those areas.

HEEN: In considering this particular problem, we might go over to Section 4. "In case of the failure of the governor to qualify, or his removal from office, death, resignation, inability to discharge powers and duties of the office, or absence from the State." In other words, if he's absent from Honolulu, which will be the capital, and is on the island of Hawaii, the lieutenant governor cannot perform those duties; and the governor cannot delegate those duties to the lieutenant governor under that Section 4.

A. TRASK: Point of information, if you please. Chairman of the committee, what particular duties are to be delegated by the governor to the lieutenant governor that was in the mind of the committee?

OKINO: The committee relied, principally, upon the representation made by Delegate Porteus and the language as it is set forth in that Hawaii Statehood Committee report. We felt then that there were some minor ministerial or administrative duties which could lawfully be delegated by the governor to the lieutenant governor, taking into account the particular fact that has been stated to you by Delegate Porteus, the governor of the Territory of Hawaii may be going from one county to other counties.

A. TRASK: Well, you - - does your reply, therefore, fill in the situation that Delegate Heen has suggested, namely that absence from the territory does not mean absence from the island of Oahu on the island of Molokai, perhaps? But, in that situation would therefore the power of delegation come in to fill in that particular absence that is not an absence as intended in Section 4?

OKINO: No. Section 4 covers an entirely different situation and I think that has been adequately expressed by Delegate Heen, because the expression "absence from the state" as it appears in Section 4 under the title of "Succession"

is something which is entirely different. I have a case to substantiate that point, a very recent case decided by Nebraska in 1942.

ANTHONY: I'd like to ask the author of this language, the Secretary, what acts he thought would be accomplished under this delegation?

CHAIRMAN: Delegate Porteus, would you care to answer that question?

PORTEUS: I had specifically in mind, or the committee had specifically in mind, that should the governor go to the island of Hawaii to attend certain functions there, that in the meantime the routine work in the capital could be continued, the presentation of proclamations for Health Week, for National Youth, for tuberculosis drives, for cancer drives, for all the other things that are required, the governor can let him do that in his absence. In fact -- if you'll just wait until I've answered the question.

ANTHONY: I've got enough of an answer. I'd like to address myself to the sentence.

PORTEUS: Well, I'd like to go on a little further if I may because I haven't finished the answer.

This will permit the governor to go to one of the other islands and take a week's vacation, if it need be. It isn't an absence from the state, it isn't the inability to qualify or removal from office or inability to discharge his duties. If the governor wants to take two weeks' vacation on the island of Hawaii, if he's been there in office for four years and gets elected for another four years, he can say to the lieutenant governor, "You take over and run the duties of this office. I'm going to Hawaii for two weeks' vacation." And it will mean that the work of the office can go on without it being held up until the governor himself comes and sets his hand to any instrument that may require a signature.

CHAIRMAN: Is that a satisfactory answer, Delegate?

ANTHONY: Now I'd like to address myself [inaudible]

PORTEUS: If the delegate will come over here, I'd be glad to let him speak from this desk.

ANTHONY: The sentence in question is not confined to the proclamation of Poppy Days or pinning things on Boy Scouts. I think the explanation of the Secretary makes it perfectly clear that this is a broad delegation, not confined to simple ministerial acts. And once you have such a broad delegation, you thereby give the executive an "out" on the responsibility for those acts that are delegated.

Now I will give you a specific example. Suppose the governor, and he could well do it under this section, would say to the lieutenant governor, "You take over the entire project in connection with the commissioner of public lands, if there is such an officer, of subdividing areas and opening up homesteads by an appropriate executive order." Now the lieutenant governor would go ahead and do that. The governor would thereby relinquish his authority. He would then not have the responsibility of the office and I assume that this Constitution will have some place in here that the governor shall see to it that the laws shall be faithfully executed. You will be giving this power to the governor, then permitting him to make a delegation. Not a delegation for Poppy Day, but a delegation for the real substance of his office and I am against the sentence.

MAU: [Inaudible]

PORTEUS: I'd be glad to volunteer the loan of my mike, although I seem to be picking up opposition all the time.

MAU: There is always a catch, Mr. Chairman, in using the Secretary's mike. He always says that if you'll join me, I'll let you use my mike.

I wonder whether all of this argument can be resolved by a simple amendment. If it is purely ministerial duties that you desire to unburden from this superhuman of a governor, then all we have to do is to use after the words "law or" in the last sentence and insert "such ministerial duties as may be delegated."

ARASHIRO: The question in my mind is in line with Delegate Anthony's presentation where in case in the future some emergency should arise, and in that emergency the governor now being elected by the people—it will be an emergency which we might call a "hot potato"—in that case, to shirk or to avoid from making a decision on an emergency he will delegate that duty to the lieutenant governor. That is a question pointed to the Secretary.

CHAIRMAN: Do you care to answer that question, Delegate Porteus?

PORTEUS: Was the question, Mr. Chairman, the question of delegating a "hot potato"?

CHAIRMAN: Correct.

PORTEUS: Well, as far as delegating a "hot potato" is concerned, it seems to me that there wouldn't be a state of continual friction between the lieutenant governor and the governor. The idea was to get a working team. Now, if there is friction I hardly think that the governor is going to put himself into a position of allowing a lieutenant governor to take over in a difficult situation and come out of it, because nobody in this territory is going to sit back without knowing that a "hot potato" has been handed over to a lieutenant governor. And they're going to say, if this is the way the governor operates in office maybe we'd better not support him for this office or another political office again. Certainly, there are "hot potatoes" that are around, but I think that this clause, leaving it to the discretion of the governor, will mean that the two men will try to work together for the benefit of the Territory. Now if he passes a "hot potato" on and the lieutenant governor can successfully handle the "hot potato," then he certainly will gain in political stature within the State.

WHITE: If you will refer to -- if they'll refer to Section 5. Section 5 reads that "The governor shall be responsible for the proper execution of the laws." Now, he can't relinquish his over-all responsibility, and as far as this section is concerned, one of the difficulties is that we are setting up a job here that's never been in the executive setup before. In the thinking of the committee he was supposed to take over the duties of the secretary of state, and, therefore, with all the power you are vesting in the governor, he's got to have somebody that he can delegate some of these duties to. So I think it's a very natural provision to have in here and I wouldn't say that it just goes to simple ministerial duties.

HEEN: I now move an amendment to that particular sentence. Place a "period" after the word "law" in the last line and delete the rest of that sentence.

ANTHONY: I second that.

CHAIRMAN: It has been moved and seconded that the period be placed after the word "law" in the last line and the remainder of the sentence be stricken.

TAVARES: I think we are having a lot of ado about nothing. There are probably thousands of laws on the books, federal laws, that say the President shall do this and the President shall do that and the courts have held time and again that

he -- and have sustained his action through any number of his Secretaries and said that is the act of the President. He has delegated thousands and millions of things to his subordinates. Of course, the governor is not nearly as busy as the President but the principle is the same. It can be delegated. If you take this out now, you are making it appear that the legislature cannot authorize the governor to delegate even ministerial matters. I think it would be wrong to delete it now.

CHAIRMAN: Delegate Anthony, are you speaking to the motion?

ANTHONY: Speaking to the motion. That is precisely why I want it taken out, because with the period after the -- as the delegate from the fourth has put it, the governor will, as a matter of law, have the right to delegate ministerial duties. The Federal Constitution provides that the President shall be responsible for the faithful -- shall see to it that the laws are faithfully executed. That does not mean that the President may not delegate certain acts to subordinates. The difficulty with this sentence is that if you put it in, you mean something more than the ordinary law. I am against it because it will be giving away some of the powers of his office, and it's in conflict with the other section which requires the governor to be responsible for the faithful execution of the laws.

A. TRASK: I speak in favor of the amendment striking this latter portion because it leads us into a very indefinite, unsimplified, foggy situation. What is a ministerial duty? What is a substantive real duty? There might be an admixture here and it is not simplified and it calls for further explanation. That's why I'm afraid of that and I think it should be deleted. I'm concerned concretely about the question of the appointment of judges. Will the duty devolve? Is it, the power to appoint a judge, a power that the governor may delegate to the lieutenant governor or not. Now maybe not, but certainly it does raise a question and therefore I'm in favor of the amendment.

CHAIRMAN: Is there any further discussion on the amendment? If not, all those in favor of the amendment will say "aye." Opposed. I believe the ayes have it.

LEE: I now move that we tentatively agree to that section as amended.

J. TRASK: Second the motion.

CHAIRMAN: It has been moved by Delegate Lee, seconded by Delegate Shimamura that we agree on this section as amended.

SHIMAMURA: The Chair has put words into my mouth. I did not rise to second it.

CHAIRMAN: I stand corrected. I heard someone say, "Second the motion."

J. TRASK: I second the motion.

CHAIRMAN: It has been moved, seconded by Delegate Trask.

SHIMAMURA: Before that question is voted upon may I state that under the provisions of HR 49, so-called Statehood Enabling Bill, the governor and the secretary of state are designated to be the officers to certify to the election of representatives and senators to the United States Congress. Under those circumstances, there should be an amendment either to Section 2, or if the delegates see fit, a provision in the election ordinance that the lieutenant governor is authorized to use the title of secretary of state for the purpose of certification merely of the election returns of senators and representatives. I merely make that as a suggestion, Mr. Chairman.

CHAIRMAN: One question. Did you suggest it be done by ordinance?

SHIMAMURA: Either here or in the ordinance. I think preferably in the ordinance where it would be more of a transitory nature. With that understanding, I won't make the amendment at this time.

LEE: I agree with the chairman of the Committee on Ordinances; so that with that understanding that the matter will be taken care of by the Committee on Ordinances, I believe we are ready to put the question on the section.

CHAIRMAN: The Committee of the Whole report will include that statement.

ROBERTS: I'd like to suggest that the Committee of the Whole report show that it's not the intention, in deleting this section, to deny the governor the opportunity to turn over those little small jobs that were mentioned on the floor which need to be done as a matter of ministerial operation.

CHAIRMAN: If there is no objection from the floor, the committee report will show that. All those in favor of the amendment to delete the last line with the exception of the word "law," will say "aye."

LEE: That has already been passed, Mr. Chairman.

CHAIRMAN: I beg your pardon.

LEE: The motion is the entire section as amended.

CHAIRMAN: Thank you. All those in favor of adopting tentatively the Section 2 as amended will say "aye." Opposed. Carried.
The only thing --

LAI: I move for the tentative adoption of Section 3.

APOLIONA: I second that motion.

CHAIRMAN: Section 3 is now before the house.

LEE: A point of information from the chairman of the committee. I notice that in your report there is shown that the federal salary of our present governor is set at $15,000 a year and the legislature of the Territory has provided an additional sum to make it $16,000. It would seem to me, Mr. Chairman, that unless you and your committee can show otherwise that $16,000 is enough money for the governor and I will make an amendment to that effect unless I hear good cause from the committee.

OKINO: On that particular question, I am sure the delegate from Kauai, Delegate Rice, would like to speak.

C. RICE: Mr. Okino asked me to speak on this as I was the introducer in the committee to put this at $18,000. The present governor gets $16,000. I feel that $18,000 compared with other salaries paid in Honolulu is not too much for the governor. I went up to the Collector of Internal Revenue and asked him what the deductions for federal taxes would be and he said if it was a single man, he'd have to pay $5,000 or near that in taxes. I feel, compared with salaries paid in Honolulu—and there's a lot of entertainment, although the legislature did give $75,000 to run the governor's office, Washington Place, and so forth at the present—I think that for $2,000 we shouldn't be niggardly. A man with a moderate income could not run for the governorship and could not

support the office. I feel it's a chance for people with moderate income to take the office.

LEE: A point of information from Delegate Rice on this matter. Assuming that your remarks are valid, I notice that in our judiciary article, in cases of depression the salaries of the offices from the judiciary may be decreased in proportion with the salaries of other government employees. Now as I read this section, there's a little inconsistency there which I haven't resolved in my mind. In the third sentence, there it says, "But in no event shall be less than $18,000 and $12,000 respectively, per annum, and shall not be increased or decreased for the term for which they shall have been elected." There might not be an inconsistency. As I understand that section, in case of a depression the legislature would still have the authority to cut that salary except that it shouldn't cut it during that term. Is that the understanding of the committee?

OKINO: Perhaps I can answer that question. The salary or compensation of $18,000 provided in this clause here for the governor is the minimum salary. The legislature would not have the right to decrease the governor's compensation. The legislature may, however, increase the compensation of a governor but not for the term he is serving in office; and if there is an increase over and above the sum of $18,000, then the legislature may, of course, by the power to establish that salary destroy the same. But the minimum of $18,000 will be the minimum salary of the governor. That is the intent of the committee.

LEE: That is during the term for which he is elected?

OKINO: During the - -

LEE: At all times, at any time?

OKINO: $18,000.

LEE: Yes.

OKINO: Yes, because it is a constitutional provision.

LEE: Well, it seems to me that why should the governor be given special treatment as compared with the other officers of the State including the judiciary and other members of the executive branch of government.

OKINO: I believe you will recall that that amendment to the compensation provided for the judiciary was made by the Committee of the Whole.

LEE: That's correct.

OKINO: This report was already filed with the Clerk of the Convention.

LEE: So that, Mr. Okino, in order to have uniformity on this matter, that same provision should apply to the salary of the governor, don't you think?

OKINO: Speaking for myself, I would have no objection, but I cannot speak for the delegate from Kauai.

C. RICE: I think it should be the same.

CHAIRMAN: Will the delegate please address the Chair. Delegate Rice.

C. RICE: I think it should be the same. If everybody has to take the cut, the governor should take the cut too.

CHAIRMAN: I would ask if any of the delegates have an amendment.

KING: I called attention to that provision - - called Delegate Ashford's attention to it and suggested that the same amendment which she sponsored with regard to the judiciary would be applicable to this section, so that if there was a general cut, the governor and lieutenant governor would share that cut. I believe Delegate Ashford has looked up the original amendment she sponsored for the judiciary and may be prepared to offer it.

CHAIRMAN: Delegate Ashford.

ASHFORD: I'm sorry, I haven't; but I've been looking for it. It's here somewhere but I can't find it.

MAU: It's very close to noon now and I think the committee ought to be given an opportunity to bring in this amendment. I move that we recess until 1:30 or rather that the committee rise, and report progress and ask leave to sit again.

LEE: Second the motion.

CHAIRMAN: I would ask that you would hold that in abeyance for a second. While we're still in Committee of the Whole, I would like to ask Dr. Apoliona to make the appropriate announcement now that Delegate Okino is here.

APOLIONA: I ask that Delegate Tavares be given that right as he's president of the Bar Association.

CHAIRMAN: Delegate Tavares, president of the Bar Association.

TAVARES: Mr. Chairman, it is again my special privilege to announce to the delegate from Hawaii that he has been endorsed by the Bar Association for nomination and appointment to the office of judge of the third circuit court. I wish to extend our congratulations to him.

OKINO: Thank you, Delegate Tavares. I am really overwhelmed and I think I shall be brief by saying thank you, all people who gave me kokua.

APOLIONA: And, Mr. Chairman, when you address Delegate Okino from Hawaii, will you extend him the same courtesy as you give to Judge Wirtz.

MAU: I renew my motion.

CROSSLEY: I believe that we can today, unless there is any other business on the Clerk's desk and in order to expedite our getting back to work immediately at 1:30 and not going through all of the parliamentary procedure, recess now until 1:30.

H. RICE: Second the motion.

CHAIRMAN: Is that satisfactory? It has been moved and seconded that we recess until 1:30. If there is no objection, so ordered.

Afternoon Session

CHAIRMAN: When we recessed for lunch, Section 3 was before us. There was a motion for the adoption, and there were delegates who were suggesting amendments. I believe one amendment has been distributed. I recognize Delegate Ashford.

ASHFORD: In the judiciary article where it provided that the compensation should not be diminished during office, we inserted the following provision as an amendment, "unless by law applying in equal measure to all officers of the State." It appears to me that that is an appropriate amendment relating to the governor's salary which is - - it is now provided

should not be increased or diminished during his term of office. I, therefore, move the adoption of the amendment by inserting it after the word "decreased" in the fifth line.

SMITH: I'll second that motion.

CHAIRMAN: It's been moved and seconded that the section be amended with the inclusion of the words "unless by law applying in equal measure to all officers of the State."

HEEN: May I ask the delegate from Molokai whether or not this new phrase should come after the word "elected" at the end of that sentence instead of after the word "decreased"? I think in the judiciary article that was put at the end of the sentence. I'm not certain.

ASHFORD: In my amendment, I think it was adopted in that form, it was put after the word "diminished."

TAVARES: I think that's well taken. This provision says "it shall not be increased or decreased during the term," and to put it at the end of the sentence would then allow it to be increased by a law applying equally to all officers of the State.

ASHFORD: I had thought it meant that wherever it was put; in other words it was intended to apply to both the increase and diminution if it were by general law applying to all officers of the State. Where it goes in is a matter that's immaterial to me.

CHAIRMAN: I believe the Style Committee perhaps could take care of that, knowing the committee's intent.

PORTEUS: Was the intent that the governor should only get an increase if all officers of the State got an increase? Then I disagree heartily with the amendment. I think that the governor's pay ought to be adjusted according to the duties of the office and if -- I agree, however, that in case there is to be a reduction, it's fair enough that it should be reduced according to a proportional reduction. But, there are times when certain offices because of their duties are selected for an increase, rather than giving every officer an equivalent increase.

ASHFORD: As the section reads at present, it couldn't be increased at all during his term.

CHAIRMAN: Is that a satisfactory reply, Delegate Porteus?

CROSSLEY: The section was written so that it couldn't be increased or decreased during his term of office. That was so that there could be no retaliation against the office during the term of office, or if they were in the same political field so that it couldn't be increased as some special consideration. The whole purpose of the section was to be sure that there would be a guaranteed minimum, however, and the reason that they in this section -- that we thought there should be a guaranteed minimum was that this is an elective office as opposed to the appointive office that we've been talking about. For that reason, that there are certain expenses that go along with the office that don't exist in an appointive office, and therefore, we felt that there was a difference between the two, and that there should be some guaranteed minimum preserved to get a man to go into the office.

TAVARES: Another point of information. Harking back over the years to 1932, as I recall it, when we made the 10 per cent cut, we made it apply to salaried officers or per diem offices, I mean salaried officers and employees. But jury commissioners and jurors and masters and various other minor types who don't get paid a regular salary or wage were not included and I would want the record to show that when we say "applying to all officers of the State," we mean by a general law, not necessarily -- we don't mean necessarily if a few jury commissioners or masters are left out that that would invalidate the general cut or increase or decrease. I take it that that's the sense of this Convention because you can't always hit everybody. But as long as it's a general law, not designed to discriminate against the governor or, in the case of the judiciary, against the judges as a special class, but applicable generally to salaried officers, that would satisfy the requirement of the Constitution.

CHAIRMAN: If there's no objection, the report will so state.

AKAU: I wasn't going to talk against or for the amendment, but rather for information since Mr. Crossley has mentioned something about money. I raise the question as to the value of putting in a piece of statutory business in this section. While I realize it says that it shall not be less than a certain amount of money—that's a safety precaution perchance somebody in the legislature would be sore at the governor and want to reduce his salary to some insignificant amount—I'm wondering if, as I've heard other constitutions, if they have mentioned the actual amount.

The second reason, our value of the dollar has fluctuated so in the past years. Let us say, ten years ago, if we dared put down $18,000 that would be heresy. Now then, we're making the Constitution for let us say ten years hence or along that line and while our dollar has fluctuated a great deal in the past ten years, who can tell what is going to be ten years hence. So I raise the question of the wisdom of putting in any amount, since in the first two sentences it actually says that the legislature shall take care of this. I raise that point.

CHAIRMAN: I'd like to refer your question to the chairman of the committee, Delegate Okino.

OKINO: I am not in a position to answer the question whether or not the compensation of a governor has been provided in the constitutions. I can only refer you to the Manual on page 153, and it will give you a pretty good idea of the various compensations provided for in the different states. I made an effort just a minute or so ago to ascertain in this page, whether or not there was any specific constitutional provision covering compensation of governors. Perhaps some states do.

TAVARES: It's my understanding there has never been any difficulty where only a minimum was fixed. The difficulty has come in constitutions when they fixed a flat salary without any possibility of change. I do not think with the huge national debt we have that the dollar is ever going to be much more valuable than it is today until we get rid of that debt. We need inflation to pay off that debt. Heaven help us if the dollar doesn't stay cheap in paying off that huge debt.

LOPER: I wonder if the word "for" shouldn't be changed to "during." "For the term of office," it cannot be increased or decreased "for the term." Doesn't it mean "during the term of office"? Any increase at any time for subsequent governors and lieutenant governors would have to be "for" the four year term. Another suggestion that I have is that—if you wish to get around as I understand the intention of the amendment—is that "it shall not be increased during the term of office nor decreased for the term of office" except as provided in the amendment.

CHAIRMAN: Delegate Okino, would you like to reply to that.

OKINO: I'm sure the committee would have no objection. Personally, I think it's an improvement.

CHAIRMAN: We can only write it in there one way. Somebody's got to make a motion to that effect.

KAM: I so move that we substitute the word "during" for "for."

CHAIRMAN: I would ask that we dispose of the amendment that's before the house first, however. Is there any further discussion on Miss Ashford's -- Delegate Ashford's amendment? If not, it's all before you. All those in favor of its inclusion will say "aye." Opposed. So carried.

KAM: I now move that we substitute the word "during" in lieu of "for" in the last -- in the fifth line of Section 3.

CHAIRMAN: Is there any second to that motion?

APOLIONA: I second that motion.

CHAIRMAN: The motion before the house is for the inclusion of the word "during" so that the line would read, "shall not be increased or decreased during the term for which they shall have been elected."

WHITE: I'd like to raise a question. By changing that to "during" whether you might not create a situation where the legislature was in session between the time that the man was elected and actually took office, so he could change his compensation. And the purpose of the "for" is to try to protect it for the term for which he was elected.

ASHFORD: I call the attention of the delegates to the fact that that was just what was done before President Truman went in. He was a carry-over, he was elected in November, and then they raised the pay before he entered his new term, and if you'll remember, it was a very close thing as to the days by which it passed.

CHAIRMAN: Delegate Loper, do I understand that you've withdrawn?

LOPER: Yes, except that I didn't make the amendment. I think it was Delegate Kam.

KAM: That is correct. I withdraw my motion.

CHAIRMAN: Thank you. The only thing before the house now is Section 3 as amended. We have no motion to that effect.

APOLIONA: I move that we tentatively adopt Section 3 as amended.

HOLROYDE: I'll second that.

CHAIRMAN: Moved and seconded that Section 3 as amended be adopted.

RICHARDS: May I ask one question of the chairman of the committee. We've run into a situation where there's been rapidly increasing prices, or rather we did during the early stages of the war, and they put in a cost-of-living bonus to all employees of the Territory. Now, does this preclude any such bonus being applied to the governor?

CHAIRMAN: If you don't mind, I will not refer that question. That question's been answered twice. It would not.

ROBERTS: I was going to ask the Chair to read the section of the proposal as it's being put.

WHITE: This will not preclude further amendment to the second sentence of the paragraph?

CHAIRMAN: If the motion before the house carried, it would, without reconsideration. The floor is open for further amendment, I mean the section is open for further amendment.

WHITE: We've only dealt with the one sentence and we've been going at it sentence -- I would like to have the opportunity of raising a question in connection with Section 3, but in order to explain it, I really have got to talk more about Section 4 than I do about Section 3.

CHAIRMAN: With that understanding, I think it would be all right to proceed.

WHITE: Well, in the second section it provides that when the lieutenant governor succeeds to the office for the remainder of the term, the lieutenant governor shall receive that compensation of that office. Then if you go down into Section 4, they set forth the number of conditions under which the governor might not serve. He might not -- he may fail to qualify, he may be removed from office, death, resignation, inability to discharge the powers and duties of the office or absence from the State. My main concern has to do with that term "absence from the State" because I feel that in that particular paragraph the distinction should be made between temporary absence or authorized leave as against absence for any of the causes stated in the first part of that paragraph, because if you read on further, it goes on to say that in those instances the powers and duties devolve upon the lieutenant governor.

Now I have an amendment to make as far as Section 4 is concerned, but for the amendment to be any good, I'd have to amend Section 3 to delete that second sentence so that it comes down below. I was wondering whether we could defer action on Section 3 until we have disposed of Section 4. I so move.

SAKAKIHARA: I'll second that.

CHAIRMAN: It's been moved and seconded that we defer action on Section 3 until action is complete on Section 4. Is there any discussion of that motion?

TAVARES: Before we do that, may I ask just one more point of information. I'd like to make it clear in my mind for the purposes of the Style Committee that regardless of where Delegate Ashford moved to place the amendment which was adopted, it is intended to apply both to the increase and to the decrease.

CHAIRMAN: Is that correct, Delegate Ashford?

ASHFORD: That is correct. And I was just discussing with the President the place where it should be put. It can very readily be shifted around by the Style Committee.

CHAIRMAN: All those in favor of the motion to defer will say "aye." Opposed. Section 3 is deferred.

KAM: I move that Section 4 be tentatively agreed to.

CHAIRMAN: Is there any second?

HOLROYDE: I'll second that.

CHAIRMAN: It's been moved and seconded that Section 4 be tentatively agreed to. Would you restrict that to the first paragraph?

KAM: First paragraph.

CHAIRMAN: Is there any discussion?

WHITE: I have an amendment to it that I'd like to have circulated to the committee.

CHAIRMAN: Would you like to read your amendment?

WHITE: I'll read it.

> Section 4. In case of the failure of the governor to qualify, or inability to discharge the powers and duties of the office by removal from office or otherwise, or his impeachment, the powers and duties of the office shall devolve upon the lieutenant governor for the remainder of the term or until the disability be removed, and he shall receive the compensation of that office during such period. When the governor is temporarily absent from the state on official business or on authorized leave, then the lieutenant governor shall perform all the functions of the governor within the state.
>
> During the temporary absence of the lieutenant governor from the state on official business or on authorized leave, the duties of such office may be assigned by the governor. In case of the failure of the lieutenant governor to qualify, or inability to discharge the powers and duties of the office by removal from office or otherwise, or his impeachment, the powers and duties of the office shall devolve upon such officers in such order of succession and in such manner as may be provided by law.

Now, that's to take care of the temporary absence and to provide that the lieutenant governor assumes the -- or carries on the functions of the governor's office but does not take over the powers, because if you talk about a chaotic situation, I can't imagine anything worse than the governor leaving the territory and once leaving the territory, the lieutenant governor taking over and with all the powers.

AKAU: Point of information. If the governor leaves the territory whether for personal reasons or business reasons it means --

CHAIRMAN: Are you discussing this amendment?

AKAU: Yes.

CHAIRMAN: I think it should be before the house before we discuss it.

AKAU: I'm sorry.

WHITE: Well, I'll move the adoption of this amendment.

APOLIONA: Second it.

CHAIRMAN: It's been moved and seconded that this amendment just read—you didn't read the whole amendment, however, did you—be adopted.

AKAU: The point I raise is this and perhaps others have been thinking about it and I'd like to get an answer. If the governor leaves the State, the State of Hawaii, whether for personal or business reasons, I don't see how you can tie the hands of the lieutenant governor by saying that he can't do this or he can't do that or he can do this. When the governor leaves, it seems to me the responsibilities for the State lie very definitely in the hands of the lieutenant governor and according to this first paragraph which has just been read, it does just the opposite. For example, if there are important decisions to be made, are we going to hang fire and wait until the governor returns?

CHAIRMAN: Would you like to answer that question, Delegate White?

WHITE: I would say that you'd have a pretty difficult situation if the governor was away on official business and you stripped him of all of his powers.

LOPER: I'd like to ask the maker of the motion if he really needs the words, "authorized leave"?

DELEGATE: Who authorized the leave?

WHITE: That's a good question. That was put in to take care of a situation where the governor might be required to go away for medical attention for a period of time or he might be away on vacation, and I would assume that "authorized leave" would probably do. I have no -- there's no pride as to the language. I was trying to get the idea.

TAVARES: May I ask a question? Some of the difficulty here evidently is due to the fact that we are trying to anticipate all possible situations. I'm wondering if the chairman of the committee would see any objection to letting the legislature provide by law for the situation under which the lieutenant governor would take over.

OKINO: Speaking for myself, I would have no objection but the proposal before you is the proposal of the committee.

I'd like to ask the mover of this amendment a question. Delegate White, in your amendment offered, you have the following clause appearing in the third sentence, "in case of the failure of the governor to qualify"; then we go to the third sentence, "or his impeachment, the powers and duties of the office shall devolve upon the lieutenant governor for the remainder of the term." You mean, if the governor is impeached, do you mean by that reason alone, that the lieutenant governor shall serve for the remainder of the term despite the fact that the governor may be acquitted?

WHITE: It was intended that if he were removed from office as a result of the impeachment proceedings.

OKINO: But you haven't said "as a result of the impeachment proceedings." The term "impeachment" means one thing, the initiation of the proceedings by the legislature, likely in accordance with the article that will be provided by the Committee on Legislative Matters. I don't think that was the intent and I don't think the delegates would subscribe to that statement.

I have another question to ask. In the last sentence of your proposed amendment, paragraph one, you have used the expression, "temporarily absent." Now what does constitute "temporarily absent," ten days, three days, two months, three months, half a year?

WHITE: Well, I would say that any reasonable length of time. I don't know if you could ever tie it down to a day or a week or a month.

OKINO: I submit that if the language that has been proposed by the committee is adopted, that particular language has already been adjudicated by many of the courts in the states; that is the language which has been recommended by the Model -- that is the language which appears in the Model State Constitution, and in going over some of the cases I have found out that that particular language seems to have been adopted by most of the states.

Now there is this Nebraska case which was decided in 1942. It gives a very good explanation of temporary disability, permanent disability, and so forth. Permit me to read to you at this time.

> The constitutional provisions upon which the plaintiff relies for the allowance of his claim deal with the disabilities in case of the death, impeachment and notice thereof to the accused, failure to qualify, resignation, absence from the state or other disability of the governor. These are all disabilities within the meaning of the Constitution. Death, failure to qualify and resignation are permanent disabilities. Impeachment is a disability, at least until trial and acquittal, and permanent in the

event of conviction. Absence from the state is a permanent disability if the governor abandons the office and becomes a non-resident. But mere temporary absence from the state for business or of a personal nature, not interfering with the interest of the public, does not vacate the office of the governor, and instate the lieutenant governor therein with all the powers, duties, and emoluments thereof. Absence from the state to entitle the lieutenant governor to the emoluments of the office of governor is an absence amounting to permanent disability, or to a temporary disability creating a vacancy, or to a disability which prevents the governor from holding the office.

Now, the language proposed by your committee is the language which seems to have been adopted by most of the states, and courts have already adjudicated on many of the expressions found in that particular clause. It is for that reason that the Committee feels that Section 4 as submitted in Committee Proposal No. 2 [sic] should be adopted. Now if we were to make amendments, then we shall be using language that has never been adjudicated heretofore.

TAVARES: I'm certainly concerned about the language of this amendment. I do not think Section 4 will cover the entire situation as proposed to be amended by the delegate from the fourth district. And if Section 4 as in the original proposal—the first paragraph—has been construed by the courts, I would think it would be safer to follow that unless we study the section - - the amendment a little more. I do not think it covers the situation fully.

HEEN: In the Model Constitution we have similar language, but there you have also the clause "or of his impeachment." Now, as stated by the chairman of the Executive Committee, that could be temporary disability if he's not convicted, and if he is acquitted the disability would be removed.

OKINO: That is correct, and you will note the insertion of that specific sentence appearing in the last sentence of Section 4, "In case of his impeachment, he shall not exercise his office until acquitted," which would mean that he would be under disability at the time when his impeachment proceeding is going on.

HEEN: I think that's correct.

HOLROYDE: I'd like to ask the chairman of the committee, where in the article have they allowed for temporary absence of the governor, to cover what was meant to be covered in the last sentence of the first paragraph of the amendment suggested by Delegate White?

OKINO: That appears in paragraph one of the proposed amendment, the last sentence beginning with - - which reads as follows: "When the governor is temporarily absent." Now the expression "temporary absence" is not provided for in Section 4 of the Committee Proposal 22. The mere fact that the adjective "temporary" is lacking is no reason why the court cannot construe that absence could be permanent or temporary. It is for that reason that I have read to you the Nebraska case.

HOLROYDE: But is there anywhere in your article that you've allowed for that temporary absence or made arrangements to have it taken care of?

OKINO: You mean a special compensation?

HOLROYDE: No, just to allow the lieutenant governor to take over, as is stated here in that sentence.

OKINO: Well, if the governor should leave the State of Hawaii for the State of California for a matter of one hour, during that period of one hour while the governor is away from the State of Hawaii, the lieutenant governor by reason of this clause takes over the duties of the governor. And as soon as the governor returns to the State of Hawaii, he is ipso facto, by that fact, reinvested with the functions of the governor.

WHITE: I'd like to ask Chairman Okino one question, too. What are the governor's powers when he goes away on business?

OKINO: The governor's powers will devolve upon the lieutenant governor.

WHITE: You mean he has no power then. He has no power to act for the state while he's away?

OKINO: That's correct.

WHITE: Well, I don't see how he could go away on official business and be stripped of his power. That's what concerns me.

OKINO: Official powers, but there's nothing to stop him to speak for the State of Hawaii, but it will not be official.

WHITE: Well, I think that that would be an impossible situation, if a governor has to go away, for instance to attend the Governors' Conference, and not be able to speak as the governor of Hawaii. That's the very thing that concerns me. I'm perfectly willing to admit that in sticking impeachment in there, I did - - it was wrong. The point I'm trying to clear up, and I'm not particularly worried about the language of the section otherwise, I'd like to have it cleared up as to what this Convention intends, that when the governor leaves the Territory that he's stripped of all of his powers even though he's on official duty?

HEEN: I think I can answer that. When the governor is out of the state, there's no official duty that he's required to perform outside of the state. If he attends a conference of governors, what is there for him to do officially for the State of Hawaii? All he does there is to talk and talk, and nothing else, and pass resolutions to make the State of Hawaii a territory again.

KING: Right at this moment the Governor of Hawaii is attending a governors' conference in the East somewhere and the Secretary of the Territory is the acting governor. And Governor Stainback has no power that he can exercise in Hawaii while he's absent there even though it's an official or semi-official occasion.

WHITE: I'd like to say in my opinion that's an entirely different situation. The man acts as acting governor and he carries on what duties he's instructed to carry on. Now, you say that you can't imagine anybody - - what if the governor had to go to Washington in connection with the question of public lands that the State is to take back. He would have no power to speak then for the State? There are many, many situations that will develop.

CHAIRMAN: Any further discussion of that point?

H. RICE: I get Delegate White's point and I would like to say that we've asked the Governor to go on to clear up the situation at Kahului Airport. It seems that the chairman of the House Committee on Expenditures is holding this transfer up. That's been approved, and we've asked the Governor to go along and see if he couldn't see the chairman of this committee. Well, he'll be acting in his official capacity, wouldn't he?

CHAIRMAN: Anyone care to answer that question? I believe he would be.

H. RICE: It's an official duty of his; he's well acquainted with the situation so far as Kahului is concerned.

OKINO: Delegate Heen, would you - -

HEEN: There's nothing to prevent the governor from expressing his views before any body of the Congress in the United States or before any administrative officer of the national government. He can go there and talk all he wants. But there will - - he will not perform any official duty though, over there so far as the State of Hawaii is concerned. All of those duties will have to be performed here by the lieutenant governor while he is absent.

H. RICE: I should say that he was the official representative of the Territory. Isn't that right?

HEEN: He is the official representative of the Territory and there's nothing to prevent him from talking all he wants, and as long as he wants, before any administrative body of the national government or before any committee of the Congress, nothing to prevent him from doing that at all.

ROBERTS: It seems to be quite clear that you don't strip the governor of his office when he leaves temporarily to attend to business which may or may not be in connection with the State. He's still the governor. He doesn't perform any functions within the state because he isn't in the state, and he turns over some of the functions - - or under the Constitution, they are turned over to the lieutenant governor, and he performs the functions of the governor within the state during the period for which the governor is absent. But the governor in his absence elsewhere is still the governor. He still speaks for the State. He just doesn't perform any functions within the State while he's gone. I think with that understanding, we don't have to worry about the language. The language in there, I think is fairly clear. Is that in accord with the intention of the committee?

WHITE: My concern is that it says, this paragraph says very clearly that "the powers and duties shall devolve upon the lieutenant governor." Now under that wording, it seems to me that the lieutenant governor while the governor was away for a short period of time could exercise power that might be contrary to what the governor wanted done. If you talk about having chaos with two different people in, I'd see how you'd just have a nightmare with this.

SAKAKIHARA: I rose to a point of information, and I would like to ask the delegate at large from the fourth district, Senator Heen. I understood from Senator Heen's remarks here a few minutes ago that the governor during his absence from within the state and during his tour of the mainland United States, as governor of Hawaii he may speak for the people. But, what I am concerned [about] is this. If that's what is his power, it limits the governor. If there should be an official act or deed for the governor to execute, will the governor have that right in the name of the State of Hawaii, to execute any documents?

CHAIRMAN: Delegate Heen, would you care to answer that question?

HEEN: You mean when the governor is outside of the state?

SAKAKIHARA: Correct.

HEEN: Whether or not he might sign some document, say in Washington, a compact, say, between the national government and the State of Hawaii?

SAKAKIHARA: Yes, sir.

HEEN: I think that the legislature may so empower him. There's nothing in this article that prevents that or prohibits any legislation along that line.

PORTEUS: May I point out that under the Organic Act the language there is similar to that adopted by the committee. "In case of the death, removal, resignation or disability of the governor or his absence from the territory, the secretary shall exercise all the powers and perform all the duties of governor during such vacancy, disability or absence or until another governor is appointed and qualified." I don't think there's anybody in the territory who has suffered under misapprehension as to who the governor and the effective authority of this Territory was. When Governor Stainback is away, Secretary Long is the acting governor and has all the powers and duties. But when the governor leaves, he is recognized still as being the governor of this Territory. If he reaches an agreement with governors of other states, votes on matters, when he comes back here, this is his kuleana and he succeeds to all those powers and all those duties. This is the accustomed language. We've had it for fifty years in the Organic Act and I think it's worked.

WHITE: I'd just like to say, I think that that might be entirely satisfactory with an appointive officer, but supposing you do have the situation that was discussed this morning and have a governor of one party and a lieutenant governor of another party. And I thought that we were interested - - we were trying to provide a situation where we weren't going to have chaos.

OKINO: May I read further from this decision which was decided in 1942, it's rather recent.

CHAIRMAN: Please do.

OKINO: It's written on the same language. "A governor does not lose his office by stepping over the boundary line of the state for a purpose or for a time that does not disqualify him from holding the office. During such an interval, the lieutenant governor does not become governor. The Constitution does not provide for two governors at the same time. When the lieutenant governor performs duties in the executive office, during the temporary, non-disqualifying absence of the governor, he still acts as lieutenant governor and his compensation in such an interval is the lawful salary of that officer."

CHAIRMAN: Is there any further discussion on this question? The motion before the house, if I may state it, is the adoption of the amendment presented by Delegate White.

WHITE: In the interest of saving a little time, as long as that's fully understood and will be interpreted that way, I'm perfectly willing to withdraw my amendment.

CHAIRMAN: The amendment has been withdrawn.
I think the motion before the house now is for the adoption of the first paragraph, tentative adoption of the first paragraph of Section 4. Is there any further amendment?

HEEN: At the outset when we first took up the discussion of this particular section, there was some discussion about the amount of the salary, the minimum salary, whether or not $18,000 was too high and maybe not high enough. The expression made at that time seemed to indicate that it might be too high. I was just wondering whether that's a closed matter at the present time.

CHAIRMAN: I think that that matter was deferred until we finish with Section 4. That is in Section 3. We will return to that when we finish Section 4. That was the understanding on deferment.

HEEN: No, as I understand it, the deferment was for the purpose of further considering the last sentence of Section 3, as to when the lieutenant governor is to receive the compensation of the governor.

CHAIRMAN: That section is not before us at the moment, Delegate Heen. We were talking about Section 4, the first paragraph. The motion to defer included, as I recall, the proviso that upon completion of Section 4, we would return to Section 3.

HEEN: I apologize, Mr. Chairman, I'm a little confused.

CHAIRMAN: That's O. K. Thank you.

SAKAKIHARA: It was my understanding when I seconded the motion to defer, it was to enable Delegate White to discuss part of Section 4 with the last sentence of Section 3.

CHAIRMAN: Correct.

SAKAKIHARA: In view of the fact that the matter has been disposed of, I now move that the Committee of the Whole tentatively approve Section 3 as amended.

HOLROYDE: Second the motion.

CHAIRMAN: I don't believe that the motion is in order unless the movant of the motion to consider Section 4 wants to withdraw or we want to reconsider our action on deferment. I believe that unless some other step is taken, the section before us is Section 4, first paragraph.

SAKAKIHARA: Then I move to reconsider our action on deferment.

LEE: Second the motion.

CHAIRMAN: It has been moved and seconded that we reconsider our action on deferment. All those in favor will say "aye." Opposed. Carried.

SAKAKIHARA: I move that Section 3 be tentatively approved, as amended.

KAM: I second that motion.

LEE: I came in late, but a point of information. Was the amendment offered by Marguerite Ashford adopted?

CHAIRMAN: It was.

LEE: So the only thing left really for discussion is the amount of the salary, whether it's too high or too low. Is that it?

CHAIRMAN: Correct. One of the things.

LEE: Well, I'd like to hear from others on that.

FONG: In the article on judiciary, I believe we did not insert in the article on judiciary the compensation of the judges although at that time we thought that the compensation of judges should be large enough so that the office may be attractive to men of ability and men of learning. Now here we have inserted in the Constitution a provision on what the minimum salary should be for the governor and the lieutenant governor. I was just wondering whether we should leave that to the legislature and have the legislature set it, instead of putting it in the Constitution and freezing the minimum salary of the two positions. Now, we have not done that for any of the other offices which we have provided for and the thought in my mind is that this section could be easily left out.

SAKAKIHARA: I beg to differ with the speaker. The remuneration of the governor and lieutenant governor should be -- the minimum of their salary should be fixed. The governor and the lieutenant governor, whoever they may be, must be elected by the people of the State of Hawaii. They at least should know at the time of their canvassing for the offices, should be in a position to know what remuneration to expect. On the other hand, in regards to the offices of the chief justice and the judges, they will be appointed. They will be -- they are not elected by the people; they are not required to make financial expenditure for their campaign expenses as the governor and the lieutenant governor are required to do. The pay of the judiciary could be provided by the State legislature, but I may add here that at the time of election of the State legislators the governor and the lieutenant governor must run for election. I submit at least in fairness to those who may offer themselves to the office, the governor and lieutenant governor should be in a position to know -- expect the renumeration from those offices, and it should be incorporated in the Constitution.

LEE: I'd like to have a point of information from the chairman of the committee, if he can reply. I notice that the President of the United States had his salary increased by $25,000. Can you inform this committee as to the salary of the President of the United States, how it's determined, whether or not there is a limitation in the Constitution of the United States concerning the salary of the President, or is it left to the determination of Congress?

CHAIRMAN: Delegate Okino, would you care to answer that?

OKINO: I can only express an opinion. I do not think there is a minimum compensation provided for in the Constitution of the United States for the President.

LEE: In other words, you doubt that there is any limitation in the Constitution of the United States.

Now, Mr. Okino, can you furnish this other information? How many states of the Union provide for a limitation of the governor's salary or the lieutenant governor's salary?

OKINO: Six states. Legislative Reference Manual, page 153. California, Georgia, Maine, Michigan, New York and Texas.

LEE: And what is the limitation in those six states?

OKINO: California, $25,000; Michigan, $22,500; Georgia, $12,000; New York, $25,000; and Texas, $12,000.

LEE: And the other remaining states do not have any limitation?

OKINO: Apparently other jurisdictions provide the governor's compensation by law.

CHAIRMAN: Are you through, Delegate Lee?

LEE: I notice here a notation concerning the President of the United States. For the information of the committee, "The President shall at stated times receive for his services a compensation which shall neither be increased nor diminished during the period for which he shall have been elected and he shall not receive within that period any other emoluments from the United States or any office." There's no specific provision other than a limitation on the salary's increase or decrease during the term for which he is elected.

HEEN: I note in the Manual the salary of the governor of Pennsylvania is $18,000 and that is prescribed by statute. I'm just wondering whether that is a minimum salary which may be -- or I suppose they can raise it or decrease it at any time if that's not within the term of the office.

OKINO: If you will refer to page 152 of the Manual beginning with California, where it is provided by the Constitution, $25,000, you will note the reference A, "Legislature may reduce." Then, we come to Georgia, $12,000, footnote E, "Legislature may change it after completion of the present term of office." Then, we come to the state of Maryland, $4,500, there is no note. We go to Michigan, $22,500, provided by the Constitution, note G, "Constitution specified $5,000, however, the legislature appropriated $2,500 additional for the fiscal year ending June 30, 1947." Then we go --

HEEN: What page is that on, if I may ask, Mr. Chairman? What page?

OKINO: 153. You will find the states, length of office, maximum term, annual salary, salary fixed by either law or constitution, and on page 152 proper notes commenting upon the various provisions.

HEEN: What I have in mind is this. Take the great state of Pennsylvania with millions of inhabitants where the governor receives $18,000 a year. It seems to me that $18,000 a year for the governor of Hawaii, with only half a million people is a little out of line.

Now, besides the salary prescribed for the governor, I might call attention to this, that in the general appropriations bill passed in 1949 the governor was given an appropriation of $75,000 for current expenses in connection with his office and Washington Place, the mansion of the governor. My recollection is that in the past that amount allotted to the governor's Washington Place was in an amount around $5,000, which was spent for his help and buying groceries, I suppose, and a little light liquid refreshment, and that's all tax free. No rent to pay and those things, I think, are things of value. I don't doubt but when he has to make his tax return, he may have to state the value of -- the regular value of that place in order to make a proper return, income tax return.

PORTEUS: The subcommittee that worked on this did make a recommendation. They found that in 1947, 37 states provided a salary of $10,000 or less a year, and seven provided a salary between $10,000 and $12,000, so 44 of the states were under $12,000. Now that doesn't make it right. Some states go down as low as three, four, five and six thousand dollars a year. That's not right for the chief executive of a state.

Whether Pennyslvania chooses to pay $18,000 or not, I think what we ought to do is pay what the office is worth. I think the office is worth more than $18,000 a year. I think it's worth much more than that. I think the man guiding the destinies of the State of Hawaii is entitled to enough compensation so that he can -- does not have to be somebody that has a large private income and wishes the honor with the responsibility. I think compensation should be coupled with that responsibility and I think as a practical matter it's a good thing to set a limit, then the legislature cannot play around with that limit. A man knows that under this Constitution as governor he cannot get less than $18,000 a year. If the legislature, in its discretion, decides to provide a residence that's not in the Constitution, it may do so or not. The legislature decides to provide help, food or other perquisites. The legislature may do so. It's not forced to. But I think a man should be able to count on reasonable compensation.

As a matter of fact, there's another thing. We know that it's a little out of line to pay the heads of departments more than you pay a governor or as much. If you're going to pay a governor $10,000 a year or some such sum as that, how in the world can you get the best men possible in order to take the heads of these various important state departments. They're going to have to live. You're going to have to pay them an adequate salary. You may have to pay as much as $12,000 or $14,000 a year. After all this $18,000 has another effect. It's a certain guide in the establishment of pay for other positions, and I don't think we ought to get the governor in a position where if he's only getting $10,000 or $12,000 a year, the argument will then be used that you can't pay the heads of the departments more than that because the governor isn't getting far more. I think it's a fair enough provision, does no violence.

OKINO: I should like to submit this for your further consideration. The governor of our Territory of Hawaii has been receiving about $16,000 a year with perquisites. The governor of our Territory of Hawaii to this date was never elected by the people. But if the governor of the Territory of Hawaii is to be elected by the people, then it would seem that an additional $2,000 a year is not unreasonable. After all I think he would like a few dollars for his campaign fund.

FONG: In looking over this chart on page 153, we find that if our governor is paid not less than $18,000 a year, he will be the -- he will be tied for sixth place as far as salary is concerned. He will only be exceeded by the State of California, $25,000; by the State of Massachusetts, $20,000; by the State of Michigan, $22,500; New Jersey, $20,000; and New York, $25,000. He will be tied for sixth place with the governor of the State of Pennsylvania.

Now, in our talk before the Congressional Committee, we told the Congressional Committee that our Territory is quite a self-sustaining Territory, that we pay into the United States Treasury in taxes more than ten of the other states in the Union. Now if we pay taxes, if our taxes only exceed ten other states, and only five other state governors' salaries exceed us, how can we justify paying our governor $18,000, and remember that is only the minimum. Not less than $18,000. The salaries which I have quoted are the maximum salaries that are now paid the executives of the Commonwealth of Massachusetts and the State of California and the other states.

Now, it seems to me, although I know the point raised by the Secretary is well taken—that we should pay a man for what his responsibilities are—still we must go somewhat in conformity with the salaries paid by the other commonwealths, and in looking over this chart it seems to me that the salary of not less than $18,000 is far above the salary paid to the other governors. I will say that it would put our governor's salary way out of line with the chief executives of the other states. I don't know what salary should be paid. I know that he should be paid a good salary because I know his campaign is going to cost him $18,000, it'll cost him that if he really wants to make a good campaign, but we should at least adhere to what is being paid to the other executives.

ROBERTS: I'd like to address myself not to the amount of money—that to me is at the moment a little immaterial to the problem—but to the question as to what we should write into our Constitution. I believe that generally we ought not to write any specific figure in our Constitution with regard to the amount of money to be received by an

officer of the State, whether he be the executive or the judiciary or the legislators. It seems to me that's a problem that could be determined as the problem arises and as the job is evaluated and the figures set.

I think, and I agree with the previous speakers that we ought to pay enough to attract the most competent and best qualified people for the job, whether it be $10,000 or $15,000 or $25,000. I'm not concerned as to whether we are sixth. I have no objection if we're first among all the states in paying a good executive a decent salary. I also think that we ought to pay more to our legislators so that we can attract individuals to the legislature. I think we ought to pay more to the judiciary. That problem however, it seems to me, is not a problem which we ought to wrestle with and write into our Constitution. I would suggest that we follow the procedure that we followed in the article on judiciary. Put out the general language that provision be made, but provide that they cannot be reduced unless other adjustments are made to all officers of the state.

Now the argument might be presented that a fellow has to run. Judiciary don't have to run, they get appointed. But what we're talking about basically is the first office. That's the only time when they don't know, but after that the executive knows what he is going to get because it's specified in the law. The legislature can't change it, and it seems to me that just for consideration of the first election, that we ought not to spell out the language.

I would therefore move that the following language be inserted in lieu of the existing Section 3:

> The governor and lieutenant governor shall receive for their services such compensation as may be provided by law, which shall not be diminished during their respective terms of office, unless by law applying in equal measure to all officers of the state.

That language is identical with the language of Section 6 in the article on the judiciary which we have already adopted. I'd like to move that as an amendment to Section 3.

CHAIRMAN: Is there any second?

APOLIONA: I second the motion.

AKAU: I second the motion.

CHAIRMAN: It has been moved and seconded that this section be amended.

CROSSLEY: I would like to ask the delegate from the fifth district, Delegate Fong, what is the present salary of the governor of the Territory of Hawaii?

CHAIRMAN: Delegate Fong.

FONG: They tell me it's $16,000.

CROSSLEY: $16,000. How much of that is provided by the legislature?

FONG: I think the legislature provides around $6,000. Is that right? $6,000.

CROSSLEY: It used to be that the legislature provided about $6,000; they now provide only $1,000. But the thing I would like to point out is that the reason that the legislature provides that $1,000 is because the federal provision is only $15,000. It used to be only $10,000 and the legislature in their judgment thought the job was worth $16,000 and therefore they provided them with the other thousand. I don't recall that there was any big fight about providing that extra money. I do recall the discussion that they felt at the time that the compensation should be brought up to this level, and therefore raised the salary by providing the amount beyond that which had been granted by the federal government. In addition to that, they provided certain perquisites to go along with the job.

Now then, getting back to whether or not there should be a minimum. I was one of those in committee that thought the minimum should be somewhat less, but went along with the majority which I would support. I'm not concerned either with what place we have in the race for paying the governor the highest salary, whether we're first or forty-ninth. I do think, as other speakers have said, we should have a salary attached to the job that will attract the highest caliber of man possible to get for that job.

Also the thing that the committee couldn't find out in examining the records of salaries for these other people that we talk about was what perquisites they got, what else went along with their salary, and if we had the full story. In other words, if we had what is commonly known as take home pay, why then we might be able to make a comparison and say we are first, second, third or sixth or whatever we stand. But we do not have that information and I don't think that it is proper to make a comparison between something that we know as being all-inclusive and something that we do not know as being all-inclusive. I would support a provision that would permit a minimum salary. I think that should be guaranteed.

MIZUHA: I would like to add one more thought to the previous speaker, that the job should attract the highest caliber of men or women in the Territory regardless of background, so that even the poorest man or woman in this Territory will be able to run for that office and serve the people if he is qualified for the job.

KAM: Speaking of high caliber men, I notice that the State of New York with eight million people will lose a good man in Governor Dewey who will not seek re-election for $25,000, too small for him. Is that right, Porteus? So, I think we should pay a very high salary to the governor of the State of Hawaii.

PORTEUS: I'd like to answer that question. Governor Dewey was such a good governor that the people of the United States decided that he would best serve his country by continuing to be governor of the State of New York.

H. RICE: I think that by writing this into the Constitution you take these figures out of politics and, having been into politics more or less, I think that this is one time when we should not leave this open to political skulduggery, or something like that, and therefore I cannot agree with the delegate from the fourth district. I think we ought to write this in.

CHAIRMAN: The motion before the house at the present time is the adoption of the amendment read by Delegate Roberts. All those in favor of the motion to amend will say "aye." Opposed. The motion is lost.

The question before the house now is the adoption of Section 3 as amended by Delegate Ashford. All those in favor of the motion will say "aye." Opposed. I'm afraid it's carried.

HOLROYDE: I move we temporarily adopt the first paragraph of Section 4.

APOLIONA: I thought that motion was already put.

CHAIRMAN: Well, we deferred and went back. I think it's in order now.

APOLIONA: I second that motion.

CHAIRMAN: It's been moved and seconded that we adopt paragraph one of Section 4 as written. All those in favor - -

J. TRASK: Point of order. I should think it'd be proper to move tentatively that Section 3 be approved as amended.

CHAIRMAN: We just did that.

J. TRASK: Did you?

CHAIRMAN: Yes, we did. All those in favor of the motion before the house to adopt Section 4 tentatively will say "aye." Opposed. Carried.

KAM: I move that paragraph two of Section 4 be tentatively approved - - agreed to.

HOLROYDE: I'll second that.

CHAIRMAN: It's been moved and seconded that paragraph two of Section 4 be tentatively approved. Any discussion?

SMITH: Before we go into that could we have a five minutes' recess for the clerks?

CHAIRMAN: I was thinking we could vote on this and then I would declare a recess. That's the last paragraph of Section 4. All those in favor of the motion will say "aye." Opposed. Carried.

The next section before the house is Section 5. Without objection, the Chair will declare a five minute recess, and I do mean five minutes.

(RECESS)

HOLROYDE: I move we adopt temporarily Section 5.

CHAIRMAN: The delegate is out of order. I haven't called the committee to order yet.

Committee of the Whole please come to order.

DELEGATE: Second the motion.

CHAIRMAN: Delegate Holroyde is recognized.

HOLROYDE: I move we adopt temporarily Section 5.

J. TRASK: I second the motion.

CHAIRMAN: It's been moved and seconded that we temporarily—did you say temporarily? —tentatively adopt Section 5. Is there any discussion? All those in favor of the motion will please say "aye." Opposed. Carried.

KAM: I move that Section 6 be tentatively agreed to.

H. RICE: Second the motion.

CHAIRMAN: It has been moved and seconded that Section 6 be tentatively agreed to.

HEEN: It has been limited to the one - - first paragraph. I understand that the movant has amended that to apply only to the first paragraph.

KAM: Yes, sir, Mr. Chairman.

CHAIRMAN: I will correct the motion then, to apply to the first paragraph only. Any discussion? All those in favor of the motion will say "aye." Opposed. Carried.

KAM: I move that the second paragraph of Section 6 be tentatively agreed to.

J. TRASK: I second the motion.

CHAIRMAN: It's been moved and seconded that the second paragraph of Section 6 be tentatively agreed to. Any discussion?

HEEN: I think that that paragraph might be deleted because it's adequately covered in the article on the legislature.

ARASHIRO: I second the motion to delete.

HEEN: I think we did that last night with reference to the article on taxation and finance. We deleted a similar section.

ASHFORD: To delete it here and put it in the legislative article would follow the same procedure that is used in the Organic Act at the present time.

CHAIRMAN: Delegate Heen, did you make that in the form of a motion?

OKINO: Your Committee on Executive Powers and Functions has no objection to the deletion of that paragraph. It was inserted there purely to call it to the attention of the delegates when this committee proposal was submitted to the Convention. Now, the committee did not want the delegates to feel that your committee had completely forgotten about the veto power of the governor.

CHAIRMAN: I would like to ask the original movant, Delegate Kam, if he would like to amend his motion to read for the deletion rather than the adoption?

KAM: I so move, Mr. Chairman.

CHAIRMAN: Will the second accept that?

J. TRASK: I accept that.

CHAIRMAN: It's been moved and seconded that the second paragraph of Section 6 be deleted. Any question? All those in favor say "aye." Opposed. Carried. The section is deleted.

RICHARDS: I now move that Section 6 pass tentatively as amended.

CROSSLEY: I second it.

CHAIRMAN: It's been moved and seconded that Section 6 pass tentatively as amended.

ASHFORD: I move to amend - - oh, I've got Section 7.

CHAIRMAN: All those in favor will say "aye." Opposed. Carried.

HOLROYDE: I move Section 7 be deleted. It is covered in the legislative article.

CHAIRMAN: Both paragraphs? It's been moved that Section 7 be deleted.

ROBERTS: This article, I gather, goes to the power of the governor.

CHAIRMAN: Are you speaking to the motion? The motion has not been seconded.

J. TRASK: I second the motion.

CHAIRMAN: It has been seconded. Dr. Roberts.

ROBERTS: I gather we are dealing in the article with the powers of the governor. The provision, Section 7, the first sentence, the first part of it at least, provides that the governor may call a special session of the legislature. If you put it in the article on the legislative powers, that's not a power of the legislature. We're talking about the governor's power, the governor's power to call the legislature into special session. That's not a power of the legislature. I would suggest that we retain, but we retain only part of it.

HOLROYDE: I think the delegate has a good point. So I'll move that that section be - - I withdraw my first motion.

CHAIRMAN: There is nothing before the house.

KAM: I move that Section 7, first paragraph, be tentatively agreed to.

CROSSLEY: I'll second the motion, if it's for adoption.

CHAIRMAN: It's been moved and seconded that the first paragraph of Section 7 be tentatively agreed to.

ASHFORD: I move to amend by inserting a period after the word "convened" in the fourth line of that section, and deleting the remainder of the section.

ARASHIRO: I second that motion.

CHAIRMAN: It has been moved and duly seconded that the paragraph be amended to read down to the word "convened" in the fourth line and the rest deleted. Is there any discussion of that amendment? All those in favor - -

ROBERTS: I'd like to speak in favor of the motion to amend, if it is understood that the article does not preclude the legislature from considering other matters than those which have been set forth by the governor in his statement. If that is understood and set forth in the report of the Committee of the Whole, I would support the amendment.

HEEN: The Committee on Legislative Powers has a provision which reads as follows: "Sessions of legislature. Regular sessions of the legislature shall be held annually. The governor may convene the legislature, or the Senate alone, in special session." And if this is to remain in part, at least in the article on the executive powers it should be only the first part of it: "The governor may call special sessions of the legislature by proclamation," period. But insert in that another clause, "or the Senate alone," so as to conform to what we have in the legislative article; so that that sentence will read: "The governor may call special sessions of the legislature, or the Senate alone, by proclamation."

CHAIRMAN: Is that a motion?

HEEN: I so move - -

MIZUHA: I second the motion.

HEEN: - - that the paragraph be amended to read as stated.

CHAIRMAN: It's been moved and seconded that the paragraph be further amended.

TAVARES: It seems to me - -

CHAIRMAN: Just a second, Delegate Tavares. Delegate Roberts, were you through or did you want the floor again?

ROBERTS: We have not discussed anything with regard to the Senate in special session. I would suggest that we adopt the first part of the sentence: "The governor may call special sessions of the legislature by proclamation." Now if later on we adopt a section in the legislative article which provides for a special session of the Senate, the Style Committee can then in rearrangement put that section in the section dealing with the power of the governor, so that he could call not only a special session of the entire legislature but also a session of the Senate, if the Committee of the Whole agrees to such inclusion.

TAVARES: This is a report of a committee, and I have heard no argument in favor of Section 7. It seems to me before we vote to delete a substantial portion of Section 7, we ought hear from the members of the committee as to the reasons which led them to recommend this. I think we should consider both sides.

OKINO: Your committee members did consider this particular point which is now being debated before your Committee of the Whole. Some felt that in view of the fact that such provisions exist in the legislative article insofar as the Organic Act of Hawaii is concerned, the matter should be treated by the Legislative Committee, and yet others felt that this was clearly an executive power. For that reason, it was felt by the majority that the matter would be contained in this committee proposal subject to whatever amendment that may be offered by members serving on the Legislative Committee, and it is for that reason that I did not actively participate in the discussion now going on.

HEEN: Speaking for myself, and I think I speak for the other members of the Legislative Committee, we feel that in a special session called by the governor there should be no restriction as to what, or no limitation as to what might be considered by the legislature sitting in special session, and that is the way it is handled in the Organic Act at the present time. There is no limitation.

CHAIRMAN: What is the wish of the committee?

TAVARES: That is something that I think should be thought over rather carefully. I personally feel that governors have been deterred in the past from calling special sessions that were needed because they felt that if they did the legislators were of a mind to go all over the lot and not pay any attention to the business in hand. Now I'm not necessarily opposed to giving the legislature some leeway in going beyond the governor's call, but it seems to me this is a provision that will encourage the governor to call special sessions when needed, and I think we can take care of the legislature's rights by requiring a higher percentage, say, than 50 per cent concurrent resolution to allow special other matters to come in. In that way, you might have a special session that is limited to the business in hand and doesn't go off on horse racing and a lot of other things.

ARASHIRO: As suggested by the delegate from the fourth district, will not this then give the governor the advantage of vetoing all the bills in the regular session, and then from time to time call special sessions for specific items that he is interested in?

TAVARES: I'll answer that question. The answer is yes, but you can take care of it by saying that the legislature by concurrent resolution passed, say, by 60 per cent of the membership of each house, can take up any other matter than the governor provides. In that way you provide a little control instead of having these people that sometimes will copy a whole bunch of bills from the preceeding session just to make a record for introduction of bills, which has happened.

ASHFORD: I'm strongly in favor of the deletion, needless to say. I think that we should observe the division of the three great departments of government and should not be perpetually trying to confine the legislature.

FONG: We are trying here at every turn to really circumvent the power of the legislature. Every time we have something in which we should give free rein to the legislature, somebody jumps up and says that we don't seem to be trusting the legislature. Now your legislature is your legislative branch of the government. It is one of the three branches of government, and I think we should have enough respect and enough confidence in your legislature to know that they will do the right thing. In the special session which was called to deal with the strike, your legislature didn't run wild all over creation and introduce a lot of bills. They handled the strike situation, they handled a few bills according to their executive committee and they went home.

Now I think that our history in the territory for the past fifty years, as far as the legislators are concerned, is that our legislature has done a good job and we can depend upon

the legislature to do what is right. Every time when we try to hamper their style and try to put obstacles in their way, we are really not showing the confidence that we should have in our men who will be elected by the people.

HEEN: I know this, that when the special session was called last year to deal with the strike situation, it was called primarily for that purpose, and most of the time was devoted in respect to that matter. Then after the great part of that work was completed we found out that there were many statutes that were passed at the regular session that should have been amended, and through a screening committee these additional bills were allowed to be introduced in order to correct these errors, these very glaring errors in some cases. And they proceeded along that line.

I think that the legislature can be trusted not to go hog wild in the matter of dealing with legislative measures in a special session. In the article on legislative matters, special sessions will be limited to a period of thirty days with the right on the part of the governor to extend that period for another thirty days, Sundays and holidays excluded.

HAYES: I just wanted to remind, following Delegate Fong and Delegate Heen, to remind the rest of the delegates here that the same legislature was also sued.

PORTEUS: I think this is a subject that may well be left for discussion when we hit the legislative article. I believe that there might be some limitation so that one person can't throw a number of bills into the hopper and force the others to either turn them down, ignore them, or otherwise dispose of them. So some limitation may be appropriate, but I think when we come to the legislative article, that's the time to deal with it.

CHAIRMAN: I'd like to remind the committee that the motion that's before us now is for the amendment of Section 7.

H. RICE: Does the amendment - - Mr. Chairman, does that state that "The governor may call special sessions of the legislature by proclamation," period?

CHAIRMAN: The last amendment that was made was made by Delegate Heen.

H. RICE: Is that right?

CHAIRMAN: His amendment was to make it read as the legislative provision in the legislative committee proposal. Would you care to read that again, Delegate Heen?

HEEN: My motion was to amend that section so that the same will read: "The governor may call special sessions of the legislature, or the Senate alone, by proclamation."

APOLIONA: Was that amendment seconded?

CHAIRMAN: I believe it was.

HEEN: I'm not sure whether it was.

APOLIONA: If not, I'd like to ask the delegate from the fourth district a question.

DOI: I seconded the motion. At this time I withdraw my second.

CHAIRMAN: The motion is not before the house. The motion before the house at the present time - -

KING: A point of order, Mr. Chairman. Miss Ashford, Delegate Ashford made a proposed amendment.

CHAIRMAN: That's correct.

KING: Delegate Heen's is an amendment to an amendment.

CHAIRMAN: That's right.

KING: Miss Ashford was trying to get your recognition to withdraw her amendment, which would leave Delegate Heen's amendment pending.

CHAIRMAN: Now, at the present - -

ASHFORD: May I be heard for that purpose? I don't know why the Senate should be called in alone, but I'm perfectly willing to accept the amendment to my motion, making it the original motion.

HEEN: I can explain that, Mr. Chairman.

CHAIRMAN: Just a second. The Chair understands now that Delegate Ashford has withdrawn her amendment. The amendment you accepted has not been seconded.

HOLROYDE: I will second that, Mr. Chairman.

CHAIRMAN: Okay, it has been seconded.

APOLIONA: Now can I ask the delegate from the fourth a question - - I mean fourth district a question. What does he mean by calling the Senate into special session, why the Senate?

HEEN: Because the session - - I mean the Senate has the power to confirm appointments, acting alone, and that's the only purpose for which the Senate may be called in special session sitting alone. That language appears in the Organic Act, and we just followed that Act. And we have provided in various places here that the governor shall have power to appoint judges, justices, with the confirmation of the Senate, and the present article of the executive department provides for the appointment of departmental heads by the governor, subject to the confirmation by the Senate. Therefore, the Senate can be called into session, sitting alone for that purpose, and that's the only purpose. That's why it's been inserted in the article on legislative functions.

APOLIONA: Can I ask another question of the delegate?

CHAIRMAN: I believe you may.

APOLIONA: You mean to tell me that every time the governor makes an appointment, he has to call the Senate into special session?

HEEN: Not necessarily because they may be treated at a regular session when the Senate is sitting and it may be done at a special session when a Senate is sitting. And if we adopt the matter of a budget session, the matter of appointment subject to confirmation of the Senate may be considered at that time also.

TAVARES: In order to bring my suggestion to a vote, because I don't think it's been fully considered yet—I want to give control to the majority of the legislature in special session—I, therefore, move to amend the amendment by accepting Delegate Heen's amendment, deleting Miss Ashford's - - Delegate Ashford's amendment, changing the period to a comma at the end of the first paragraph following the word "session," and adding the following words: "unless authorized by concurrent resolution adopted by a majority of each house of the legislature." That will allow the legislature by a majority of each house to control the type of bills that will come in during the special session and will make for economy of operation of the legislature.

CHAIRMAN: Delegate Tavares, as I understand your motion, it would include the present first paragraph of Sec-

tion 7. Delegate Tavares, you would include the whole of the first paragraph of Section 7?

TAVARES: Yes, Mr. Chairman, with Delegate Heen's amendment and with that addition which would then authorize a majority of each house of the legislature to override the governor's limiting of the session on any particular issue.

CHAIRMAN: Delegate Heen's amendment deletes most of that paragraph and substitutes a short sentence therefor.

HEEN: That's correct. It ends with the word "proclamation."

TAVARES: My amendment reinstates it, Mr. Chairman, but allows the reference to the Senate being called in alone to remain in.

CHAIRMAN: I would ask Delegate Tavares to read his amended paragraph.

LEE: There's nothing before the committee on that amendment. It hasn't been seconded, and furthermore I believe that we should take a vote on this amendment proposed by Delegate Heen, and then after the thing is adopted or rejected, if Delegate Tavares seeks to further amend, I think we can get to the point.

DELEGATES: Question.

CHAIRMAN: All those in favor of the amendment to paragraph one of Section 7 as proposed by Delegate Heen will say "aye." Opposed. The ayes have it.

WOOLAWAY: Now is it in order to second Delegate Tavares' motion then?

CHAIRMAN: You may.

WOOLAWAY: I do second.

CHAIRMAN: You are recognized.

WOOLAWAY: I'll sit down after I've seconded.

TAVARES: I now renew my motion, and I understand the delegate from Maui has seconded it.

CHAIRMAN: Correct. The motion before us now is the --

FONG: I wish to speak against the amendment. As I said, we should have enough faith in our legislators to know that they will do the right thing. The history of our legislation has shown that the legislators have done the right thing when they were called into special session. In all the special sessions that I have sat in your legislators had gone about their work and have done the work that they were called in specifically to do and they have not wandered all over the place except just to do the thing that they thought was the right thing to do.

Now I think this unnecessary limitation upon the powers of the legislators is an infringement upon their rights. The governor is representing the executive branch of the government. The legislators are representing the legislative branch of government. I think if the governor is going to call the session, he should leave it up to the legislators to decide as to what they want to do. I think we have enough men and women in our legislature who are able to do the right thing. And I think this amendment is an unnecessary restriction upon the right of your legislators.

CHAIRMAN: Delegate Tavares, would you like to read your amendment throughout, please.

TAVARES: My amendment would cause Section 7 to read as follows:

> The governor may call special sessions of the legislature or of the Senate alone by proclamation, and shall state to both houses when organized the purpose for which they have been convened, and the legislature shall transact no legislative business except that for which they were especially convened and such other legislative business as the governor may call to the attention of the legislature while in session, unless authorized by concurrent resolution adopted by a majority of each house of the legislature.

HOLROYDE: I would like to point out that this is the executive article that we're dealing with, and now we are trying to limit the legislature and what they do in the executive article. I think any amendments or any restrictions on the legislature should be in the legislative article and not in the executive article.

ARASHIRO: If there should be any restrictions as far as the legislature, I think the legislature can take care of themself instead of we having that article again in the executive section.

DELEGATES: Question.

CHAIRMAN: Question. All those in favor of Delegate Tavares' amendment to the amended paragraph will say "aye." Opposed. The amendment is lost.

The question before the house now is adoption of the first paragraph as amended.

SAKAKIHARA: I now move that Section 7 as amended be tentatively approved.

CHAIRMAN: Are you speaking to the first paragraph alone?

SAKAKIHARA: That's right.

WOOLAWAY: I'll second the motion.

CHAIRMAN: It has been moved and seconded that the first paragraph of Section 7 as amended be adopted tentatively.

ARASHIRO: Will that paragraph be reread again so --

CHAIRMAN: Delegate Heen, would you please read your amendment, please.

HEEN: That section will read as follows:

> The governor may call special sessions of the legislature, or the Senate alone, by proclamation.

CHAIRMAN: All those in favor of the motion will say "aye." Opposed. Carried.

DOI: I move to delete the second paragraph of Section 7.

SAKAKIHARA: Second it.

CHAIRMAN: It's been moved and seconded that second paragraph of Section 7 be deleted. Is there any discussion?

H. RICE: I think they are making a mistake if they delete this. In '31 or '32, we had a couple of special sessions, didn't we, and if we hadn't had this in the Organic Act, why we would have had to go out and come in. I think the executive should have this power to extend the sessions.

SAKAKIHARA: This section is taken care of by the Committee on Legislative Functions and Powers.

DOI: I would like to speak in favor of the motion. I think this paragraph here goes to the basis of the legislative power and that is the length of time the legislature deems wise they need to consider certain problems. I think the best judge to determine how much time they need is the body deliberating on the question. In this case it happens

to be the legislature. I therefore believe that this paragraph should be deleted.

HEEN: This problem is adequately treated in the article on legislative powers and functions. Among other things it provides, "General sessions shall be limited to a period of 60 days and budget sessions and special sessions shall be limited to a period of 30 days, but the governor may extend any session for not more than 30 days. Sundays and holidays shall be excluded in computing the number of days of any session." So it's adequately taken care of in the article on legislative powers and functions.

ROBERTS: I'd like to speak against deleting of this section at this time. I think that the purpose of the deletion would be to prevent the governor—we're dealing now about the executive functions article—to extend any regular or special session. That is on the assumption that there will be a limitation of time in the article dealing with the legislature. Such a proposal is now in the section. If it carries in there for limitations of the sessions, then it seems to me you've got to provide the power of the governor to extend. If, however, in the article dealing with the legislature, we put no limits on the legislature and its sessions, then it seems to me the Committee on Style can very well present that question and we could delete it. But until such time as we've acted on the legislative article, it seems to me if we delete it now, we will be unable, if the other article goes through, to give the executive the power to extend sessions, if we have a limitation. If we don't have a limitation, then this article could very well go out. But we haven't established that, yet.

KING: I agree with the last speaker that this paragraph should not be deleted at this time. Delegate Heen has quoted from a report that has not yet been submitted to the Convention nor adopted. And any duplication or repetition can be cleared by the Committee on Style. So I think it would be a mistake to delete this paragraph submitted by the Committee on Executive Powers which is now before the committee.

CHAIRMAN: Is there any further discussion on the question?

HEEN: As I have stated, that will be reported out in that manner so far as duration of sessions are concerned -- is concerned, and I don't for a moment think that the Convention is going to throw that provision out. If this provision is to remain, it might read this way, "The governor shall have power to extend any regular, budget or special session of the legislature as provided in this Constitution." It might read that way, and the Style Committee can then throw it out later as being unnecessary.

CHAIRMAN: Any further questions? All those in favor of the motion to delete will say "aye." All those opposed, "no." The noes have it.

HEEN: All right, then I move an amendment to that paragraph, so that the same will read as follows: "The governor shall have power to extend any regular, budget or special session of the legislature as provided in this Constitution." I move the adoption of that amendment.

H. RICE: Second the motion.

CHAIRMAN: A further amendment to this section has been made and adopted -- moved and adopted [sic]. Any discussion? All those in favor of the amendment will say "aye." Opposed. Carried.

CROSSLEY: I move the adoption of the paragraph as amended.

APOLIONA: Second the motion.

CHAIRMAN: It's been moved and seconded that the paragraph as amended be adopted. All those in favor will say "aye." Opposed.

AKAU: Point of order.

CHAIRMAN: State your point.

AKAU: The point of order is regarding the amendments that are beginning to come to our desks. I wonder if it would be in order to ask the people who are writing the amendments to kindly sign their names because then we can refer to them, then we'll know that that was such and such amendment, instead of fingering through about four or five amendments and we don't know which one we're talking about.

CHAIRMAN: I believe the delegates have heard the request.

There's nothing before the house now except the paragraph -- Section 7 which has not been adopted.

HOLROYDE: I move that Section 7 be adopted as amended.

CROSSLEY: Second the motion.

CHAIRMAN: It's been moved and seconded that Section 7 as amended be adopted in intent. All those in favor will say "aye." Opposed, "no." Carried.

CROSSLEY: I now move the adoption of Section 8.

SMITH: I'll second that.

CHAIRMAN: It's been moved and seconded that Section 8 be adopted.

ASHFORD: Did we cut out the reference to treason in the Bill of Rights, and where would be the provision for treason?

FUKUSHIMA: In the Bill of Rights, we did cut it out, yes, but still by statute, we may have the crime of treason.

OKINO: In reply to the question interposed by Delegate Ashford, I should like to direct your attention to the report filed by the chairman of the Committee of the Whole relating to Bill of Rights. It pertains to Section 17. I'm sorry, it pertains to Section 18 of the proposal submitted by the chairman of the Committee of the Whole. The original section read as follows: "Section 18. Treason against the State shall consist only in levying war against the same, or in adhering to the enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or in confession in open court."

Then the recommendation of the Committee of the Whole. [Report No. 5]

> This section is derived from Section 3 of Article III of the Federal Constitution, which was adopted at a time when there was fresh in the memories of the revolting colonists the fact that under the then or recent laws of England there were seventeen types of treason punishable by death in a "very solemn and terrible way," and when the modern scientific methods of crime detection and proof, other than eye-witness testimony—such as photography, fingerprinting, handwriting analysis, microscopic and chemical analyses, fluoroscopic examinations, etc., —were unknown. Actually such a provision is unnecessary because it defines only one crime, leaving to the legislature in any event the power to define other crimes, including other capital offenses. Deletion of the section, therefore, would actually strengthen the power of the

legislature, or at least render it free from any uncertainty, to deal in any manner commensurate with the needs for protection against modern espionage, fifth column activities . . . and so forth.

Now, in this particular section, you will note that that is mentioned as an exception, that the governor shall not have the right to grant pardon or reprieve if a person is found guilty of the offense of treason. And since the matter is to be left with the legislature, I see no reason why any specific provision covering the same be included specifically in this Constitution.

TAVARES: I think this section raises some very serious problems. I realize that treason is a very serious offense and so is impeachment. But are we to have two crimes that nobody can ever punish [sic] forever and ever and ever? This is what this does. I see no other provision in here for the legislature or anybody else to give relief from these things. And I think therefore that unless you do take care of it, it will be better to leave it to the governor.

Secondly, treason can be defined as a lot of other acts just by giving it a name, and you make it impossible to get a pardon. In other words, a man who is convicted of treason is forever afterward disqualified from holding office, from voting, from having all the other general rights that go with citizen - - with the rights of citizenship when a man is not convicted of crime. I think that is probably going much further than the committee intended. Other constitutions which have that have a provision allowing specifically for some type of reprieve or pardon or relief from some other party than the governor in those particular cases.

There is one more problem that hasn't been covered but I think it can be covered by including it in the report of this Committee of the Whole, and that is, there is very grave doubt whether, unless you make it clear otherwise, the governor's power to pardon extends to misdemeanors created by ordinances of the counties. In this territory, traditionally, the governor has assumed the power to pardon against misdemeanors created by ordinance. The majority rule of the states is that that is not included ordinarily in the governor's pardoning power. It only includes offenses against the state under state law. I believe that we should in our report make it clear that this includes pardoning against offenses under ordinances. And this is no joke because we have one attorney general who has actually ruled that the governor has no power to pardon misdemeanors created by ordinances. I disagree with that ruling but it is a ruling; it is supported by the weight of authority in the states whose history, of course, I believe is different from ours. And for that reason I think that our report should state that this includes the power to pardon against offenses created by county or ordinances of municipal sub-divisions or counties.

CHAIRMAN: The report shall so state.

HEEN: Some reference was made that this matter might be taken care of by legislation. The only legislation contemplated here is one relating to the manner of applying for reprieve or pardon. Now I think that the term "for all offenses" would cover any offense at all, whether created by ordinance or created by legislative enactment. They are all offenses no matter by whom prescribed. All these cases for the violation of ordinances, the case is one of the Territory against the defendant, and it's not the city and county or county against the defendant. It's always brought in the name of the Territory. Now, so much for that.

I am in accord with the views expressed by the last speaker, that a person convicted of treason or convicted upon impeachment should at some time have the right to be pardoned or reprieved. I, therefore, move that the words in the third line "except treason and cases of impeachment" be deleted. You will note, I am leaving the comma after "impeachment," so that that section will read: "The governor may grant reprieves and pardons after conviction for all offenses, subject to regulation by law as to the manner of applying for the same."

RICHARDS: Second the motion.

CHAIRMAN: It's been moved and seconded that the words "except treason and cases of impeachment" be deleted from Section 8. Is there any discussion?

FONG: I have a question. There are some jurisdictions like the State of California in which a person after being convicted and after having served his time or having been paroled for a certain time can go before the judge and have his crime wiped out. Now, I would like to ask this question. Will this section prohibit a law to that effect?

TAVARES: It's my opinion, rather hastily formed, that such a law would probably be unconstitutional because it would be considered as infringing on the pardoning power, if such a law were passed.

FONG: In the State of California there is such a law.

TAVARES: Well, it must be under a special constitutional provision, I think, of the Constitution of California, which is much longer than ours.

FONG: I believe that - - just posing a thought here, that it would probably be a good thing if we don't leave this pardoning power entirely in the hands of the governor. There are many cases in which a man after having served his time in prison should have the right of every private citizen, and I think he should have the right of going before a court and having himself absolved from all the crimes that he has committed, only to a certain extent. Now, I believe that this section should not be written so that the legislature in its discretion may not be able to grant to persons of this character, for violation of minor offenses, the right of going before the court and, after having served his time and after having paid his price to society and after rehabilitating himself, that he may not be able to restore himself to the good graces of society.

SAKAKIHARA: I wish to ask the chairman of the committee a question. Why was the word "commutation" left out from that provision?

OKINO: Heretofore, the matter of commutation was a statutory matter. I will direct your attention to Section 3910, Revised Laws of Hawaii, with reference to commutation of misdemeanors; Section 3950 with reference to the subject matter of commutation of felonies. That having been statutory matter right along and the matter of commutation having been deleted - - not included in our Organic Act, we thought it would be safer to include in our Constitution merely reprieves and pardons, deleting commutation.

HEEN: May I answer that, also? Commutation, as I understand it, is the power on the part of the governor to reduce the term of sentence or to reduce the fine or to eliminate the fine altogether. That is included in the power to grant pardons. It is something less than a pardon, but it's included in the power to grant a pardon.

SAKAKIHARA: I would like to make sure that that power is vested in the governor under the terms of Section 8. I therefore would like to amend it by placing a comma after "reprieves" and insert the word "commutations."

ROBERTS: I'll second that.

HEEN: Point of order. It seems to me there is a motion pending now to amend.

CHAIRMAN: Correct.

HEEN: That was proposed by myself. Why not get rid of that and then this other matter can be brought up.

CHAIRMAN: Would you place this in abeyance, Delegate Sakakihara, until we dispose of the present motion?

DELEGATE: What is the amendment?

CHAIRMAN: Is there any further discussion?

DELEGATE: What is the amendment?

CHAIRMAN: The amendment before the house at the present time would delete the words "except treason and cases of impeachments." No further discussion? All those in favor of the motion will say "aye." Opposed. The amendment was carried.

SAKAKIHARA: I would like to amend by inserting a comma after "reprieves," and inserting the word "commutation."

YAMAMOTO: I'll second it.

CHAIRMAN: It's been moved and seconded - -

OKINO: I believe the committee, your Committee on Executive Powers and Functions would have no objection to including that word "commutation," firstly, to clarify whether or not the term "commutation" or the effect of that term "commutation" is included in the word "pardon"; secondly, it has always been treated in my opinion as a statutory matter; but if the delegates feel at this time that it should be given a constitutional status, then it may properly be included herein.

TAVARES: If the word "commutation" is not included in the word "pardon," the governor's been granting unconstitutional commutations for lo these 30 or 40 years. There's nothing clearer in my mind than that the word "pardon" includes pro tanto the right to give a partial pardon, and that's all a commutation is, a partial pardon.

SAKAKIHARA: Assuming that the governor of the Territory for the last 30 years has granted commutations without that being spelled out in the Hawaiian Organic Act, I do say that it is a safeguard so that there will be no misunderstanding in the future that the State Constitution of Hawaii does provide a power of commutation to the Governor.

LEE: I agree with the speaker before the last, that the commutation is included in the general term "pardon." I believe in order to satisfy, however, the distinguished delegate from Hawaii that the committee report of the Whole might state that the intent of the committee and accepted fact by the committee that pardons do include commutation, would be sufficient. I don't think we should keep on adding words that are already included in the generic term.

SAKAKIHARA: In reply to the gentleman from the fourth district, I say this, that under the Model State Constitution I find the language written as follows: "Executive clemency. The governor shall have power to grant reprieves, commutations and pardons after conviction."

SHIMAMURA: I may also point out that some of the state constitutions also include the word "commutations," Arizona and some others.

FONG: We should remember that we are writing the Constitution for the people. We are not writing a Constitution for lawyers, and if we want to make it specific and explicit, let's put it in the Constitution. Don't say, "Well, let's put it in the report," and you will never find a layman looking at the report. He will read the Constitution. He's going to be guided by what the Constitution tells him. And if we can make it explicit in the Constitution, let us make it. Don't say, "Well, let's put it in the report." We are by all means writing a Constitution for the people and not for lawyers.

CHAIRMAN: Is there any further discussion on this point?

LEE: In that case, I believe we should write the whole Revised Laws into the Constitution.

TAVARES: Yes, and let's write "due process of law" then in simple terms so the layman can understand it.

FONG: What is the harm then - - what is the harm in adding the word "commutation" there instead of putting it in the report and using another sentence or ten sentences to explain what "commutation" is?

TAVARES: We have been using the Federal Constitution as a model here in many respects, particularly the Bill of Rights. The President has been granting commutations for a long time, too, and all the power he has in the Constitution is in these words, "He shall have power to grant reprieves and pardons for offenses against the United States except in cases of impeachment." Nothing said about commutations there.

HEEN: I think the present language of the article in this connection is an improvement not only following the Model Constitution, but also the Constitution of Arizona.

FUKUSHIMA: If the word "commutation" is included in the word "pardon" I believe we have a Committee on Style to fix that up. It's not a matter of substance, it's a matter of form.

CHAIRMAN: I think we can vote on the amendment. The amendment is to include the word "commutation" after "reprieves." All those in favor will say "aye." Opposed. The Chair is in doubt. I'll ask for a standing vote. All those in favor of the amendment will please stand. All those opposed. The amendment is carried by a vote of 29 to 21.

HOLROYDE: I move Section 8 be adopted as amended.

APOLIONA: I second that motion.

CHAIRMAN: It has been moved and seconded that Section 8 as amended be adopted.

SHIMAMURA: May I inquire the reason for the insertion of the words "after conviction" in the second line?

CHAIRMAN: Delegate Okino.

OKINO: Beg your pardon, Mr. Chairman?

CHAIRMAN: The question was the reason for the words "after conviction" in the second line.

OKINO: Well, that always has been the classical expression followed by most all of the states.

ASHFORD: May I answer that?

CHAIRMAN: You may.

ASHFORD: Perhaps some of the delegates here, my friend Mr. Anthony being absent, who claims to be a Jeffer-

sonian Democrat, Jefferson in the Aaron Burr conspiracy pardoned the witnesses before they were even indicted, so they could be witnesses against Aaron Burr.

CHAIRMAN: Any further questions?

TAVARES: I think that it should be explained, what we're getting into. Actually, the present Organic Act does not have such a requirement. This has actually happened. Maybe we should consider it, maybe it's good, maybe it's bad, but a witness is about to claim privilege against self-incrimination and you need him to get a conviction. In order to eliminate that privilege, you give him a pardon, then he can testify and he cannot claim privilege against self-incrimination If you put this in, you remove the power the governor now has to eliminate that ground of refusing to testify against some one else.

CHAIRMAN: Any further discussion?

AKAU: Does the -- do the words "as to the manner of applying the same" in Section 8 refer to the regulation by law? What does it refer to, and is it actually necessary to put it in there?

CHAIRMAN: Delegate Okino.

OKINO: I believe it is necessary to put it in so that the legislature may implement the constitutional provision herein provided.

CHAIRMAN: If there's no further discussion, we'll vote on the question.

FUKUSHIMA: I move an amendment at this time, by striking the comma after "pardon" and by deleting the words "after conviction."

SHIMAMURA: I second the motion.

CHAIRMAN: It's been moved and seconded that the words "after conviction" in the second line including the comma preceding shall be stricken. Any discussion? All those in favor of the motion to amend will say "aye." Opposed.

HEEN: I'd like to have some discussion on that as to what the purpose is.

CHAIRMAN: The Chair believes that the motion was carried. If you want to rise to a point of information and ask the movant the purpose and if there is any further discussion, we'll have to move to reconsider.

HEEN: That's correct. I move for reconsideration.

SAKAKIHARA: I second it.

CHAIRMAN: It's been moved and seconded that we reconsider the amendment just passed. All in favor say "aye." Opposed. Carried.

The amendment is open for discussion. Delegate Fukushima, do you wish to explain the amendment? Delegate Tavares.

TAVARES: I would like to explain again. This power has been enjoyed by the Governor of Hawaii for fifty years, and it is also enjoyed by the President of the United States. There may have been a few abuses, but they have been so few that evidently no scandal has ever been raised to my knowledge about such abuse.

The situation is this. Under our Bill of Rights, there is a right of a person to claim privilege against self-incrimination, and therefore, refuse to testify. There are situations where, in order to convict one criminal, perhaps the more guilty one or the ring leader, it is necessary to have the testimony of his accomplices or some of his partners in crime or some of the lesser fry. By giving a pardon in advance before such a person is even tried or convicted, the governor can eliminate the right of such person to refuse to testify on the ground of privilege against self-incrimination because such a pardon then makes it impossible to prosecute him for the crime. You thereby are able to compel the witness to testify, whether he likes it or not, against his accomplices or against his partners in crime. That power has actually been used and is needed sometimes, and I think it would be rather serious to eliminate that power, particularly since we have had it for fifty years, and as far as I know it hasn't been abused.

CHAIRMAN: Is there any further discussion?

OKINO: I should like to ask the speaker this question. Isn't the same power, Delegate Tavares, utilized by or in the prosecutor as a matter of common law?

TAVARES: No. The prosecutor can make no binding promise not to prosecute. He can give this -- they call this -- it's called immunity, but in my opinion no prosecutor can give immunity. All he can do is refrain to prosecute somebody, and if he makes a promise not to prosecute, and then he does prosecute, I don't believe that the courts can prevent such a prosecution.

ASHFORD: I would like to speak against the amendment. The gentleman from the fourth has said that we have no instance of abuse of it. I thought that I had given an instance of the most outrageous abuse of it. A man of contemptible reputation was pardoned beforehand so he could cook up a story against the President's great rival. There's always been a very considerable question as to whether Aaron Burr was guilty or not. But this pardoning power before even a man was charged was used to build up that case against Aaron Burr, and it could be used to build up a case against any one of us.

TAVARES: One more statement and I'll subside, Mr. Chairman. If you eliminate this power to pardon before conviction, you make it possible for every gang, every crime syndicate, every member of a crime gang to refuse to testify, and there's nothing you can do about it, and in that way they can cover up their crime. I think you are playing into their hands if you take away this power.

ROBERTS: Many of the state constitutions make it very specific that the governor may grant reprieves, commutations and pardons, the language that we have adopted, but they also provide that it be after conviction. It seems to me you don't pardon a person until he is proven guilty. There's nothing to pardon him for if he hasn't been proven guilty. Now there is a problem in terms of prosecution. Now, it seems to me if the governor can convince an individual to testify against somebody else to assist the state, he can give his word to that individual that he will grant him a pardon if he is prosecuted and if he is found guilty. I don't see any need to delete that section. It seems to me that before you grant a pardon that a person has to be proven guilty.

FUKUSHIMA: Delegate Roberts' statement and Delegate Okino's statement that a prosecutor may give a pardon, which is not true, and Delegate Roberts who states that the governor may later give a pardon after conviction presupposes that the governor will live. Supposing the governor makes that promise and he dies, and another governor comes in and doesn't keep his promise? What do you have? The same thing can be said of the prosecutor.

DOI: I would like to also state my opinion on the question of whether the prosecutor can in a way give immunity. My answer is yes, I think he can go to court and make a state-

ment as a matter of record and come to an agreement with the court and the defendant that he will not prosecute because he wants to prosecute the most serious offender than as regards the less serious offender. Because he needs him as a witness, he will not prosecute. I think the court will bind him to that word.

HEEN: That statement is not correct, that a prosecuting officer may act in such a way as to grant a pardon. Now, if a prosecuting officer, say elected to office, grants in a way some immunity to an individual from prosecution, when he runs for office and is not reelected, the new prosecuting officer may bring that same individual up before the court for prosecution so long as it is still within the statute of limitations.

CHAIRMAN: Is there any further discussion? The amendment before the house is for the elimination of the words "after conviction."

SAKAKIHARA: I rise to a point of information. Will the Chair kindly restate the amendment as it is?

CHAIRMAN: The amendment which is to be amended?

SAKAKIHARA: Amendment, yes.

CHAIRMAN: "The governor may grant reprieves, commutations and pardons after conviction for all offenses subject to regulation by law as to the manner of applying for the same." The amendment on that amendment is the deletion of the words "after conviction."

LEE: If the lawyers are confused on this question, it would seem to me that the laymen in this Convention should be more confused.

LARSEN: Not so, sir, not so.

LEE: And some of my distinguished colleagues in the back were asking me about this matter and asking me how I was going to vote. I'm not sure how I'm going to vote. I have listened to Delegate Ashford's statements and find no contradiction thereto. Based upon that statement, I can't very well vote for the deletion because to the ordinary mind, the only time a pardon comes into effect is when a man has been accused of crime, charged with crime, and convicted with crime. Now, here we are to give an unlimited power to the governor to say to a man who has possibly not even been accused of crime, not even been charged of crime, and not even convicted of crime, a pardon. A pardon for what? And I can see a possible offense which a person might be pardoned for and yet, for that same offense, there may be other crimes committed which the pardon may not include, and you might run into a lot of contradictions here for a purpose which was merely to encourage a reluctant witness to testify. I am trying to weigh the advantages of that effect to the amendment sought to be introduced here, so I would like to defer action, and I so move that action be deferred on this matter until the end of the calendar.

A. TRASK: I'd like to say, one of our axioms here I'm sure in trying to draft this convenant called the Constitution is to follow as nearly - - as far as possible our Organic Act. Now referring to Section 66 under the executive power we have this expression referring to the governor, "may grant pardons or reprieves for offenses." The words "after conviction" are not in our basic Organic Act.

Now, let's get down specifically to the point at hand. Many of us are concerned about Delegate Kageyama's case. To me, this word "after conviction" has direct reference to that situation.

CHAIRMAN: Speak more closely into the mike, please.

A. TRASK: Many of us suspect that Governor Stainback had much to do about whether or not Kageyama would testify and all that resulting situation which compelled his resignation from this body. Obviously it occurs to anybody that if there was any such pact, the governor at this date is authorized under the present existing law to go ahead and pardon Kageyama for whatever crime there was, if any, in his situation, in his particular case. We have this petition now before the county attorney with respect to impeachment pursuant to an offense alleged with respect to violation of the City and County oath taken as a supervisor. There is, however, certainly an offense, an offense existing. It hasn't been wiped out by any statute of limitation as Delegate Heen has observed. So strictly we have right here in our midst the Kageyama case with respect to this word sought to be deleted, and I'm in favor of the deletion, "after conviction." If there was a deal made by the governor with Kageyama and the governor was in praise of Kageyama, I believe he is morally bound to act, to pardon him. Whereas, if tomorrow we would be a state and we pass this thing, "after conviction," the deal, if any was made, could not be followed through, and I think that would be improper.

So, I am in favor of having this "after conviction" deleted because I think it's consistent with our past history of fifty years.

CHAIRMAN: Is there any further - -

KAM: I'm not an attorney but I'm still confused myself. I was just wondering, in New York and California they have that phrase "after conviction" and I guess maybe we try to be a little different from them.

KAGE: I'd like to second Delegate Lee's motion to defer action.

WOOLAWAY: I suggest those who are still confused - -

CHAIRMAN: Delegate, are you speaking to the motion to defer?

WOOLAWAY: Yes, that they vote kanalua.

CHAIRMAN: All those in favor of the motion to defer will say "aye." Opposed, "no." The noes have it.

All those in favor of the motion to delete will say "aye." Opposed. The motion is lost.

HOLROYDE: I renew my motion to adopt Section 8 as amended.

CHAIRMAN: I think that's well before the house. All those in favor of the motion to adopt Section 8 as amended will say "aye." Opposed, "no." Carried.

DOWSON: I now move that we temporarily adopt Section 9.

LEE: I move that we rise and report progress and beg leave to sit again in one more session. For time, Mr. Chairman - -

KING: I'd like to ask, is it anticipated that Section 9 will take sometime? If not, it might be helpful to clear it before we rise.

SAKAKIHARA: May I ask for a recess, Mr. Chairman.

CHAIRMAN: There will be a five minute recess at the call of the Chair. If no objections are heard, so ordered.

(RECESS)

CHAIRMAN: Committee of the Whole please come to order.

KING: There is some business on the Clerk's desk, so I suggest and move that the committee rise and report progress and ask to sit again at 7:30 this evening, rather than recess until 7:30.

SAKAKIHARA: Second it.

CHAIRMAN: It's been moved and seconded that we rise and report progress, ask leave to sit again at 7:30. All those in favor say "aye." Opposed. Carried.

Evening Session

CHAIRMAN: Will the Committee of the Whole please come to order.

CROSSLEY: I move adoption of Section 9, Committee Proposal No. 22.

APOLIONA: I second that motion.

CHAIRMAN: It has been moved and seconded that we adopt Section 9 of Committee Proposal No. 22.

KELLERMAN: I would like to make an amendment to Section 9. In line 7, beginning with "place," "place this state or any part thereof under martial law," I move the deletion of those words because that is covered in Section 13 of the Bill of Rights, in which it states—this is a new draft of the Bill of Rights, the draft that the Style Committee is working on—where it says, "The power of suspending the laws or the execution thereof shall never be exercised except by the legislature or by authority derived from it to be exercised in such particular cases only as the legislature shall expressly prescribe." It seems to me that under that language the executive cannot be given the power to place the state or any part thereof under martial law in any such general terms as in this section. I, therefore, would move to delete the words "place this state or any part thereof under martial law and."

ASHFORD: I would like to ask the proponent of that motion - -

CHAIRMAN: I believe - -

LAI: I second the motion.

CHAIRMAN: I stand corrected. Delegate Ashford.

ASHFORD: I would like to ask the proponent of that motion if she will accept an amendment to her amendment, making a "period" after the word "invasion" and deleting the rest of it.

KELLERMAN: I will accept that because under the Bill of Rights, it is stated that "The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it." So I will accept that amendment.

ASHFORD: In speaking in favor of this amendment, I would like to say that I think this one of the most dangerous provisions that has been proposed anywhere in this Constitution. We had our dose of martial law and this provides that the governor can declare martial law and suspend the privilege of the writ of habeas corpus when the public safety requires, and I presume he is to be the whole judge of "public safety."

OKINO: I was going to request that that portion with reference to martial law may be deleted in view of the fact that the Committee of the Whole had taken action on that particular subject matter in paragraph two of Section 14 of the Bill of Rights.

But with reference to the subject matter relating to the suspension of the privilege of the writ of habeas corpus, I should like to ask the movant of the amendment the following question. Section 14 with reference to the suspension of the writ of habeas corpus reads as follows: "Section 14. The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require." And if you were to read the committee report, there is nothing mentioned as to who is to exercise that right when that occasion arises. Now, it seems to me from the contents of the report submitted by the Committee of the Whole on the Bill of Rights that the executive department is to exercise the power with reference to the suspension of the civil law, but there is nothing mentioned as to who, what officer of the State of Hawaii is to exercise that right. Now in the absence of any clarification along that line, perhaps that clause should be retained.

KELLERMAN: I think that the chairman of the committee is correct. If it isn't stated in the report who is to exercise it, I don't know who else would other than the chief executive. That was my understanding when we passed the section on the Bill of Rights; and if I'm wrong on that I would like to be corrected, but that's my understanding.

ANTHONY: The suspension of the privilege of the writ can only be done by the legislature. This section is in direct conflict with the section that this Convention has already adopted on the Bill of Rights. Now, the suspension of the privilege of the writ was questionable under the Federal Constitution because of the location of the language in the Federal Constitution. It wasn't until Ex parte Merryman that it was determined that it could only be done by the Congress.

In my judgment this entire section so far as it relates to martial law and the suspension of the privilege of the writ should be deleted. In the first place, that power can only be done, under the present Bill of Rights, by the legislature. They can say, implementing the section in the Bill of Rights, when and in what cases the governor may suspend the privilege of the writ. Naturally, it requires an executive act, but it first requires legislation. So much for that.

Now, as to the question of whether or not the words "martial law" should remain in there. Those words have been treated in many decisions as synonymous with the suspension of the privilege of the writ of habeas corpus. We've had an experience here with a declaration of martial law which we should never like to have repeated again. Many state constitutions have no such provision. In fact, the Organic Act of Alaska has no such provision in it, nor does the Organic Act of Puerto Rico. Hawaii is unique. It came from Section 31 of the Constitution of the Republic and the reason it was incorporated as it was in the Constitution of the Republic was because it was not a popular revolution, and the authors of the Constitution of the Republic wanted to make sure that the judges that sat on the bench wouldn't be interfering with any military commissions. That's why they wrote Article 31 of the Constitution of '94.

Now, in my opinion this would be a very dangeous provision. I agree entirely with the delegate from Molokai, and so, therefore, I should think the correct way to handle this would be to put a period after the word "invasion" and delete the rest of the sentence.

CHAIRMAN: The Chair understands that that is the present motion, present amendment.

ASHFORD: I've already spoken once, but I would like to say a few words more.

If you will notice, this goes much, much further than the Bill of Rights. This isn't a question of rebellion or invasion; this is a question of actual or -- "to suppress actual or prevent threatened insurrection, violence, rebellion, or repel invasion." That's very broad language.

HEEN: In the Bill of Rights the matter of suspension of the writ of habeas corpus is dealt with in one paragraph. "The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it." Now, that's one subject. Then, in the next paragraph, you are dealing with statutes passed by the legislature. "The power of suspending the laws" – what laws? It must be laws passed by the legislature. "The power of suspending the laws or the execution of those laws," which I say is still limited to statutory laws, "shall never be exercised except by the legislature, or by authority derived from it, to be exercised in such particular cases only as the legislature shall expressly prescribe."

Now, if I am correct in that interpretation, that that second paragraph is limited only to statutory laws, then you have nothing by which the suspension of the writ of habeas corpus may be suspended. Therefore, there must be something either in the Constitution or there must be a change here in the Bill of Rights so that the legislature may prescribe the time when not only statutory laws may be suspended, but also when a writ of habeas corpus may be suspended. That's correct.

ANTHONY: That is correct, and it would be perfectly competent for the legislature, implementing the section that is stated in the Bill of Rights, to state precisely the occasion for the suspension of the privilege of the writ, or the particular occasion for suspending any law, but just like in our Federal Constitution the Congress would have to act. There is no self-executing provision in the Federal Constitution and there should be none in ours. We don't want any dictator here as a governor who is going to look at this section and suspend the privilege of the writ. Call the legislature together if there is an emergency and let the emergency be declared by the legislature. We all know if there is a national emergency the federal troops will take over this place anyhow, but let's not put anything in our Constitution that is going to authorize any governor to place this State under martial law.

The history of this thing on the mainland has been largely in connection with labor disputes. There's been a strike out in Western Pennsylvania or in the coal mines or the mines of Colorado and they called out the militia and declared martial law, and that's the sort of thing we don't want. We want the legislature to deal with that sort of situation. We don't want any dictator dealing with it.

TAVARES: It seems to me that a little further light might be thrown on the question by reiterating something that at least to my mind wasn't made very clear. I have read a little bit since the last meeting. I think that by adopting the provision of the Bill of Rights against suspending the privilege of the writ of habeas corpus, we have automatically adopted the interpretation placed on that section by the Supreme Court of the United States which held that President Lincoln did not have power independently to impose -- to suspend the writ unless Congress authorized it, as a result of which Congress then did pass a law.

I do want to point out, though, along Delegate Heen's -- the line of Delegate Heen's argument, that if the legislature does not, in advance, pass a law authorizing the governor to declare martial law in case of invasion and so forth, the governor will then have to call a special session. Now, if Honolulu is invaded, how are you going to call a special session to get the governor authorized? We shall have to get the legislature to pass a law right away after we become a state, giving the governor power under certain conditions to suspend it; otherwise there will be a hiatus. I think that's correct, is it not?

ANTHONY: That is not correct, Mr. Chairman. Delegates, it is absolutely wrong. If there is any national emergency, if we are being invaded, that is a national problem to be dealt with by the general government, the national government, not the state militia. The only thing that they are used for is to put down labor disputes or when there's insurrection or troublesome attacks down at the docks, and things like that. It's only in a rare case in which the state militia is ever called out to provide for the common defense. We don't need anything like this in our Constitution, and you don't find it in Massachusetts' Constitution.

RICHARDS: I would like to take issue with the last speaker. I happened to be here on December 7th. It took some 24 hours later for the Congress of the United States and the President to declare a national emergency. It was here already. We had problems to take care of. We aren't sitting in Massachusetts. We're sitting here on the forefront of where something might happen, and I do not feel that it is up to us to wait for Massachusetts or for the Congress of the United States to act in an emergency.

AKAU: I've been interested in hearing both sides of the picture here, what the delegate from the fourth and the delegate from the fifth have said. It seems to me that we don't want a dictatorship. On the other hand, and by the same token, we do want protection. It seems to me if we change this wording and rather than have the governor -- have it come under here, it would come under the legislative powers, "The legislature shall," with some kind of statement for emergency purposes and perhaps, if I may ask the delegate from the fourth district, would that take care of the situation?

HEEN: As I tried to point out a moment ago, one paragraph of the Bill of Rights gives the legislature the power to prescribe when statutory laws may be suspended, or the execution of statutory law may be suspended, but then in the first paragraph you say nothing about what the legislature may do in reference to the suspension of the writ of habeas corpus. Now, I am in agreement with what the other side has said about amending the particular section, Section 9 of the article on the executive branch of the government. If you do that, then in order to clear the situation, the provision in the Bill of Rights should be amended. Then it should be amended this way: "The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require." "The power" – this is new – "of suspending the writ of habeas corpus and the power of suspending the laws or the execution of the laws, shall never be exercised except by the legislature, or by authority derived from it to be exercised in such particular cases only as the legislature shall particularly prescribe." Then you give the legislature the power to suspend the writ of habeas corpus as well as suspension of statutory laws.

OKINO: I should like to ask Delegate Anthony a question. Delegate Anthony, you made the point that the legislature would have the power to implement this particular paragraph by legislation, did you not, something like the next paragraph?

ANTHONY: That is correct.

OKINO: Unless the amendment as suggested by Delegate Heen is incorporated in the first paragraph, like the second paragraph, would it not be the function of the court, the judiciary, to determine when there is a state of rebellion or invasion?

ANTHONY: That's an executive determination in the first instance. But under the present section of the Bill of Rights, "The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it," the legislature may suspend the privilege of the writ. It will then be a question of legislative and executive determination whether or not the facts warrant the suspension. That is a judicial question which can come before the courts. You don't need any further implementation of the present section of the Bill of Rights. That is taken directly from the Federal Constitution.

OKINO: Then, in this - -

CROSSLEY: Mr. Chairman.

CHAIRMAN: Are you finished?

OKINO: No.

CROSSLEY: Mr. Chairman, I was going to suggest a five minute recess and let the "supreme court" agree on language and - -

CHAIRMAN: If there's no objection, so ordered.

(RECESS)

KELLERMAN: If I may restate what has taken place to clear the matter, I moved that we delete the words "place this State or any part thereof under martial law and." The motion was seconded, and then I accepted it and the second also accepted the addition made by Miss Ashford to add - - to put the period at the end of the word "invasion," thereby deleting the rest of the paragraph. I now move the previous question.

ASHFORD: I second that motion.

CHAIRMAN: Do I understand that Delegate Ashford's amendment is deleted now?

KELLERMAN: Delegate Ashford's amendment was made to my amendment, which I accepted, so there is only one amendment before the floor.

CHAIRMAN: Therefore the period will go after the word "invasion"?

KELLERMAN: After the word "invasion." There's only one amendment now - - one motion before the house. I move the previous question.

HEEN: As I understand it, then, after putting the period after the word "invasion," all the rest of that sentence shall be deleted. Is that correct?

CHAIRMAN: That is correct. The Chair so understands.

HEEN: I am going to support that motion, but I want to give notice now that at some stage of the proceedings, perhaps before we get to the stage of third reading, that the article on the Bill of Rights, Section 13 as now reported out by the Style Committee - -

KING: I'd hate to raise a point of order against Delegate Heen, but - -

CHAIRMAN: State your point.

KING: - - there has been a motion made for the previous question and seconded.

CHAIRMAN: I did not recognize any second.

KING: I apologize to the gentleman.

HEEN: The idea is that that section should be amended in the Bill of Rights.

YAMAMOTO: I rise to a point of information. Will the chairman of the Executive Powers and Functions explain the interpretation of the Committee's Report - - Proposal No. 22, of the word "violence." Would you give me the interpretation of the word "violence."

CHAIRMAN: Delegate Okino, can you answer that question, please?

OKINO: I don't think I could give you a better definition than to repeat the word "violence."

CHAIRMAN: Is there any further discussion?

CROSSLEY: I second the motion for the previous question.

CHAIRMAN: I think there are others who would like to speak on this subject who were unable to clear their minds during the recess. Would you hold that for a few more speakers?

CROSSLEY: Gladly, Mr. Chairman.

CHAIRMAN: The Chair feels that if you don't, we will have to withdraw.

NIELSEN: Now, from our eminent attorneys—I think that's setting them up on a good high level—I would like to know about this word "threatened," because you can shake your fist at a man and threaten him, and it looks to me like you're giving an awful lot of power if you can have that word "threaten" in there. You can have 20 men just walking in a gang and you can say that was "threatening." The governor would have the power to act under this. I'd like to hear about what their meaning of the word "threatened" is.

CHAIRMAN: Does anyone of the delegates wish to answer that question? Delegate Tavares.

TAVARES: I'll stick my neck out a little bit. The word "threatened" is not, of course, a word that you can define exactly, but I can say this. If under the guise of anticipating threatened violence the governor acts not in good faith - - I can find you cases where the Federal courts have enjoined the governor and enjoined anybody else from preventing people from going to a certain place if there wasn't just due cause for it. In other words, if that provision is ever taken advantage of in bad faith, there is a remedy in the courts under the laws of - - under the right of peaceable assembly and other rights under the Constitution, so the courts can protect people who are unjustly discriminated against or unjustly oppressed by such a violation.

ROBERTS: I believe that we ought to have a section dealing with the power of the governor and stating in our Constitution that he shall be Commander-in-Chief of the armed forces of the State and to call on such forces to execute the laws, and I think, also, to prevent insurrection, rebellion or invasion, whether real or threatened. I have very serious doubts as to whether you need any section in there dealing with violence or threatened violence. The time when the governor ought have the power to call out the militia is a time when things are serious and there are serious threats to the safety of the State. They ought not be left to the

discretion of the governor when he thinks there may be some violence, actual or threatened. If the problem deals with insurrection, if the problem deals with invasion or rebellion, it seems to me that he has a responsibility as chief executive to see to it that the State is adequately protected. I would therefore urge, Mr. Chairman, that the word "violence" be deleted from Section 9; and I would therefore move to amend the amendment by deleting the word "violence."

YAMAMOTO: I'll second that motion.

CHAIRMAN: Delegate Roberts, the Chair will ask that you hold that amendment in abeyance as it does not apply to the actual amendment that's now before us. Let us dispose of that first, please.

ROBERTS: I will hold it until the action - -

RICHARDS: What is the actual amendment before us?

CHAIRMAN: The amendment before us is to place a period after the word "invasion" and delete the remainder of the paragraph. Is there any more discussion on that point?

ARASHIRO: Yes, I wish to ask this question on the pending motion as to what might be the possibility of the usage of the word "threatened insurrection" and also "violence." What are they referring to as far as - -

CHAIRMAN: I believe that your question falls in the same category as the motion that I just asked to be withheld. Let us vote on the deletion of the last part of the paragraph and we'll get to that point.

SMITH: I'd like to ask the chairman of the committee, when they inserted the words "when the public safety requires it" was that to take care of say earthquakes, floods, etc.?

OKINO: Yes, it does. It would be an emergency from which there might occur tumultuous disturbance. They may result in violence.

SMITH: I believe that "when the public safety requires it" should be left in the section. Therefore, I'm strongly not in favor of having the period ending right after "invasion."

OKINO: Point of order. I think Delegate Smith is out of order. That portion is not included in this amendment. That portion is to be stricken out.

CHAIRMAN: That is the amendment, to strike it out, and he's speaking against the amendment. Is there any further discussion? All those - -

DOWSON: I'd like to ask a question. Are there any states which empower the governor to suspend the law, go under martial law and suspend the privilege of the habeas corpus?

CHAIRMAN: Delegate Okino, did you hear the question?

OKINO: No, I have not been able to find anything from my search. That particular clause - - section is a composite of that which we find in our Organic Act, Section 66 and Section 67. The committee felt that it would be advisable to follow the language of the Organic Act as closely as possible.

CHAIRMAN: Are you ready for the question?

SAKAKIHARA: Question.

CHAIRMAN: All those in favor of the motion to delete or to amend the paragraph by deleting will say "aye." Opposed, say "no." The motion is carried.

SAKAKIHARA: I now wish to offer a further amendment to Section 9. On the fourth line of Section 9 delete, after the word "suppress," "actual or present threatened," and on the 5th line, "violence, rebellion or," so that that section will read: "The governor shall be Commander-in-Chief of the armed forces of this State, and may call out such forces to execute the laws, to suppress insurrection or to repel invasion." I believe that the matter of - -

NIELSEN: Point of order. I'll second the motion.

CHAIRMAN: Proceed, Delegate Sakakihara, you are now in order.

SAKAKIHARA: I believe that the other features, such as violence, rebellion, and so forth, will be purely statutory matter covered in the execution of the laws, for which the governor as Commander-in-Chief will be called upon to call out the forces of the armed forces. I don't see the necessity of enumerating the "actual or present threatened violence or rebellion."

SHIMAMURA: I agree with the amendment and also with sentiments expressed by the last speaker. I do not feel that in our Constitution the prerogative and privilege and power of the governor should be enlarged. It should be restricted, if possible, and the usage of the words in Section 9, "threatened" and "violence" are an enlargement of the governor's powers and not a restriction thereof.

RICHARDS: May I ask the proponent of this amendment that, does he feel that if a mob should get together and start out to burn down the Palace because of something that they particularly dislike, or take particular action against some other individual in government, that the governor should not be empowered to call out the militia to protect State property or protect State officers?

CHAIRMAN: Would the proponent of the motion care to answer that question?

ANTHONY: Mr. Chairman, I can answer that question for the delegate.

CHAIRMAN: Would that be satisfactory, Delegate Sakakihara? Delegate Anthony is recognized.

ANTHONY: If the governor is made the Commander-in-Chief and if he is clothed with authority to execute the laws, he would have every authority to call out the state militia to suppress violence, to keep these mobs in order. You don't have to put it in the Constitution. I have no particular objection to the language going in there, but the simple provision in the Federal Constitution is that the President, the chief executive, is the Commander-in-Chief of the Army and Navy, that's all it says. Now, under that simple provision, the President has done many things. Witness the sale of the 49 aged destroyers under the war power as Commander-in-Chief. So he would have every power to suppress violence by calling out the militia.

RICHARDS: As long as that is well understood and placed in the committee report, I have no objection. I merely thought that, with my colleague from the fifth district, that when certain things are a little bit uncertain to the general lay mind, why not spell them out, because we are not writing a Constitution for the benefit of the attorneys, as was stated earlier today.

OKINO: For the benefit of Delegate Dowson, and perhaps other delegates, I should like to furnish at this time this information. The right to call out the militia to repel invasion, to execute the laws or to suppress rebellion is

specifically conferred upon the governor in 25 states. Would you like to know the names of the states? In Mississippi the governor may also call out the militia to suppress riots; in Missouri, to suppress actual or threatened insurrection.

CHAIRMAN: Thank you.

CROSSLEY: I would like to ask Delegate Anthony, then, in view of his statement, if it wouldn't be better in Section 9 to go back to the period after "State," in the second line of that first sentence, and then it would read, "The governor shall be Commander-in-Chief of the armed forces of this State," if that wouldn't be better than to try and put in limited powers. If you are going to begin to strike out words along here, it seems to me you are putting a restriction by trying to spell out specifically one or two things, whereas the other is a broad power. That's the way it should be.

ANTHONY: There's a great deal in what the last speaker has said. I had put a period after "state" earlier this afternoon when I left the Convention, thinking that if this was coming up that's where I would put the period. So far as I'm concerned, that would be perfectly adequate. The chief executive would have all the power of a chief executive. Of course, he would be answerable in the courts if he wrongfully called out the militia when there wasn't any emergency. But doing it that way, you are following the pattern of the federal government and you are obviating the danger, by whittling away some of these words, that a future court will interpret that to mean that he can't do thus and so. I think there's a great deal in what Delegate Crossley said.

TAVARES: First of all I want to remind the delegates here that this provision has been substantially in our Organic Act, under this language. "That the Governor," and so forth, "and whenever it becomes necessary he may call upon the commanders of the military and naval forces of the United States in the Territory of Hawaii, or summon the posse comitatus, or call out the militia of the Territory to prevent or suppress lawless violence, invasion, insurrection, or rebellion in such Territory."

Now, the abuses that come from martial law came not from this portion of our Organic Act, but from the imposition on this Territory of the unconstitutional "kangaroo courts" or provost courts, as they were called. Nobody here objected to martial law; nobody today says we shouldn't have had martial law. The thing we objected to was those "kangaroo courts" and we're not going to have them here.

Now, if that first portion, as Delegate Anthony says, includes all of the wording of this portion that's to be deleted, and the report so states, I will acquiesce in that. But I think the report should be very firm and specific on that because I want to call again to the attention of the delegates that our supreme court in at least one case has held that the Territory had no war powers. I don't know whether that means the State has no war powers either. Remember the President has war powers and perhaps the states don't, and therefore, perhaps the President has a little more implied power than our governor does. Therefore, I would like it very clearly understood in the record that if we are to delete everything after "State" that it means exactly - - it includes all of the provisions that are deleted, except this placing under martial law and suspending the privilege of the writ of habeas corpus.

CROSSLEY: It was on that basis that I suggested that there be a period after "State." If that is not included in the committee report, and that is not, in fact, what this section means, then I wouldn't be for the deletion of any part of this. Therefore, I would like to move that this section be amended, or I will make an amendment to the amendment, further amendment, to place a period after "State," and that the committee report will show that this is no deletion of the powers contained in the balance of that section as amended, and by that I mean with a period after "invasion."

WOOLAWAY: I'll second that motion.

NIELSEN: I would like to ask the chairman of the Executive Committee how many, if any, states have the word "threatened" as regarding violence, rebellion, etc.?

OKINO: For the benefit of Delegate Nielsen, I refer to page 141 of the Legislative Reference Bureau Manual. In the State of Missouri that language is used, "to suppress actual or threatened insurrections."

NIELSEN: It's just one state that uses that?

OKINO: Yes, one state.

NIELSEN: One out of 48. Well, I think that to write into the Committee of the Whole [report] that we agree with all of this, but we won't write it into the Constitution. I think that what we write into the Constitution is what we agree to. Therefore, I am going to vote against that amendment.

ASHFORD: I can't allow a statement made by one of the delegates here to pass without objection. It was said that no one here objected to martial law. Hundreds of people objected to martial law, I was one of them.

MAU: Two of the delegates who spoke before Delegate Ashford stated that if the amendment were - - if the amendment be to put a period after the word "State," they would agree to that amendment only with the thought that in the committee report everything that is stricken out of Section 9 be made known in the report to be included in that provision. I disagree with that. I don't believe that any one delegate could commit the whole Convention by saying that "I agree to an amendment providing that a committee report be written in such a - - in a certain way."

CHAIRMAN: Delegate Mau, that was part of the motion. Therefore, if you don't agree, you may vote against it. But you're in order. I'm just - -

MAU: But I'm speaking against the amendment for that reason.

CHAIRMAN: O. K., Delegate Mau has the floor.

MAU: If anything be written in any committee report, the eloquent words of Delegate Anthony ought to be written into the report to show the intent of this Convention, rather than that the governor should have such extraordinary powers. Let us go back to the illustration used by Delegate Richards, that in the event mob violence occurred, and this mob went to the Palace and burned the Palace down, or attacked some of the officials of the State, first of all, the police powers of the State, I think, would be sufficient to take care of that matter. If that police power is insufficient, then the laws of the State have been violated and the governor, under the power to call out the militia so as to see to it that the laws are executed and obeyed, I think would be sufficient. So that to say that if the amendment carries with a period after the word "State," that everything after that which had been stricken should be covered by the report, I think is absurd and wrong.

AKAU: I think what has been said is very good. I'm wondering if we realize that when the people will be reading this Constitution that very few, comparatively speaking, will go back, let us say, and read the details that have been discussed by this Committee of the Whole or even by these

various committees. I think they will probably concern themselves with the actual sections. Now, then, I'm wondering if the delegate from Kauai - -

CHAIRMAN: Delegate Crossley, you are being addressed.

AKAU: I am wondering if the delegate from Kauai would withdraw that proviso in his motion so that we might just vote on that part until the word "State," and leave it to the discretion, let us say, of the people who are writing it in. They probably will write it in, but if you would withdraw the proviso I think the people would vote for it.

CROSSLEY: May I answer that question.

CHAIRMAN: Would you yield for a man who has been trying to speak on this subject?

CROSSLEY: Well, I was asked a question. I'd like to answer the question.

CHAIRMAN: Delegate Crossley is recognized.

CROSSLEY: When I spoke on the section in the first place, I spoke of putting a period after "State" because I had heard the eloquent speech, the eloquent words of the attorney from the fourth district and agreed with him. I am not an attorney; I don't know what the courts are going to interpret in the first two lines of that with a period after "State," and I don't think that any other lay person here does know. Therefore, I would like to know what this means myself.

Now the people that are going to go and read a report of the Committee of the Whole are the judges and the attorneys who are looking for an interpretation of what we were trying to say. It's not the man in the street that is going to read this report. I doubt that he will even read the Constitution. But for sure, the judges, the attorneys, the people that are trying to get an interpretation of these sections are going to do it; and all I was asking for was that the thing that had been said be clearly spelled out, so that when they did look for interpretation here that they would see it clearly stated that the governor shall be Commander-in-Chief of the armed forces of this State, and that means that he has these rights, and that's all in the world that my amendment was.

RICHARDS: I rise to a point of personal privilege.

CHAIRMAN: State your point.

RICHARDS: I was misquoted by my colleague from the fifth district, and I would like to have that corrected before we proceed with the discussion. He stated that where I referred to the matter of the burning of the Palace and the attacking of citizens in government, that I was referring to a fact that had been accomplished. My speech was on the question of "threat," and I wish that fully understood by the rest of the delegates, where I feel that the governor should have the power, or some authority should have the power to take care of threatened actions of that nature, and not actions after they have been accomplished.

CHAIRMAN: I believe that's clearly stated.

SAKAKIHARA: I rise to a point of information. I am the original movant of the amendment. It was duly seconded. Delegate Crossley of Kauai has offered another amendment. Was that amendment to my amendment?

CHAIRMAN: It was.

SAKAKIHARA: May I speak to the second amendment, amendment to the amendment, in opposition to that amendment? As I understand it, Section 9 will merely read as follows: "The governor shall be Commander-in-Chief of the armed forces of this State." Is that correct?

CHAIRMAN: Correct.

SAKAKIHARA: For what purpose are the armed forces for? For what purpose does the State provide a state national guard? I firmly believe that the delegates assembled here were elected to draft a State Constitution. Certainly the people of the future State of Hawaii is entitled to know the purpose for which the state militia is maintained. What are their duties? I strongly feel that among some of the purposes for which the state militia is maintained, that that militia should be used for some specific purpose, for the purpose to execute prevention of insurrection, to suppress rebellion or repel invasion. If enemy forces should invade our shores, then the governor, as Commander-in-Chief, could call out the militia to repel invasion. I believe very strongly that the governor, as Commander-in-Chief, be entitled, under the State Constitution to call out the militia for the purpose of suppressing invasion or insurrection.

There has been times when strikes were going on, riots, and that the forces of the police was inadequate. The governor was called upon to call out the national guard. I believe that the Constitution in certain degree should spell out, and I, in this instance, feel very strongly that Section 9 should provide so that the people can read and understand their own State Constitution, and for that reason I made the original motion so that the Commander-in-Chief of the armed forces of this State may call out such force to execute the laws, to suppress insurrection or to repel invasion. Section 5, as tentatively agreed this forenoon, provides that, "The governor shall be responsible for the proper execution of the laws." Among the duties of the guard will be to enforce the execution of that law. The governor, as Commander-in-Chief, will call out that force to execute that law. And I believe that the wording as amended by the gentleman from Kauai is inadequate.

KING: It seems to me the point has been quite clarified and I would like to speak in opposition to the amendment to the amendment because the point made by Delegate Sakakihara has considerable weight. "The governor shall be Commander-in-Chief of the armed forces of this State." That may be sufficient because he is the Commander-in-Chief and he may use them for any legal or proper purpose, but it does seem desirable to add something to it, that he may call those forces out for certain purposes. So I would like to suggest that we vote on the amendment to the amendment and clarify that point, and if that should fail to carry, then we vote on the original amendment and clarify that point and go on to the next section. We've been on this particular section about an hour and a half and it seems to me everybody's mind is about made up how they want to have it written. There are two amendments pending, one is an amendment to amendment and the other is a basic amendment, and all it needs is two votes to decide what we're going to do with Section 9. So I'd like to move the previous question.

CHAIRMAN: The Chair would be very happy to put both of those votes, incidentally.

MAU: Point of order. First I'd like to ask about the amendment to the amendment, how it reads.

CHAIRMAN: I would be very glad. The first amendment as offered by Delegate Sakakihara would place a period after the word "invasion"; would strike the words "actual or prevent threatened"; and also the word "violence" and "rebellion." The amendment to that amendment, proposed by Delegate Crossley, was to place a period in the second

line after the word "State" and to delete the remainder of the paragraph with the understanding - - not with the understanding but as part of the motion that the committee report would state that the substance contained in the rest of that paragraph, up to the word "invasion," was the intent of this committee.

MAU: The point of order I raised was this, whether the second part of that motion can be properly included in one motion, whether or not it shouldn't be divided into two motions. It makes an amendment asking that the period be put after the word "State," and then a second motion that when the committee report is written - - whatever that motion is. I don't believe the two can be tied together.

CHAIRMAN: I believe the same end can be accomplished, and just as quickly, if we put the motion, and depending upon the outcome of the motion, either another motion could be made to add either part of that motion either to the report or to change the language. I think it can be accomplished either way. Do you get my point, Delegate Mau?

MAU: I don't think that's a proper motion.

ANTHONY: I've been trying to get the floor for sometime.

CHAIRMAN: I recognized you a while ago and you didn't want it.

ANTHONY: I didn't notice it.

CHAIRMAN: Delegate Anthony. Are you through - -

MAU: I'll yield for a moment because he's so anxious to get the floor.

CHAIRMAN: I will recognize you when Delegate Anthony is through.

ANTHONY: I think there's a good deal in what Delegate Mau has said. I don't think that any statement here on the floor as to the construction of words that ultimately go into the Constitution by any particular delegate can be binding on any court or anybody as to what those words mean. Now, as I understand the motion, the motion is to put a period after "State."

RICHARDS: I rise to a point of order.

CHAIRMAN: Will you state your point, please.

RICHARDS: We have discussed here, since we have been meeting as a Committee of the Whole, the point that interpretation shall be written into the committee report. Now, if this is something new, I'd like to know about it.

ANTHONY: Let's get that straightened out right away. The only time you have resort to the legislative journals is when the meaning is not clear. You don't pick up a legislative report unless there is something in the language that is ambiguous. If the language is perfectly clear, then you read the words. You don't read the report and see what the words mean.

Now as I see it, if we would put a period after "invasion," it would do the same thing as Delegate Crossley's motion would do. And I would not be in favor of taking out the words that Delegate Sakakihara would take out, the words "threatened violence." Now it seems to me that if everybody in this Convention understands that in the event of an emergency sufficiently bad to warrant the calling out of the troops, the governor may do so, then let's put a period after "invasion" and let it go at that.

CROSSLEY: I'll withdraw my motion.

RICHARDS: I still rise to a point of information. We have been going on for some days now in which motions similar to Mr. Crossley's have been acted upon. Unless we proceed - -

CHAIRMAN: The delegate will recall that the Chair did not rule the motion out of order.

RICHARDS: Well, I just really rise for a point of information inasmuch as the last speaker from the fourth district now seems to want to write into our committee reports that the committee reports mean nothing compared to the language that is submitted in the Constitution. Now, if that is so we better start all over from the beginning.

CHAIRMAN: Would you yield a moment? Are you through, Delegate Mau?

MAU: I wanted to see if I couldn't explain the true situation to my colleague from the fifth district. The courts never look to extraneous matters for interpretation. Only when there is an ambiguity in the language. It first looks at what is written. If it understands it, then it goes nowhere else and says this is it. But if there is ambiguity in the language, if there are several ways to interpret the language as written, then they go to your report or your legislative journal. It's only in such instances that the court resorts to extraneous matters for interpretation.

CHAIRMAN: The Chair feels that further discussion of the point so far as it pertains to the committee report is out of order. The motion has been withdrawn. The motion included the language concerning the committee report.

NIELSEN: The motion before the house now is Sakakihara's motion, I believe.

CHAIRMAN: That is correct.

NIELSEN: I move for the previous question.

APOLIONA: I haven't spoken on this question here and I shall address myself to the amendment as proposed by Delegate Sakakihara. If our enemies or invaders were all outside of the country proper, everything would be fine. But as far as I'm concerned, there is just as much danger within the country as there is without the country. So at this time I would like to say that I shall vote against the amendment as proposed by Delegate Sakakihara.

H. RICE: There's nothing like the school of hard knocks and having served as president of the Senate of the Territory of Hawaii when Mr. Garner Anthony was the attorney general and fought for the Territory, I think this is one time we should look to the man who has had the experience during that time. I agree with Delegate Ashford. When we were in martial law, I told the Governor, Poindexter, that he let us down so that we were worse off than a conquered territory here in Hawaii. I agree that this is one time where we should listen to Garner Anthony because he's been through the school of hard knocks and he knows what he's talking about.

CHAIRMAN: The question before the house - -

WOOLAWAY: I haven't spoken yet. I'd like to ask this point of information. Maybe Garner Anthony, Delegate Anthony can answer. What is wrong with this section as it is now covered under the Organic Act, as we have been abiding by it for fifty years?

ANTHONY: The section in the Hawaiian Organic Act was the principal cause of all of our trouble. If it hadn't been for Section 67 of the Hawaiian Organic Act we would never have had this nonsense and rigamarole that we had down here during the war. The President could have suspended the

privilege of the writ for a few days and it would have been all over. We wouldn't have had those four years of it. That's what we had, these "kangaroo courts" down here under the declaration of martial law. Why? Because we had the words "threatened invasion" in there, and those words should not be in our Constitution.

But I still believe that the governor should have the right to put down violence, and so I say put a period after the word "invasion," and vote against Sakakihara's proposed amendment. Then it would be a question of fact for the governor to determine, whether or not the situation is serious enough to warrant the calling out of the troops, and the governor will have to take his chances with the ultimate facts, and he will be an elected official and you can depend on him to do the right thing.

DELEGATE: Question.

SMITH: I'd like, for a point of information, to ask the last speaker, is it necessary to leave out the words "or he may when the public safety requires"?

CHAIRMAN: No.

ANTHONY: I'm sorry, I didn't get the question.

CHAIRMAN: It was in the first amendment which was not voted on.

SMITH: I just asked, is it—on the question whether or not the words "and he may when the public safety requires" —is it necessary to have that in?

CHAIRMAN: The Chair is in doubt on the point of order here.

A. TRASK: Point of order.

CHAIRMAN: Perhaps I better check with the Clerk. The words "and he may when the public safety requires" and so forth, was that deleted by a vote?

A. TRASK: That was deleted, Mr. Chairman.

AKAU: Point of order. I think we've had full and free discussion. I move the previous question.

DELEGATE: That was my point of order.

ARASHIRO: I second that motion to the previous question.

ROBERTS: I haven't spoken on the amendment, Mr. Chairman. The previous speaker stated that one of the serious difficulties of martial law in the problem of the Organic Act were the words "threatened invasion." The words "to prevent threatened insurrection, rebellion or to repel invasion" are in the present proviso. That language is in there. It would seem to me that the difficulty isn't met by leaving the same language.

CHAIRMAN: The amendment before the house would delete.

ROBERTS: I understand that, but the speaker before was speaking in opposition to the amendment, and was speaking for the retention of Section 9 with a period after the word "invasion." It seems to me that leaving the language in there does not meet that purpose.

ANTHONY: This is a rather technical discussion, but Section 67 of the Hawaiian Organic Act has two things. One, the first part of it, permits the governor to call out the posse comitatus or the militia, in the event of violence and so on. The other section was the section that we had the most trouble with. It authorized him to suspend the privilege of the writ and to declare martial law. This section that we're dealing with here has nothing to do with the suspension of the writ or the privilege of the writ nor the declaration of martial law, it simply enables him to call out the militia, and I think it's all right.

CHAIRMAN: Is that a satisfactory disposition of your question?

HEEN: I rise to a point of information.

CHAIRMAN: Dr. Roberts still has the floor.

ROBERTS: I'm sorry, Senator Heen. I'll be through in a minute. I'd like to suggest that we either retain the very simple language that "The governor shall be Commander-in-Chief of the armed forces of the State," which section, by the way, is the section which has been used in the State of New Jersey, or a simple section such as the one in the Constitution of the State of Michigan, which provides that "he shall be Commander-in-Chief of the military and naval forces and may call out such forces to execute the laws, to suppress insurrection and to repel invasion." The word "violence" does not appear in any of the state constitutions. It does not appear in the Organic Act. Violence? Well, this doesn't say "lawless violence," and it just says "violence," any kind of violence.

I agree with you, Mr. Chairman, but we're dealing with a basis of a Constitution now. If we're putting in language which is different from the Organic Act, we're going to have to interpret it. That's been one of the arguments which has been raised on the floor and one of the reasons why a good many of the lawyers want to keep the Organic Act in. They say they've had 50 years of experience under it and adjudication. That makes good sense. But if you're changing it, it doesn't make good sense because you're going to have further questions on it.

I go for a very simple clause that "The governor shall be Commander-in-Chief of the armed forces of the State." That's a section which has been adjudicated, federally; a section which is fairly simple and fairly clear. If you are going to make provisos, the provisos ought to be fairly simple and they ought to be confined to insurrection, to rebellion or to invasion. Now, if the governor executes his authority improperly, then he's subject to action in the court.

I would suggest, therefore, that the amendment proposed by Mr. Sakakihara be supported, but I would like to add the word "rebellion" in that section and I would move to amend the section to include the word "rebellion."

SAKAKIHARA: I accept the amendment.

CHAIRMAN: The amendment is accepted by the movant.

HEEN: I rise to a point of information. I would like to know just exactly what Delegate Sakakihara's amendment is, with that amendment proposed by Delegate Roberts which he has accepted.

CHAIRMAN: I will read the amendment. The amendment is to delete, after the word "suppress" in the fourth line, the words, "actual or prevent threatened," skip the word "insurrection," and delete the word "violence," so the section would read:

> The governor shall be Commander-in-Chief of the armed forces of this State, and may call out such forces to execute the laws, to suppress insurrection, rebellion or to repel invasion.

HEEN: I now move an amendment to that amendment, that the word "actual" be deleted in the fourth line, that the word "threatened" be deleted in the fourth line, so that the

- - no, no, he deleted too many words - - so that that part shall read: "and may call out such forces to execute the laws, to suppress or prevent insurrection, violence, rebellion or to repel invasion."

ANTHONY: I was wondering if the movant of the last amendment would accept a further amendment to insert the word "lawless" before "violence."

CHAIRMAN: Insert the word what?

HEEN: "Lawless" before the word "violence," "lawless violence." So that my amendment - - it seems to me that Delegate Sakakihara should agree with my amendment.

SAKAKIHARA: I accept Senator Heen's amendment.

CHAIRMAN: Do you agree with it?

SAKAKIHARA: I agree with it.

CHAIRMAN: The only question before the house is to amend the first sentence of Section 9 so that it would read as follows:

> The governor shall be Commander-in-Chief of the armed forces of this State and may call out such forces to execute the laws, to suppress or prevent insurrection, lawless violence or repel invasion.

HEEN: No, "rebellion" remains.

CHAIRMAN: "Lawless rebellion."

HEEN: No, "lawless violence, rebellion or to repel invasion" period.

CHAIRMAN: Thank you. All those in favor of the amendment as just stated will say "aye." Opposed. The amendment is carried.

CROSSLEY: I now move the adoption of this section as amended.

WOOLAWAY: I now second the motion.

CHAIRMAN: It has been moved and seconded this section as amended be adopted.

RICHARDS: I have a further amendment. My amendment would be: "and he may"—putting a comma after the word "invasion"—"and he may when the public safety requires, place this State or any part thereof under martial law and suspend the privilege of writ of habeas corpus for a period not to exceed 90 days."

J. TRASK: Point of order.

CHAIRMAN: Will you state your point of order, James Trask? Delegate James Trask.

J. TRASK: I am quite sure that we voted on that deletion.

RICHARDS: Was there a period for which he could pass - - suspend the writ mentioned?

CHAIRMAN: The Chair will have to rule that the amendment is in order under that understanding. Is there any further discussion on this? Is there any second?

SMITH: I'll second it.

CROSSLEY: I'll second it for debate.

HEEN: Point of order. At the outset there was a motion to delete that very part of that sentence, and action was taken upon that motion and the motion carried. Therefore, if you want to deal with that same part of that sentence again, there should be a motion to reconsider. Therefore, this motion at the present time is clearly out of order.

CHAIRMAN: The Chair has ruled that the motion is in order in that by placing a time limitation on the suspension of the privilege of the writ, it is a new subject.

ASHFORD: Move the previous question. I move the previous question, Mr. Chairman.

DOI: Second the motion.

RICHARDS: Mr. Chairman, my motion was seconded. Is that the - -

CHAIRMAN: That is correct.

RICHARDS: - - previous question we are voting on, my amendment?

CHAIRMAN: That is correct. The motion before the house is the amendment by Delegate Richards. All those in favor of the amendment will say "aye." Opposed. The motion is lost.

The motion before the house now is the adoption of Section 9 as amended.

DELEGATE: Mr. Chairman, I move that Section 9 as amended be adopted.

CHAIRMAN: The motion has been made. All those in favor will say "aye." Opposed. So carried.

LAI: I move for the adoption of first paragraph in Section 10.

SAKAKIHARA: Second it.

CHAIRMAN: It's been moved and seconded that the first paragraph of Section 10 be tentatively adopted.

J. TRASK: I move for a short recess subject to the call of the Chair.

CHAIRMAN: If there's no objection, a short recess of approximately five minutes.

(RECESS)

CHAIRMAN: The Committee of the Whole please come to order.

ARASHIRO: I now move that we adopt Section 10.

CHAIRMAN: That motion is before the house.

DELEGATE: I second the motion.

LARSEN: I would like to present an amendment that's on your desks, in the name of Henry White who couldn't be here, to delete the present first three sections and in their place put in the sections as suggested. The one that's on your desk.

CHAIRMAN: The copy that I have is not identified, Delegate Larsen.

LARSEN: It starts: "Amendment to Committee Proposal No. 22. Amend Section 10 of Committee Proposal No. 22 by deleting the first three paragraphs thereof and substituting in lieu thereof the following:" and then comes Section 10. Got it?

> Section 10. There shall be an Attorney General, a Commissioner of Finance, a Treasurer, a Commissioner of Taxes, a Superintendent of Public Works, a Board of Regents, Commissioners of Public Instruction, and a Public Utilities Commission, each of whom shall be in charge of a principal department of the state and their respective functions, powers and duties shall be as provided by law.

All other executive and administrative offices, departments and instrumentalities of the state government and their respective functions, powers and duties shall be established by law in such manner as to group the same according to major purposes so far as practicable.

The legislature from time to time may assign new powers and functions to departments, boards and instrumentalities, and it may increase, modify, or diminish the powers and functions of such bodies, but the governor shall have power to make such changes in the administrative structure or in the assignment of functions as he may deem necessary for efficient administration. Such changes shall be set forth in executive orders which shall become effective as of the dates set forth therein and shall continue until modified by executive orders or specifically modified or disapproved by a resolution adopted by a majority of each house of the legislature. The legislature may create temporary commissions for special purposes or, except for those established herein, reduce the number of departments or boards by consolidation or otherwise.

Each principal department shall be under the supervision of the governor. The head of each principal department shall be a single executive unless otherwise provided herein or by law. Such single executives shall be nominated and appointed by the governor, with the advice and consent of the Senate, to serve at the pleasure of the governor.

Whenever a board, commission or other body shall be vested with the responsibility for the administration of a principal department of the state, the members thereof shall be nominated and appointed by the governor with the advice and consent of the Senate. Members of the Board of Regents and of the Public Utilities Commission, and Commissioners of Public Instruction shall serve for staggered terms, as provided by law, and shall be subject to removal only for misfeasance or malfeasance in office. All other appointees of the governor to boards, commissions or other bodies shall serve at the pleasure of the governor. Each board, commission, or other body may, with the advice and consent of the governor, appoint a principal executive officer who may be ex officio a voting member of such board, commission or other body, when authorized by law. Such principal executive officer may be removed by a majority vote of the members appointed by the governor.

CHAIRMAN: I have it.

RICHARDS: A point of order. Are we going to talk about all of Section 10 at once, or are we going to go paragraph by paragraph?

CHAIRMAN: In view of the amendment that has been offered, which would be to amend the first three paragraphs, I'm afraid it would be up to the movant of the amendment to move that this be placed in lieu of the first three paragraphs.

RICHARDS: As I read that amendment, it is paragraphs two and three to be amended and does not affect paragraph one.

CROSSLEY: I don't believe that is correct. Paragraph one deals with the subject that: "There shall be not more than 20 principal departments." If you will read the amendment offered by Delegate White, you will find out that he wants to delete that section. He is, of course, silent on it which would mean that there would be no limitation on the number of departments.

CHAIRMAN: Delegate Larsen, do you wish to put this amendment before the house?

LARSEN: I would like to place this before the house.

DELEGATE: I'll second the motion.

CROSSLEY: I would like to speak against this amendment. As I read this amendment, this would eliminate the first paragraph of Section 10. Now, the first paragraph of Section 10 was designed to do a special job. It was designed to do away with the trend towards the multiplication of many departments. It was designed to stop independent agencies being set up one after another, increasing the bureaucracy of government, and to carry out one of the principal functions of the Little Hoover Commission in concentrating the work in fewer departments. Not only would that bring about more economical government, but it would make the job of the governor a lot more precise. It would enable him to pick better men because he would be picking fewer men to head these principal departments.

Now, limiting the number of administrative departments is a constitutional requisite for streamlining the government of the State, for increasing its efficiency and in reducing its cost; and to do those things and to that end, the constitutional limit on the number of departments is desirable. When you do this, you integrate administrative functions, and to that end, of course, later on in this section, you will find that we have recommended that each principal department shall be under the supervision of the governor, the head of each principal department shall be a single executive, except where a board is called for. All of those things would mean that you could build up without any difficulty at all any number of departments. The trend has been in the Model State Constitution, in the New Jersey revision, in the Connecticut report, all of these states have put a limit on the number of departments to bring about the very thing that the Little Hoover Commission has tried to bring about, not only in state but federal government, and that is a limitation upon the number so that there will be a concentration of the number of people.

HEEN: I rise to a point of information.

CHAIRMAN: State your point.

HEEN: I was wondering what he means by the "Little Hoover Commission."

CROSSLEY: I mean the "Big Hoover Commission."

HEEN: I thought so.

CROSSLEY: Therefore, inasmuch as this amendment offered by Delegate White would serve to delete that first paragraph, I would like to see the amendment defeated.

CHAIRMAN: Is there any further discussion on the amendment? All those in favor of the motion to amend the first three paragraphs in accordance with the proposal submitted by Delegate White will say "aye." Opposed. The motion is lost.

The motion before the house at the moment is the adoption of Section 10 as proposed by the committee.

LOPER: I have one minor amendment. In the middle of the second paragraph, "The head of each principal department shall be a single executive unless otherwise provided by law." I think - -

CHAIRMAN: Delegate Loper, are you speaking to the first paragraph of Section 10?

LOPER: Second. I understood the - -

CHAIRMAN: I may have stated the motion incorrectly. The motion is for the adoption of the first paragraph. That motion was amended to replace three paragraphs. The amendment was lost; therefore the only motion before the house is the adoption of the first paragraph, Section 10.

LOPER: I thought the motion was to adopt the whole section.

CHAIRMAN: I may have incorrectly stated it. All those in favor of the motion will say "aye."

RICHARDS: May I ask the chairman of the committee as to why the number of 20 principal departments was picked out? Did he have a specific number as to which departments, or why 20 instead of 24 or 16 or 10?

OKINO: I believe my committee member, Delegate Crossley from Kauai, would be willing to answer that question.

CROSSLEY: The committee did discuss a variety of numbers. For instance, the Connecticut Report took the whole State of Connecticut into 14 administrative departments and other states had varying numbers. I believe the highest was 20. However, we did invite the budget director and others of the territorial government over to discuss and propose a consolidation of departments, and the highest number that we came out with was somewhere in the neighborhood of 14 or 15, along in there. The committee felt -- the majority of the committee felt that there should be a cushion over and above anything that we could see or understand, that there should be a sufficient cushion to grow into, but not too great a cushion to use up all at one time. Some of these other states have done just that; they have provided a cushion, and in most cases they still have that cushion because they keep consolidating rather than using that all up because when it's gone, it's gone.

RICHARDS: I can appreciate the idea of the delegate from Kauai and I certainly am in favor of having as few departments of government as possible, but we do arise to the situation that occurred in this particular Convention, where everybody happened to say we can get by with eight or ten committees and yet by the time we added up, we kept increasing.

I have no particular argument with whether 20 is going to be sufficient or not. There is, tomorrow, the committee report on agriculture, conservation and land coming forward. That committee report does not recommend any specific number of boards or commissions to take care of the various aspects of the assets of the State, but it does request that there be a sufficient number available, realizing that there was a limitation suggested in this particular article, to take care of the requirements to properly administer the assets of the State, particularly from the conservation angle. In our committee meetings, we met with people from the fisheries; we met with people from the land board and the land commissioner; and we met with people from the board of agriculture; we also met with people interested in conservation; we met with people interested in the conservation of water as being the lifeblood of the State.

Now, I have no particular bone of contention with 20 principal departments. I merely wish to make sure that there's going to be enough to take care of the problems which will be put before the legislature regarding the various and sundry assets of the State, as well as the functional departments which we all know are necessary for the proper operation. I also wish to state that I do feel that the fewer number of departments the greater efficiency of the State. That point I certainly agree with, but I just raise the question, is 20 going to be enough?

OKINO: I should like to ask Delegate Richards a question or two. I take it from what you have said, Delegate Richards, that your committee is proposing a board, or two or three boards, to take charge of the administration of the agriculture, forestry, maybe fisheries and conservation, something like the proposal that was submitted by the Committee on Education.

RICHARDS. If I may answer that question, we are submitting no suggestions of any number. We are merely suggesting an over-all comparatively short article for inclusion in the Constitution. Our committee report merely suggests that because of the diversity of the problems, and because of the necessity of conservation of our assets, and because certain of those conservation programs might encroach upon each other, that there might be a fairly large number of boards necessary.

OKINO: You mean to be established by law or to be given a constitutional status?

RICHARDS: All to be established by law. The only point involved is that we do state that they should be executive boards with the power of appointing the executive officer. That is the only requirement that we have in our proposal, but there is no question as to the number, that we leave up to the legislature.

OKINO: May I at this time direct your attention to paragraph three of Section 10 of Proposal No. 22. If you have any -- if any board is specifically recommended to be given a constitutional status, then it may be excepted by the first phrase or clause, "Except as otherwise provided in this Constitution." And if it is so, it will not be counted in as one of the 20 principal departments.

RICHARDS: If that is the interpretation, that is perfectly satisfactory with me. I didn't read it that way as I read through the report.

TAVARES: I'm afraid I didn't quite catch all that Delegate Okino said. May I get the meaning of that "principal departments" again?

OKINO: The idea of that clause, "Except as otherwise provided in this Constitution," was to meet with any committee proposal like the proposal submitted by the Committee on Education. That board will not be counted in as one of the 20 principal departments limited in paragraph one of Section 10. Likewise, if the Committee on Education is to submit any such recommendation, and if approved by the Convention, then it would be excepted from the limitation of 20 principal departments.

TAVARES: I am a little bit concerned because, according to my recollection, I just put down all the departments I can remember right now, with the Auditor, Budget Director, Attorney General, Tax Commissioner, Department of Education, Board of Regents, Public Utilities Commission, Public Works, Public Lands, Treasurer, Archives—would Archives be considered a principal department?

OKINO: That I believe will be ascertained by legislature.

TAVARES: Agriculture and Forestry, Hawaiian Homes Commission, Hawaii Housing Authority, Public Welfare and Institutions, I get about 17 or 18 already and if you only have 20, I'm a little concerned really now as to whether that number is enough.

CROSSLEY: I'd like to point out to the delegate that just spoke that if you want to go through and take all of the principal departments, you can get 73, we can save the delegate

a counting, you can get 70 some odd departments. But I have here the organization chart of the State of Connecticut, there are 14 operating departments. Under agriculture and natural resources, there would be a head of the department, or the head of the commission, as it's called here—a single executive with an advisory board in this case, and an adjudication board -- administrative board; and under that Agricultural and Natural Resources Department, Commissioner of Farms and Markets, Milk Administrator, Milk Regulation Board, Connecticut Regional Marketing Authority, State Board of Veterinary Registration Examination, State Board of Fisheries and --

RICHARDS: I fully appreciate the remarks made from the -- by the delegate from Kauai and there was one -- the point on which I wish to inform this Convention is that a particular proposal was presented to the Committee on Agriculture, Conservation and Land, providing for just such a setup as is in Connecticut, and it was voted down 100 per cent except for the chairman. Now, I'm just throwing before this Convention a particular thought that because certain delegates do feel that there should be independent boards, that this situation should be taken care of. It is entirely up to the Convention. I'm holding no brief for the particular points involved. I'm just merely stating that I do not know whether 20 is going to be sufficient.

CHAIRMAN: The Chair feels that if 20 is not the proper number, some delegate should propose an amendment to this section; otherwise, I think further discussion is not in order.

CROSSLEY: I'd like to continue, if I could, uninterrupted. I was trying to point out that when you look at states like New Jersey, that is limited and does operate under 20, and some of these other states, that the whole purpose of trying to get a fewer number of boards is just to prevent what the previous speaker is talking about, and that is that every man who is going to be in charge of some division of government will have an entire independent setup of his own. If you limit the number, it will be found that those functions of government that are well related can be brought together and put under a single department without losing any of the efficiency. As a matter of fact, every single study that has been made on this subject, every revision of a state constitution, has brought about a limiting of the number for the sole purpose of bringing together these departments and trying in that manner to cut the cost of government and to bring about a more efficient government in so doing.

Now, as to Connecticut rejecting this a hundred per cent, Connecticut has not yet had the opportunity to vote on the Connecticut report. It has been held up by one section that has nothing to do with the consolidation of departments. It has to do entirely with reapportionment. I went into the National Municipal League when I was in New York last month and talked to the people who have written the report, and they told me that reapportionment is the only thing holding up the Connecticut report, and that is because a few districts, in reapportionment, do not want to lose the representation they now have and under reapportionment they would lose that, and therefore would lose control of the State Assembly; and that is the only thing holding up the report. Every other section has been adopted.

RICHARDS: I rise to a point of personal privilege.

CHAIRMAN: State your point.

RICHARDS: I believe delegate from Kauai misinterpreted my remarks. My remarks had nothing to do with the rejection or not of the State of Connecticut. I was discussing the matter of the Committee of Agriculture, Conservation and Land and it had nothing to do with the State of Connecticut. I am heartily in agreement, personally, with the remarks of the delegate from Kauai regarding the matter of conserving the cost of government by consolidation. I am merely pointing out to this Convention that the report that is coming out from the committee does not favor complete consolidation as is suggested.

LOPER: I wish to speak in support of the committee report and the position taken by the delegate from Kauai and add just this additional argument, which I don't believe has been brought out. Part of the reason for limiting the number to 20 is based upon a principle of organization, good administrative organization whether military, business or governmental, and that is that there is a limit to the spread of supervisory authority and responsibility, and by limiting it—as a matter of fact 20 is too many to be supervised by any one executive—but by limiting it, it's an invitation when some new function of government comes along, to find one of the existing departments to assign it to instead of setting up another commission or department.

HEEN: I rise to a point of information.

CHAIRMAN: Will you state your point, please.

HEEN: I would like to ask the delegate from Kauai, in the setup that he first spoke about, there would be one department relating to agriculture and other related subjects. Now, does that mean that the present Board of Agriculture, Forestry and Conservation would be abandoned or that that particular agency would be within the department that you spoke about?

CROSSLEY: Mr. Chairman, if I may answer that question. It certainly would not be abandoned. It's simply that under a Department of Agriculture, you would probably add conservation and lands; you would add fisheries; you would add a number of things, natural resources, and a lot of other things that would have a natural affinity for the section itself, rather than set up independent departments for all of those things.

HEEN: That is, there would be a separate division, say, of the over-all department. Is that correct?

CROSSLEY: That's correct.

HEEN: I think we have one setup that is similar to that at the present time. That is the Department of Institutions, where you have under that department the territorial penitentiary, the industrial schools, the territorial hospital, and maybe one or two others. But those do not have any separate boards, as I understand it. Is that not so, Mr. Delegate from Kauai?

CROSSLEY: I'm sorry, I didn't hear the question, but my colleague, he says it is.

HEEN: That's correct. Now another question. As you know, we have several boards, like the Board of Dental Examiners, the Board of Engineers, Architects and Surveyors, the Board of Health, the Board of Medical Examiners, the Board of Optometrists, the Board of Osteopathy, the Board of Hairdressers, Cosmetologists and Cosmeticians. What would you do with all those boards? Put them under one department and what would you call that department?

CROSSLEY: I would like to make it clear that what I have proposed, or what the committee has proposed, and the majority have adopted in this first paragraph of Section 10 is not as to how they shall be consolidated, but only to

the point that there shall be not more than 20, and if you limit the number to 20, the consolidation will have to be worked out within that number. Under all of those things -- all of those would be consolidated unquestionably under one appropriate department, single executive.

ROBERTS: I'd like to speak in support of the proposal. The section, to me, is a very valuable one. It goes to the very heart of proper executive function and integration of operations so that the governor, the chief executive, has a limited number of departments that he, personally, can keep in touch with and can follow the functions and operations of those departments. The section does not spell out how the existing departments are to be allocated, that is left for the legislature. The legislature then can re-allocate and place the departments where they think they properly belong. This proposal merely provides an adequate method of administration with a limited number of departments so that the executive can keep personally in touch with their operation and see to it that the executive functions are effectively carried out in the State. I think the purpose is good and I think we ought to support the proposal.

TAVARES: I am in sympathy with the purpose of this proposal, but it seems to me there is one missing link here. I notice that in the Model Constitution where they have such a provision, they have a self-executing provision, and so if the legislature doesn't act, the governor can by executive order see that they are consolidated. Now, I am in sympathy with reducing these things, but suppose we miss and leave one too many outside. Now, which ones of the departments are going to be void, and which ones are going to be valid? There is one question that isn't answered. What are you going to do about it until the next legislature meets if you haven't consolidated them all at one time? We're going to go into a new era here where we should have 20 departments, but what's going to happen in the meantime when we become a State? Who is going to do the consolidating if the legislature hasn't done it before that? And which departments are going to be void because they are over the 20 limit? I think by leaving out the Model Constitution self-executing portion giving the governor power to do it, subject to revocation by the legislature, you've only done half the job.

HAYES: A point of information. I would like to know, since the committee has reported this out and recommended that within not more than 20 principal departments, now I would like to know whether they have an idea what the 20 principal departments will be? I would like to see it spelled out.

OKINO: I believe the delegate from Kauai has already given an explanation on that point. The commission established by the Connecticut legislature worked on this problem not only 60 days or 90 days, they have spent a considerable number of years. Before the New Jersey Constitution was revised, there was also a special committee which did considerable work on the subject matter of reorganization of the administrative departments and boards. What our committee has done was merely to accept the benefit of these profound and long studies made by experts serving on these commissions. If New Jersey and Connecticut felt, and it does include several other states, they could have consolidated and allocated the various existing boards, commissions and departments into less than 20 and in some states 18, we felt that the State of Hawaii certainly, with no more than probably about half a million people, should be able to consolidate our 75 boards, commissions and licensing boards. Now, it is for that reason that the committee proposal contains the specific statement, namely, that the method shall be left with the discretion of the legislature.

In reply to the statement made by Delegate Tavares, I think the answer is this. No one expects that the now-existing 75 boards, licensing boards, commissions, departments could be allocated within 20 principal departments. I think the matter could be worked out in a schedule so that the legislature may, within the next two years or perhaps three years, reorganize the existing boards, commissions and departments so that it will comply with the provision of Section 10 now recommended by your committee.

KING: The only point at issue is, is 20 departments sufficient. They're not being allocated in the Constitution; it's merely a provision that the principal executive functions shall be allocated by law. Now if 20 is enough, why let's pass the first section. If 20 isn't enough, why let's amend it to read 24, and I think that's the only point.

Now for the further point that Delegate Tavares raises, that is not covered here. But it simply says, "All executive and administrative offices" and so forth, "shall be allocated by law." Presumably it's an instruction to the legislature to make such an allocation at the first session after statehood has been achieved.

ANTHONY: I think Delegate Tavares has raised a rather serious defect in this proposal. The very thing that we want to accomplish, namely a consolidation, is left up in the air. Now we all know the great multiplicity of bureaus and departments that the federal government has had and the difficulty that the President has had with his reorganization plan. Now, it seems to me if we follow the Model Constitution provision and incorporate some place in this section, or elsewhere, executive power to permit the governor to effect a reorganization of departments and consolidation and, if you will, submit it to the legislature, but nevertheless give the executive the power so that something will be accomplished. If you leave it up in the air completely, then there is no assurance that the consolidation that the committee wants to accomplish will ever be accomplished.

CHAIRMAN: I believe that the delegate is at liberty to propose such an inclusion.

KING: We've discussed this section for quite a long time and no one has offered a specific amendment. Now if either Delegate Anthony or Delegate Tavares has an amendment to offer, I suggest they submit it. Meanwhile, I move that we defer action on Section 1 -- paragraph one of Section 10 and proceed to paragraph two of Section 10.

KAGE: I notice someone mentioning something about the Model State Constitution. There's a very interesting question posed here. May I read the question. It says "Why 20 departments instead of 40, 30 or 10?" It is found on page 32, second paragraph on the right column. Very, very interesting article. If you care to have me read that short little paragraph, I'd be very happy to do so.

CHAIRMAN: I beg your pardon. Is that an answer to the question?

KAGE: Yes.

CHAIRMAN: Read it.

KAGE:

> Why 20 departments instead of 40, 30 or 10? The answer is the result of careful thought and study of much administrative experience. Students of administration have long agreed that the "span of control" or number of subordinates which an individual should supervise must

be carefully limited if the supervisor is to know his men and to keep their efforts properly coordinated. In military organizations, span of control rarely exceeds five or six subordinates. In business, it is not likely to run higher than 10 or 15.

WOOLAWAY: I would like to second the motion of President King so that a proper amendment can be written up on this matter.

CHAIRMAN: It's been moved and seconded that this matter be deferred.

ROBERTS: May I speak on that?

CHAIRMAN: You may, Delegate Roberts.

ROBERTS: I think the only question that has been raised is the question of providing an effective date for the setting up of the 20 departments. I think it's extremely difficult, and I think it would require adequate time to study the problem and to make the proper investigations so the legislature can act in setting up those 20 departments. I think if we ask the committee dealing with ordinances and continuity of law, or we can put a section in the present proposal which would have this section effective four years from the date that the Constitution goes into effect, which would give the legislature —the first one—an opportunity to get a commission to study the problem and to act on it subsequently. I will, therefore, move that it be the sense of this committee that four years be permitted for this reorganization to go into effect.

CHAIRMAN: I believe your motion will be out of order unless the motion to defer is withdrawn.

ROBERTS: I indicated the basis for speaking on the motion, and then I would like to ask whether instead of deferring it, we could act on that basis and we could dispose of the problem in that way.

TAVARES: I think that would be satisfactory.

KING: I have no objection, but I'd like to see the Committee of the Whole get along. My understanding is that Delegate Tavares raised two questions, not only as to the time limit, but as to the agency, in case the legislature fails to make such an allocation by law, whether the chief executive would then be authorized to do so. Though I'm not sure that the motion offered by Delegate Roberts will cure it, however if that seems satisfactory, I withdraw my motion to defer action.

DOI: I am convinced that Delegate Roberts' motion will expedite matters, therefore I second the motion.

CHAIRMAN: It's been moved and seconded that the sense of this Convention is that Section 10, paragraph one shall be approved in substance and that a further amendment will be made to take care of the situation brought up by Delegate Tavares. Is that a correct statement of your motion?

ROBERTS: Yes, Mr. Chairman.

CHAIRMAN: All those in favor of the motion as stated, please say "aye." Opposed. Carried.

KING: Just to bring it before the committee, I move that we tentatively approve of paragraph two of Section 10.

TAVARES: I second the motion.

CHAIRMAN: It has been moved and seconded that we tentatively approve paragraph two of Section 10.

ASHFORD: I move to amend the section by putting a period at the -- by inserting after "confirmation of the Senate," "and may be removed with the consent of the Senate," deleting the rest -- the remainder of the section.

DOI: I second that motion.

ASHFORD: The purpose of it is that it doesn't seem to me right that department heads should be removed at the pleasure of the governor, particularly the attorney general. The attorney general interpreting the law should not be subject to removal, in my opinion, by the governor if he doesn't accede in his interpretation to the wishes of the chief executive.

CHAIRMAN: It has been moved and seconded that the second paragraph be amended.

SERIZAWA: I would like to pose a question to the chairman of the committee.

SILVA: Point of order. I would like to hear the amendment as made, moved and seconded.

CHAIRMAN: I thought maybe some of the other delegates would. Second paragraph of Section 10. It has been moved that it be amended to read in the last sentence:

> Such single executive shall be appointed by the governor subject to the confirmation of the Senate and may be removed with the consent of the Senate.

Is that correct?

HEEN: If we are going to do that, then in that particular provision or somewhere else in that same section, there should be a provision for a definite term of office.

FONG: I would like to amend the amendment by adding at the period of that paragraph the words as follows --

CHAIRMAN: Which period?

FONG: Period after the words, "with the consent of the Senate," the last period in the last paragraph. "Excepting however, that the attorney general shall be elected by the legally qualified voters of this State at the same general election as the governor and hold office for the same term. He shall be a licensed attorney at law of the State of Hawaii and shall possess the qualifications provided in the fourth paragraph of Section 1 of Article ___," referring to the qualifications of the governor.

KAUHANE: I second that motion.

FONG: Speaking in behalf of the motion, I would like to refer the delegates to the Manual which has been given to us by the Legislative Reference Bureau, turning to page 187 and 188. You will note that in page 187 and 188, it deals with the attorney general, as to how he is appointed or elected in the various states. You will note in this appendix that there are only four states which appoint their attorney general. All the rest of the states -- There is one state which gives to the Supreme Court the power to appoint the attorney general, four states give the governor the power to appoint the attorney general, and in all the other states out of the 48 states, that is 43 out of the 48 states provide for the election of the attorney general.

The attorney general should be elected because I feel that he is the man who should interpret the laws of the State. He should be independent of the executive because if he is not independent of the executive, he will be prone to construe the laws, that is to interpret the laws to favor the executive. He should be free from the legislature because if he was not free from the legislature, he would be biased towards the legislature. So following the program and

following the practice of the 44 states of the Union, I feel that the attorney general should be an elective officer.

CHAIRMAN: Delegate Fong, does the Chair understand that your amendment would retain the language inserted by Delegate Ashford's amendment?

FONG: That is true.

CHAIRMAN: That is true?

FONG: Yes.

FUKUSHIMA: Speaking for the amendment proposed by Delegate Fong, I'd like to point out that not only 44 states elect their attorney general, but also it would be well in line to check the Missouri Constitution which was revised very recently. There the attorney general is still an elective official.

The attorney general's function is not only an advisor to the executive. He has many, many functions which are not close to the executive. He is the chief enforcement -- law enforcement officer of the State. He also drafts bills for the legislature; he also deals with public charities; he supervises equitable proceedings for the abatement of nuisances; he intervenes in divorce proceedings where collusion is suspected; and he does a host of other things which are not pertinent to the executive.

Secondly, his function to the executive is merely an advisory one, it's merely ministerial, his opinion is merely an opinion. The executive officers, the administrative heads, do not have to follow their opinions -- his opinions.

I am also inclined to go along with the proponent of the amendment in view of the fact that the attorney general possesses great discretionary powers. He has quasi-judicial powers which is the inherent right of his office in interpreting certain laws, and not even the courts can touch that. The attorney general's office should not be subservient to the executive. That was one of the reasons why the delegate from Molokai introduced her amendment, because she felt that the attorney general should not be at the mercy of the governor when his opinion would not coincide with that of the chief executive.

TAVARES: I have a lot to say about this but it's ten o'clock. I think we ought to defer this until tomorrow. There's going to be a great deal of argument on this. I don't think this ought to be --

KING: I feel that we should go on as long as we can. We are just falling behind. We haven't finished the report of the Committee on Taxation and Finance and if this carries over to tomorrow and we have Agriculture coming up tomorrow, let's go on at least to half past ten.

TAVARES: I move to defer further action on this proposal and to take up the next proposal that the delegate has just mentioned, the next amendment on this.

CHAIRMAN: I beg your pardon, Delegate Tavares, what was your motion?

TAVARES: Well, go on to the next one then, Mr. Chairman.

CHAIRMAN: The next what?

TAVARES: Paragraph.

CHAIRMAN: Is that a motion?

HEEN: The motion, as I understand it, was to defer further consideration of the second paragraph at this time, until some later time. I second that motion.

CHAIRMAN: It has been moved and seconded that the paragraph under discussion be deferred until a later date.

FONG: We could dispose of this question right now. There's no need of deferring this question. We must know where we stand on this problem and I don't see any reason for deferring it.

ANTHONY: To discuss this question will take a full hour and I, for one, will want to take as much time as the Chair will allow me to discuss this. And there are a lot of delegates that are not here. I don't see why we can't move on to a less controversial subject than this one. You've got to have a full debate on this. There's no use fooling yourself about it. Just because one quarter of the delegates aren't here, there's no reason to press for a vote at this time.

CHAIRMAN: Any one else wish to speak on the move to defer?

APOLIONA: My mind is still open as far as the selection of the attorney general and I'd like to have more time to study this thing over, and I would go along for deferment of this paragraph.

LOPER: I have a minor amendment which I think might pass, but perhaps I'm out of order.

CHAIRMAN: I think the only motion before the house is for deferment, unless you wish to amend that.

DOI: I believe we should decide the question tonight. If we need more members, ask the Sergeant-at-Arms to bring them in.

FUKUSHIMA: There is no need of delaying this thing. Why should we tackle something which is easy or which is not controversial. What difference does it make whether we take it up tonight or not. The fact that it is controversial should be the very reason why we should take it up tonight.

PORTEUS: Let's not fuss over whether we're going to vote on this tonight. The matter is very easily resolved. We can take a roll call vote and those that want the election will vote "aye" and those that don't want election will vote "no." One side or the other will rapidly analyze to see whether or not they've got the winning vote. And then several of us will stand up and we'll change our votes in order to be able to reconsider. So it's perfectly all right, there's no harm done. It still can be reconsidered tomorrow. It will be. So I think we'll take roll call on the thing and we'll watch the vote, we'll change, and then we can have reconsideration. But we won't dispose of it tonight. That's all right. Let's have the roll call and let's get the vote.

SAKAKIHARA: Let's have roll call.

CHAIRMAN: The motion before the house is a motion to defer. All those in favor of deferring this section will say "aye." All those opposed. The Chair will ask for a standing vote. Is a standing vote satisfactory?

DELEGATES: Roll call.

CHAIRMAN: How many want roll call? Roll call is called. The motion before the house is a motion to defer.

ROBERTS: May I speak to that question before we vote?

CHAIRMAN: I don't think it's proper to speak to it at this time. It's already -- the vote has been called in one instance. This is just a case of dividing the house to see whether the motion shall carry or fail. Will the Clerk please call the roll?

LOPER: What are we voting on?

CHAIRMAN: The motion before the house is whether or not paragraph three shall be deferred or not. Paragraph two, I'm sorry.

APOLIONA: In substance the motion before the Committee now is whether the attorney general shall be elected.

CHAIRMAN: In substance, the motion before the Committee is whether this paragraph shall be deferred or not.

DELEGATE: Take it easy, take it easy.

CHAIRMAN: The Chair will not recognize any more speakers. The Clerk will call the roll.

Ayes, 27. Noes, 23 (Akau, Ashford, Doi, Fong, Fukushima, Ihara, Kage, Kam, Kanemaru, Kauhane, Lai, Luiz, Lyman, Mau, Nielsen, Noda, Sakakihara, Serizawa, Shimamura, St. Sure, J. Trask, Yamamoto, Yamauchi). Not voting, 13 (Arashiro, Gilliland, Holroyde, Kawahara, Kido, Lee, Mizuha, Phillips, Sakai, Silva, A. Trask, White, Wirtz).

CHAIRMAN: The motion is lost - - the motion to defer is carried.

FONG: I move that we rise and report progress and ask leave to sit again.

FUKUSHIMA: I second the motion.

CHAIRMAN: It's been moved and seconded we rise, report progress, ask leave to sit again. All those in favor say "aye." Opposed. Carried.

JUNE 21, 1950 • Morning Session

CHAIRMAN: The Committee of the Whole please come to order. When we gave up last night, we were on the second paragraph of Section 10 of Committee Proposal No. 22. That paragraph was amended first by Delegate Ashford, amended again by Delegate Fong, then there was a motion to defer which was duly carried. When that motion was carried, we moved to adjourn. What is the wish of the Convention?

LOPER: Will you please review for the committee the two amendments that have been made to this paragraph?

CHAIRMAN: I will attempt to do so.

ASHFORD: Were those amendments made or were they merely offered and under discussion?

CHAIRMAN: The amendments were moved and seconded. Your amendment was then amended by Delegate Fong.

ASHFORD: Well, I would like to withdraw my amendment, if that is proper.

CHAIRMAN: I think the question is whether this matter which was deferred last night, is it in order to take it up today, Section 10, without any formal motion? The Chair understands that is proper. I will recognize Delegate Ashford.

ASHFORD: I would like to withdraw my amendment. It was directed primarily to the attorney general. Upon further consideration, it seems to me that a weak attorney general is subject always to direction and a strong attorney general if he were dismissed would result in the failure of re-election of the governor. So it is not quite as serious as I had thought upon my first impulse.

CHAIRMAN: The Chair would like to state that the withdrawal of your amendment would automatically leave the paragraph before us as written. Is there any further discussion on that paragraph? Delegate Fong, that means that your amendment is washed out by the withdrawal of the amendment which you amended.

FONG: Under those circumstances I would like to renew my amendment.

CHAIRMAN: You may proceed.

FONG: Put in a comma after the word "governor."

CROSSLEY: Has the gentleman from the fifth yielded the floor? I have an amendment.

CHAIRMAN: He wants to state his amendment. Delegate Fong, is your amendment of this morning the same as the one of last night?

FONG: I have it now. "Excepting, however, that the attorney general shall be elected by the legally qualified voters of this State at the same general election as the governor and hold office for the same term. He shall be a licensed attorney at law of the State of Hawaii and shall possess the qualifications provided in the fourth paragraph of Section 1 of Article_____." The qualifications which I refer to are the qualifications set down for the governor, that is, he must be 35 years old, a resident, and so forth. I move for the adoption of the amendment.

FUKUSHIMA: I second the motion.

CHAIRMAN: The amendment has been duly made and seconded. Is there any further discussion on this point?

TAVARES: Just one short statement. I should like to remind the delegates present that the people of this territory through their duly elected legislators have spoken on this problem as far as the City and County of Honolulu is concerned. It has been significant to me that in speaking of popular election of officers the delegate who proposes this amendment has very carefully refrained from mentioning the two legal officers of the City and County who, after great deliberation by the legislature, have been made appointive because the elective system didn't work.

CHAIRMAN: Any further discussion on the motion?

FONG: I'd like to take exception to that remark. We were in Congress before the Congressional Committee of the Senate, the Senate Insular Affairs Committee, and it was there that Seth Richardson, who was sent down here to review the Massie case and to make recommendations to the Senate, spoke to the members of the Insular and Interior Affairs Committee and told them that we were on the verge of being given a commission form of government. And due to the fact that we were on the verge of being given a commission form of government, we were forced to accept the recommendation made by Mr. Seth Richardson, and that was the only reason why the city and county attorney and public prosecutor are not elected by the people of the Territory of Hawaii - - by the people of the City and County of Honolulu. If that was so, why wouldn't the city and county attorney of Maui or the city and county attorney of Kauai or the city and county attorney of the island of Hawaii, that is the county attorneys of the islands of Hawaii, Maui and Kauai, why aren't they appointed? The legislature didn't speak in their behalf because there was no pressure brought upon the legislature to change those officers from elective to appointive offices. But it was due to the fact that pressure was levied on your legislature, pressure was levied to the extent that if we did not follow the recommendation of Seth Richardson that we would be given a commission form of

government, and it was Mr. Seth Richardson who stated that we did not know how close we came to a commission form of government.

CROSSLEY: I would like to ask the last speaker when that recommendation and report was made, when was it that they were under pressure—1931, 1932?

FONG: 1931 according to - -

CROSSLEY: Well, what has happened then? I'd like to ask if that was the pressure at that time, that pressure no longer exists, it hasn't existed since - - certainly since way after that time, and why wasn't the system changed then? If it was only done under duress and to accomplish a purpose, which it apparently did accomplish, I don't argue that with them, but I can't see why it wasn't changed then. It's been a long time since 1931, nearly twenty years.

FONG: Mr. Crossley has been in the legislature. He knows how difficult it is to change a bill. Reapportionment has been with us for 50 years and we have tried to change reapportionment and we haven't been able to succeed yet.

CHAIRMAN: The Chair would like to say that we intend this morning to eliminate the debating society. I would like the delegates to say all that they have to say when they get up, so they won't have to speak more than five or six times.

SILVA: Mr. Chairman.

KING: Mr. Chairman.

CHAIRMAN: President King.

SILVA: You look me in the eye and recognize somebody else. Thank you.

CHAIRMAN: He has been waiting to be recognized.

KING: I yield to Senator Silva if he wishes to be recognized.

CHAIRMAN: Delegate Silva.

SILVA: Thank you, Mr. Chairman. I was just about to say that I disagree with Mr. Fong in its entirety, as long as I remember about county attorneys. We have a county attorney here, former county attorney, the good chairman of this committee, and he's asked me time and again that he thought for the best interest of the counties that all county attorneys should be appointed rather than elected. There's no question - - and I believe there is something to that. Now, these county attorneys get elected every two years and there's no question that they get around. They have to do it otherwise they just can't get elected. And just to show you what kind of good county attorney he is, he was so good in fact that he tried to do the right thing that he got defeated. So you can see that the fellow that gets around and makes the most promises gets elected. So I think if you want a good county attorney, I think he better be appointed rather than elected, and I think your attorney general of the Territory, like the attorney general of the United States, should be appointed rather than elected. That's my speech and that's all.

KING: I'd like to speak in opposition to the amendment. I do so with a certain amount of hesitation. There is always the imputation that we are speaking here in some anticipation of future political fortune. That certainly is not the basis on which I oppose this particular amendment.

We are trying to establish a State Constitution that would have a strong executive and leave that executive with sufficient authority to carry on his duties. Now if the government attorney general is elected and has a mandate from the people direct, he may and often will cross swords with his superior, the governor of the State. In California, where they have an elective attorney general, there have been two very sad illustrations of that point. When Governor Warren was serving in a previous term, the attorney general was a Mr. Kenney of the Democratic Party who immediately used his office as a springboard to run against Governor Warren in the next election. As it happened, he was defeated. More recently the attorney general, also elected, of the State of California is a gentleman who has refused to cooperate with the governor in order to root out organized crime in California. Those of you who read the current periodicals will read that this gentleman, I've forgotten his name, has pooh-poohed the idea that crime exists in California and is almost ready to be indicted as being hand in glove with the criminals. He is an elected attorney general of the State of California and he's beyond any control by the governor of California. So, the elective system hasn't worked too well.

Now, I am sympathetic towards the point that has been made by others, that perhaps we are trying to create a superman out of this governor of the State of Hawaii. But, I don't think that's true. He has to run for election every four years. He has to answer to the people of Hawaii on the hustings or he won't be re-elected, and you're also electing a lieutenant governor.

Now, there's another angle. There are two balances to the governor's powers. First, the legislature. If the legislature doesn't give him the money or doesn't give him the authority to carry out the duties of his office or refuses him additional grants that would allow him to exercise powers beyond those granted in the Constitution, he'll not be able to do very much. We have a very fine illustration of that in recent American history, where there was a Democratic Congress in the last two years of President Hoover's term and he was unable to do anything for those two years. Every proposal he made was put in the wastepaper basket by the Congress, and after he went out of office, we had a Democratic President and a Democratic Congress and everything went through fine. So, I think the legislature is the first great brake on the governor. Now, I'm one of those who believes that the legislature is the senior one of the three equal branches. There isn't any question about it, because they come direct from the people and they're re-elected every two years and they hold the power of the purse strings. So that's one barrier against the governor's actions.

The third is the power of the judiciary to find certain things illegal, not in accordance with statutes or not in accordance with the Constitution.

So, whoever this governor of Hawaii may be, he'll not be any superman. We've had right here under appointive power a governor with all the powers that we are proposing to grant this governor whom we are going to elect and he hasn't been any superman. There hasn't been anything he's been able to do against the wishes of the people and against the wishes of the legislature. So I think we may disregard that fear that the State Constitution is clothing one man with too much power. On the other hand, if you do not give him sufficient power to carry out the duties of his office, he'll be unable to function properly as the chief executive. So I am opposed to the amendment on that basis.

CHAIRMAN: Are there any other delegates who wish to speak?

LEE: I am sure that the Chairman didn't mean fully about cutting off debate on this rather important question. We're in the Committee of the Whole and we're supposed

to probe into all phases on this question so that every delegate in this committee would have resolved in his own mind and conscience how he wants to vote on this matter. So that cutting off the "debating society" I am sure was meant in a humorous light rather than in a serious light.

CHAIRMAN: May the Chair state he, the Chair, is sympathetic with the point raised. However, my point was we wanted to give everyone a chance to speak.

LEE: The first question that comes to my mind would be to ask, what are the duties of an attorney general of the new State, and in checking the Revised Laws of the Territory—I'm sorry I wasn't here last night, I'm not sure whether it was read last night—in Section 1501 of the Revised Laws, it states the duties of the attorney general under Chapter 22. Let us analyze it then. "The attorney general shall appear for the Territory personally or by deputy in all the courts of record, in all cases criminal or civil in which the Territory may be a party, or be interested, and may in like manner appear in the district courts in such cases." We may assume safely from that languaage that it has no connection with the office of the governor.

"Section 1502. Prosecutes offenders, enforces bonds." The language reveals that he has the duty to be vigilant in detecting offenders against the laws of the Territory and prosecute the same with due diligence, and the matter of enforcing bonds. These are two duties that are placed upon the attorney general for which he would be responsible regardless of whether or not he was appointed by the governor or elected by the people.

"Section 1503. Gives opinions. He shall, when required, give his opinions upon questions of law submitted to him by the governor, the legislature, or the head of any department." These duties, it would seem to me, would have some connection with the governor's office, certainly a strong governor under an appointive system. I'm speaking of the possible disadvantage it would be to make a stooge out of the attorney general. In other words, a strong governor could have an attorney general render an opinion according to the policies that he desires. I believe the late President Franklin Delano Roosevelt was accused of that as well as many other presidents. However, the duties of the attorney general in giving opinions includes, besides giving opinions to the governor, his duty includes giving opinions to the legislature as well as to all heads of the departments.

The other, "Section 1504. Advises public officers. He shall, without charge, at all times when called upon, give advice and counsel to the heads of departments, the high sheriff, magistrates and other public officers" et cetera. Well, that's part of his duties which would relate, it seems to me, to the executive branch of the government.

Section 1505 relates to giving aid to the poor. In other words, besides acting as the so-called legal advisor of the governor, legislature and heads of the departments, he owes a duty beyond that, his duty goes right to the heart of aiding the citizenry who cannot afford legal counsel.

And Section 1506 relates to "No fee, not to act as attorney. He shall not receive any fee or reward from or in behalf of any person or prosecutor, for services rendered in a prosecution of his business . . . nor be concerned as counsel or attorney for either party in any civil action depending upon the same state of facts."

Then 1507 relating to accounting of money which comes through his hands; the next one relates to his salary; then the next section relates to the attorney general and his assistants and his power of removal of his assistants and the using of his seal.

Now, analyzing these duties, it would seem to me that it would be incumbent upon all the delegates here to weigh the questions of wherein lies the duty of the attorney general of the State of Hawaii. Where is it to be, to the executive branch of the government or is it to the people in general? In my mind I came here to this Convention with an open mind on this question and as a lawyer would have felt that the attorney general as an advisor to the governor should be appointed and confirmed by the Senate. However, I came here this morning, and realizing that there was some question on it, asked to look into the problem from its inception and find and come to this conclusion right at this moment, when I've read this matter, that his duty is not only to advise the governor but his duty is first and last to the people of this Territory, of this new State. I can see a situation where the legislature and the governor may be in conflict as to a policy. If he is appointed by the governor, would not his loyalty tend by human nature to favor the person who he appointed -- who appointed him?

Furthermore, it is in cases of conflict that we must test this question of whether or not he should be appointed or elected. And as I said, when I first came to this Convention, my opinion was that the attorney general should be appointed by the governor and confirmed by the Senate. As these questions arise, if the answer to my question is that the attorney general is responsible to the people and not to one branch of the government, then I say that he should be elected. Unless I can be shown good cause otherwise this morning, it would seem to me that looking at this question from a de novo basis, the attorney general should be elected. I point to these duties of the attorney general, and weighing the advantages as well as the disadvantages of appointment and the elective system and come to this conclusion.

What is then the danger under which an attorney general would be placed in if he were elected. The dangers would be that he would be just like any other politician, so to speak. Well, you mean just like the governor? The governor is elected. Where the judiciary might be well construed to be different from the attorney general because the judiciary interprets the laws and takes into consideration not only a conflict between the legislative branch of the government, but also the executive branch of the government, I could see well a distinction between the appointment of the judiciary as compared to the appointment of the attorney general. And, therefore, I would like to hear full debate on this matter, if that matter has not been fully debated before, and that's why I say that it seems to me, on such an important question as this, we should not try to close debate on this matter.

A. TRASK: I am wrestling with my soul on this question like the rest of the delegates here, but I cannot help but feel that the relationship of client and attorney is a privileged one. What is said between a client and an attorney is a sacred confessional matter, privileged in the law, and no one can give evidence if they do not care to do so. Of course, that's in private conference of a private nature between a client and his attorney.

Let's move it into the realm of public affairs. We're still concerned, however, with the question of a philosophy. When a political party is moved into office, it is moved into office because it has put forth to the people a program which the people have adopted, adopted for that particular time to solve certain problems that confront the people. The question is, therefore, should there be an election in Hawaii by a group, by a party which advocates even as severe a thing as the breaking up of the Bishop Estate. Do you think for one moment a program such as that advocated by a governor could have elected an attorney general who would be opposed

to that? Would not the will of the people be frustrated when you elect a governor to make more lands available to break up existing situations here if it's deemed advisable. I'm not saying I'm for breaking up the Bishop Estate, but that is a stark problem. It is a problem. It is in the thinking of all of us here. What shall we do, because the problem is here.

Now, pursuing that thought for a moment. It would be unfair, it seems to me altogether, to have a legal advisor elected who would be opposed to the program of the governor. There is a confidential nature of a public character, however, whereby to put a program into effect you must have legal advice from a person who is sympathetic to that particular philosophy. And it is not a trivial matter. Just imagine, for instance, when this country in 1933 in the direful condition of poverty, when people were hanging sheriffs, threatening judges, turning over milk wagons, people lining up outside of restaurant doors ready to dig into the garbage for food. Those were the conditions in America in 1933 because I was back there in the East. I was in Havana when Roosevelt was shot at and Cermak of Chicago died. It's a real situation and the problem can very well arise when the two parties have programs so divergent in viewpoints that upon the election of an attorney general advocating such a program would determine the welfare of the people.

It would seem to me, therefore, consistent even with the provisions that the delegate from the fourth district has cited, namely, Chapter 22, the powers of the attorney general. They are not extraordinary powers. They are powers that are usual to any attorney general, namely the enforcement of the law. He is the civil and he is the criminal prosecutor, he must uphold the law. That is nothing extraordinary at all. That is his usual, traditional duties. But what we're concerned, and we are primarily concerned with is drafting a convenant for the people which will promote assiduously the program and welfare of the people. And since we are an organization, a society that goes from time to time with changing views as to politics and to welfare, we must have a person learned in the law who will advocate the program which the people have voted for. So, I cannot help but feel strongly, I am quite torn in soul about negativing an election to office of a public person. I think everybody -- I believe sincerely in elective offices as much as possible, but I cannot help but feel that with experience back of us we must have as near as possible a confidential relationship between the governor and his attorney general who will support his, the governor's program.

LEE: A point of -- question. Will the speaker yield to a question?

CHAIRMAN: State the question, please.

LEE: Now, the duties of the attorney general is also to -- from the attorney-client basis, would also go to the legislature, wouldn't it?

A. TRASK: Yes.

LEE: Now, let us hypothesize a situation where the program of the legislature may conflict with the program of the governor. Is it your opinion that in the enforcement of that program of the governor's that the attorney general must render his opinions in the light of that program of the governor as compared with the program of the legislature?

A. TRASK: Well, I cannot conceive of a situation where a program of the governor can be carried through without the kokua of the legislature. In other words, as the delegate -- as President King has indicated, the governor's or the President's program cannot be carried out without the legislative kokua. That is the answer to that.

KING: Will Delegate Lee yield for a question?

LEE: I certainly will yield.

KING: Isn't it a fact that within the recent past several years the legislature has invariably employed very high class counsel in addition to the attorney general to help them draft legislation and advise them as to the legal angles involved?

LEE: That is correct, Mr. King. The duties of the legal counsel to the respective houses is to advise the respective houses as to the constitutionality of any legislation, as well as to draft bills for the respective legislators. On the other hand there, they might well -- the advice of the counsel for the respective houses might well conflict with the opinions of the attorney general, as we all know from this Convention that lawyers are quite often in disagreement as to the constitutionality of certain laws as well as to their respective policies.

It seems to me we must weigh the final question as to where the responsibility of the attorney general lies. That is where I have been trying to reach a conclusion in my own mind and it seems to me that not only from the statute but from the inherent duties of the office of the attorney general, it goes beyond his responsibility to the governor, his responsibility to the legislature and to the people. That is the thing that confronts me at this particular moment; and as I say, I have an open mind on this matter and I can see where there would be good reason for either system.

CROSSLEY: Mr. Chairman, may I ask a question of the last speaker? Not only is it -- isn't it true that the legislature has employed counsel, their own, but isn't it incumbent upon the governor to file certain administrative bills, and doesn't he have to look to the attorney general to do that job for him? That's part one of the question. Part two of the question would go to the fact that the governor is responsible for the execution of the laws of the state and the governor doesn't go into court, the attorney general goes into the court as the agent of the governor, and, therefore, has a direct responsibility to the executive branch. Aren't both of those questions true?

LEE: I believe the speaker has just answered his own questions.

FUKUSHIMA: After listening to my fellow colleague from the fifth district, all I can say about his remarks here this morning is that the attorney general should be the tool of the governor and nothing else.

I'd like to supplement Delegate Lee's remarks this morning so that the delegates will have in their minds the nature of the duties of the attorney general besides those that were mentioned by Delegate Lee. Among other duties that were mentioned, the attorney general possesses supervisory powers over the estates of lunatics; he institutes disbarment proceedings against attorneys; he institutes quo warranto proceedings against public officers and corporations; he exercises the right of enforcing public charities; he institutes equitable proceedings for the abatement of public nuisances; and also intervenes in divorce proceedings where collusion is suspected. These are the many powers -- in fact there are many other inherent powers reposed in the attorney general. The function as being an advisor to the governor is one of the minor items as far as the attorney general is concerned. I'd like the delegates to bear that in

mind when the delegates here speak of a strong executive department.

H. RICE: It seems to me that the outer islands would be best served by an appointed attorney general. The attorney general, if he was to run for office don't need to bother with the other islands at all. You'd have 70 per cent of the votes here. It seems to me that the way it's worked at the present time with the governor appointing the attorney general and the Senate confirming him, he looks to the interests of the other outer islands just as much as he does to Oahu. And I think the scheme of appointing the attorney general is to the benefit of the outer islands. And the fellow that we would want to elect is the governor, he's the boss and he should appoint the attorney general with the advice and consent of the Senate, and therefore, I'm against the election of the attorney general.

DOWSON: If a person seeks legal counsel he can choose his own attorney. The attorney general is the legal advisor of the governor and the department heads of the State. I believe the governor should be given the freedom to choose his attorney general for his legal advisor.

LAI: I am speaking in favor of the motion. I am speaking for myself as a lay citizen and speaking for thousands of citizens in this Territory who might have the same idea as I do. When we go to the polls to elect our public officials, we elect our legislators and say to them, "Get in there and set up the policies that are for the benefit of all of us." When we elect our executive officials we say to them, "Get in there and see that the policies are carried out." Now, it would be a foolish thing for me to say, "You, too, get in there and appoint your own attorney general and watch yourself." And I think as a citizen and as a voter we are all in favor of voting for an attorney general. We say to the attorney general, "You get in there and watch and see that the policies are carried out." The attorney general should be independent and free to report to the people of any wrong doing on any part of the government. He will serve as a check and balance in the three departments.

The opponents have claimed that a strong executive would be the thing for us to have here, and by appointing an attorney general we would have a strong executive. I don't think I agree to that because by having an elective attorney general, he would serve -- he would keep the executive efficiency in the highest level because of possible criticism from the attorney general. And by having appointive -- more appointive officials in the executive department, the governor can create more patronage jobs, appoint people that are not capable of filling the position.

Now the opponents also claim that by electing the attorney general you would create competition within the executive department. I think that's a very healthy position, because in manufacturing of merchandise if you have competition, you get better products; and in merchandising if you have competition, you get lower prices; and in sports if you have more teams, and better teams, that will give you better games. And the same thing with government departments. If you have more elective officials you get better running of government.

I don't agree with Mr. Rice, saying that 70 per cent of Honolulu votes here will elect the attorney general. I think you need more than that. When you have candidates, say three or four candidates, you certainly have to depend on votes from outside islands.

By having the election of the attorney general, you will have more aggressive and younger candidates to run. By appointment, you will note that the governor has a tendency to appoint people who are older and more conservative. And I think in the position of the attorney general you want some body with a lot of fire, and that's what we want. We want some younger and more aggressive element in the department.

By election of more of our public officials, I think we'll create more interest in our executive department by the people. Right now our governor and secretary of Hawaii is appointed by the President of the United States; naturally the people here would not have as much interest as we would if we have our governor, lieutenant governor and attorney general elected by the people.

NIELSEN: I want to speak in favor of the amendment because I have had the experience of serving in the last two sessions of the legislature, and I'm sorry there's not more people here that had that experience.

Now you take this loitering law. That's just one instance and I can name several. There was no question the attorney general agreed with the governor and also with the majority of the two houses. When the question was put to him directly, "Will this be constitutional?" he said, "Yes, it will be." The Supreme Court just two or three weeks ago ruled that it was unconstitutional. Now, there is no question but it was subservience. I feel that if we elect our attorney general then he will represent the people. I'm going to continue to feel that we should elect more officials, and possibly when we get down to dog catcher, we may elect one.

MAU: I can't help but refer to a statement made by the delegate from the fourth district when he was outlining the duties of the attorney general. He said that even here so many of the lawyers were in disagreement on so many questions. I would like to remark that that is one of the reasons why we have traveled at a snail's pace, because of so many disagreements and because each of the lawyers has attempted to impress upon the Convention his own viewpoint in the matter.

On this question, I believe that two philosophies of government are involved. On the one hand, the philosophy of Alexander Hamilton. He believed that government should be run by the educated people, by the intelligentia. He also believed that even as to the electorate, only those who owned property should vote. He felt it was dangerous to give any powers at all to the people. On the other hand, Jefferson believed that the government belonged to the people, that the people should have more to say in who should run and how their government should be run. I recall the other day that our distinguished delegate from the fourth district, a former attorney general, Delegate Anthony, remarked that Jefferson believed that every so often there should be a revolution in the country so that there'd be progress. I'm surprised that nobody has dubbed him a "Red" for that statement. But that is true. That was Jefferson's feelings. He felt that every so often we should search our souls and see where we're going because only through that can you have progress.

I imagine that the same argument will be made this morning as was made in prior sessions when we debated the question of election of the judiciary and of the post auditor, so he was called, and that argument is this. We are still giving the people the right to run the government because we permit the people to elect the governor, and the governor, being the representative of the people, will select all the boards and the commissions. He will also select his own attorney general. So that to a certain extent that argument is true, that the people still have a say, but only indirectly. Why should we have direct government by the people? Why should we have the people -- give the people the right to elect those who shall run their government for them, a direct

say by the ballot box? I see no objection to that. If there are two conflicting philosophies in government, I certainly wouldn't follow Alexander Hamilton. Jefferson is the man even today, the man of the hour for democracy. And I ask that all those who believe in popular government, in democratic government, give thought to these things that I have mentioned.

TAVARES: I will try to be brief. I want to say this in my last talk, I hope, on this matter. I have held every job in that attorney general's office from the lowest to the highest, over a period with some spaces in between from 1927 to date. I have worked under four or five attorneys general and under four governors, and it is my opinion that the system of appointment has not prevented the attorneys general and their deputies from doing their duty when they were asked by the governor whether they could or could not do a thing. If you will look at the opinions of the attorneys general, you will find them replete with opinions that the governor can't do this or some officer can't do that.

One of my first jobs, and I was hardly dry behind the ears as the lowest deputy in that office, was to tell Governor Farrington—and he was very angry at me for doing it—that he couldn't veto a part of an item of an appropriation bill, and I had to sit there for fifteen minutes and have him bawl me out for telling him he couldn't do it, but we stuck to it because that was the law.

My opinion is that if you will look around and ask your attorneys when they start in what job they'd like to hold in this Territory best, they want to hold a deputy-ship in the attorney general's office. Why? Because the prestige of that office, as it has been administered over the last fifty years, is high enough so that they want to be -- they want the prestige of having been a deputy. And I say to you, if you will look at the list of your supreme court justices and other lawyers today, you will find that they are among many of the leading lawyers of today, the men who were in that office, all the way from Harry Irwin in Hilo down to other people here. I say the system of appointment has produced very fine lawyers and that their opinions and the advice they have given the governor has been, in my opinion, outstanding.

I feel that there has been very little of this weakness that people talk about they fear from because the governor might appoint the attorney general. I feel that those weaknesses will be just as great, if not greater, from an elective attorney general. What is an elective attorney general going to do when a whole lot of cohorts out there have lent him money or put up money for his campaign and then they get into trouble and the come and ask him, "Now look, Joe, I gave you a thousand dollars for your campaign, how about letting me off." The instances are even greater against his doing his duty where he has to run for election. And suppose just before election when he has to run again, there is presented a case which could be sensational, but he knows in his heart that there's nothing to it. Isn't he going to be tempted to bring a suit for the sensation to get himself elected? The emotional conflicts which are raised by the elective system are great enough to offset all of the disadvantages that I have heard against the appointive system.

LARSEN: I would just like to keep the record straight. I've heard constantly this idea that if you believe in the appointive system, you don't believe in popular government. It seems to me we should straighten it to the fact. The appointive system gives people more justice because responsibility is fixed and when something goes wrong, the people know who is to blame. If the governor can blame the attorney general or the attorney general blame the governor, it seems to me they have less representative government. It seems to me we've all of us shown we're interested in the people, but some of us believe that the people will get better service by the appointive system than the elective system. And it seems to me that's the problem we've got, and I'm sure we have all of us thought about it for several months, and I'd just like to gently suggest to the orators the old adage, "After the first five minutes, no opinion is changed."

CHAIRMAN: If there's no question, we'll vote on the amendment.

FUKUSHIMA: I'd like to correct a statement just made by the delegate from the fourth district, saying that if an attorney general runs for an election he may be obligated simply because a fellow gives him a thousand dollars, and he gets in trouble and he comes to the attorney general and says, "Well, Joe, how about some help now." I'll tell this delegation here that the attorney general doesn't handle criminal cases. If he does, it may be one in ten thousand. It's seldom that he does under the system that we have in the territory now, and under the system that you find in the states. He may be the chief law enforcement officer, but the actual prosecution is doled out to the prosecutors of the counties. The attorney general doesn't go to court and prosecute. It's very seldom that he does.

ANTHONY: I'd like to have an explanation to this question from the chairman of the committee. What has been the result of the experience of the elective system that has prevailed generally throughout the states? Did the committee discuss that and have any views on that question?

OKINO: The committee did not make a research to that extent.

CHAIRMAN: The question -- Are you through with your question, Delegate Anthony?

ANTHONY: I got the answer. I'd like to address the Convention.

CHAIRMAN: You may.

ANTHONY: I came to this Convention committed to the idea that we should have a strong executive who should appoint such officers as the attorney general. The way the Convention is shaping up, we are depositing more and more power in the governor, and so I have a good deal of sympathy with what has been said here this morning. I want to remind the Convention that the attorney general is the chief law officer of the State. He's not the private attorney for the governor. He advises all branches of the government. In fact, he even will act at the request of the Supreme Court, that's part of his job, to bring up proceeding at their instance. So I say there is a good deal to be said for an elective system.

But turning the thing over in my own mind, I have finally reached the conclusion, despite these arguments, that it would be a rather impossible situation for the chief executive to endeavor to carry out his program if he had an elected attorney general and who was not in sympathy with the governor's program. Now if there is a division between the attorney general and the governor, then any attorney general who is worth his salt would resign the office, tell the governor to go ahead and get somebody else. That would be a public fact of great notoriety.

One other word. We've had a pretty good record in our attorney general's office, beginning with John Ricord, such

persons like W. O. Smith, Emil C. Peters, S. B. Kemp. We've had a pretty good record in the office. I think, by and large, the history of the office warrants the continuance of the present system.

MAU: Point of information. I wonder if the chairman of the committee can tell the Convention how many states elect their attorney general.

OKINO: I believe there are about 45 states.

MAU: Forty-five?

OKINO: Yes. It's on page - - you can refer to your Manual.

MAU: Thank you very much.

ARASHIRO: As I sit here and listen to the arguments I am getting more confused, and I'm going to be pretty popular kanaluaing.

Now, we have two factions here, who are one for the appointive system and one for the elective system. The appointive system to me has reasoned it out to the extent of drawing a line in trying to get efficient offices created either by the elective or the appointive system, whichever they feel is the most efficient method of creating that office. Now, the elective group tells me that under the elective system you can elect the people that the people want, and furthermore, they believe in the principle of not taking away the right of the people to elect the people that they want. We are coming to a stage to me, as they have presented to me, that we cannot delegate any authority to anybody. If that is so, then I am assuming that we must elect our janitors and right down the line, elect our school teachers and elect all people in government positions because we cannot delegate any authority to anybody, to appoint anybody.

But now, I want to sit here a little longer, and I still want to hear more argument. That is, if under the appointive system, what are the abuses and what are the faults. Under the elective system, what can be the danger if we should initiate the elective system.

DOI: From the very excellent analysis of the duties of the attorney general given this morning I gather that much of the duty of the attorney general concerns subjects other than being a legal advisor to the governor. Such being the case, I think the governor should remain independent of the - - the attorney general should remain independent of the governor as well as the legislative branch. I think it's a simple matter to allow the governor to appoint his own legal advisor and set the attorney general's department independent of both the executive and the legislative. An attorney, I believe – if I may say – is not under legal ethics to serve conflicting interests. We are, by appointing the attorney general and assigning the same duties as we know them to exist with the attorney general, placing him, as pointed out this s morning, in a position where he has conflicting duties, conflicting duties in a sense that he owes not only duties to the executive, but also the legislative branch. Also he owes duty to the people which conflicts with the executive as well as the legislative. Therefore, I believe we should elect the attorney general.

LOPER: I don't like the implication that those who vote for the appointment of the attorney general don't believe in the people. We have a typically American attitude against the all-powerful state, and for that reason we have a separation of powers between the executive, the legislative and the judicial. But I don't think that it should go as far as separation of powers within the executive branch itself or you weaken it to the place where it cannot do the job that it's supposed to do under the our American form of government. Those of us who supported the retention by the legislature of its right to appropriate money and its responsibility for raising taxes to cover such appropriations indicated by that that we believed in the people because the people elect the legislators. I shall vote for the appointment, but I do not think that that implies any lack of confidence in the people.

OKINO: When Delegate Anthony interposed that question to me as the committee chairman, I gave him a very simple and brief reply, thinking that it would answer his question. I should like to give an explanation on that point. I do not want the delegates to feel that your committee simply decided at one meeting whether or not the attorney general of the future State of Hawaii is to be appointed or elected. We had about - - at least three meetings debating on this particular question. The majority of your committee members, after considering this problem which is now before you for at least three or four meetings, and each meeting took about an hour and a half, agreed that the attorney general should be appointed by the governor of the State of Hawaii, subject to the confirmation of the Senate. Accordingly, the committee proposal did not specifically enumerate the clause that the attorney general shall be an elective officer. The committee felt that following the general language as set forth in Section 10, paragraphs one and two would suffice, would indicate that the attorney general should be appointed by the governor subject to the confirmation of the Senate.

SMITH: I just want to make one point clear. I have been for years fighting for good government in my own community and basically that was one of the reasons why I got elected as a delegate to this Convention.

Now, I want to state one thing. You've been hearing a lot about popular government. The popular government of our country is a representative government. We are based - - have a two-party system which we all enjoy. There are other factions, but mainly it's two-party. Those two parties are the ones that actually run the government for the people. And I object thoroughly to the insinuations, in fact everything when individuals have come up and made statements to the fact that we are not for the people when we vote for appointment. There was a chance here, a couple of chances where individuals were able to get up and say, "Do you trust the people? Will you be able to look them in the eye?" and when certain instances came up where they actually, under good American government, had the opportunity, there was no noise whatsoever.

Now in a two-party system, you either are Republican or you are Democrat. When the people vote for their representatives, there is a platform or principles which are followed. Irrespective whether I or any other one likes a certain party, the popular vote of the representatives shows the inclination of the trend of thought in the community and they in turn will vote for that principle which they hope the representatives will lead them. Now in order to go ahead and give the representatives complete free wheel to carry out that proposition, they have to go ahead and have people behind them. You cannot go ahead and have factions digging from the side, knocking down that policy. The opportunity for the people in voting for representatives of the people to knock down any policy is just what is happening and has happened in the past 150 years. If they don't like the principles and policies of a party and they think they should be checked, they knock 'em out. The same way we have been

voting for supervisors or senators. If we don't like their policies, then we kick them out. But we're going to be going one step further down here in Hawaii, and I know that it's hard for a lot of us, even me as a layman, to imagine what is going to come up in the future. But, there's one thing, the governor has to be impartial if he wants to stay in. He has to have free reign, and I don't believe that in electing the attorney general that he will be given that absolute free reign.

Thank you.

SERIZAWA: As a layman I have listened to the arguments brought forth by both the opponents and proponents of the election of the attorney general, and it seems to me that the opponents have emphasized the fact that the governor, or the administration's policy, will be greatly hampered if the attorney general is not appointed. I heartily concur with some previous speaker who has said that if the governor wants a legal advisor he should get a private legal advisor. Now the question that I have in my mind is, is the attorney general a legal advisor or private legal advisor of the governor? I believe the delegate from Oahu, Delegate Lee, has stated in his enumeration of the duties of the attorney general that the attorney general is responsible also for -- or responsible to the people also, besides the governor, and also the legislature. I was more or less kanalua up to this time, but now I am beginning to favor election and I will support the amendment.

LAI: I just want to clarify a point that was brought up by several speakers. The point was in electing the attorney general there would be the danger of the attorney general opposing the project of the governor. I don't think I agree to that. If the projects of the governor are good, it would be foolish for the attorney general to oppose that, and if the projects are not good and not for the benefit of the people, I think it's a wise thing for the attorney general to oppose.

CHAIRMAN: The Chair would like very much to put the question. There have been 20 speakers.

KAWAHARA: In voting on this amendment I suppose we are going to vote on the basis of the arguments presented on the floor so far. In looking over the material in this Legislative Reference Bureau Manual I find that in the great State of Alabama the governor is elected, the lieutenant governor is elected, the state auditor is elected, the secretary of state is elected, state treasurer is elected, superintendent of education is elected, commissioner of agriculture and industry is elected, and the attorney general is also elected. In the State of Arizona the governor is elected, the secretary of state elected, state auditor elected, treasurer elected, superintendent of public instruction elected, and the attorney general is also elected. In forty-five of the states, the attorney general is elected. Four states, Massachusetts, New Hampshire, New Jersey, Pennsylvania, appoint the attorney general. On that basis, I think perhaps we are following some precedent by following these forty-five states in electing our attorney general.

CHAIRMAN: The question before the house is the amendment proposed by Delegate Fong. I believe that you're all --

APOLIONA: I have sat down here this morning and listened to the arguments pro and con for the election system. I have said last night that my mind was still open. Besides listening to the debate on the question, I have gone to the source of the question debated. When we are in doubt, we try to find the possible solutions to our doubts, and where can we find the solutions to these doubts? I have purposely not gone to any of the attorney generals of the Territory of Hawaii because they have been all appointed, but I have gone to the next class of people, your city and county attorneys, to ask for their advice. We say that experience is the best teacher. I have gone to these men who have had experience in being elected to office and to others who have been appointed to office. And those who have been elected to office have said to me, "Doc, if I am going to be elected again, you can have the job." So, therefore, my mind is set that I will oppose the amendment.

NIELSEN: I think there's one thing that we certainly should not overlook, that we're not referring to the United States, we're referring to the sovereign states, of which we intend to become one. If forty-five of those, or 93 per cent of them elect their attorney general, then we cannot say that they all elect poor attorney generals. I think that certainly forty-five out of the forty-eight electing proves that that's the policy we should follow, and that certainly is a large majority and we'll be right with the rest of them if we do.

CHAIRMAN: The Chair would like to say that the question of the number of states has been pretty well discussed last night and today. Do you wish to speak to that point?

SMITH: I just wanted to ask the last speaker a question. New Jersey was the state that just had their Constitution amended, and so forth. They are appointed, arent' they?

NIELSEN: They are appointed, but that doesn't mean that if all the other states had Constitutional Conventions, they'd throw out the elective system. No one can kid me in that respect.

HOLROYDE: I would just like to draw attention to the delegates here the committee report, page 3, the last paragraph:

> In a majority of states today, the governor shares his executive authority with five or six other constitutional officers for whose actions he is generally held publicly responsible, but over whom he has little control because they are either elected by popular vote or by the legislature. In the early 1920's leaders in many states realized that state administrations were badly organized and could not cope with growing state problems. As a consequence, reorganization plans were widely adopted. New Jersey, New York, and Virginia are the principle examples of states which ratified constitutional amendments needed to eliminate the long ballot of elected officials and open the way for statewide reorganization.

The last sentence,

> Your committee, following the trend, agreed that in the executive branch, there should be only two elected officials, namely, the governor and the lieutenant governor.

FONG: May I ask the gentleman a question?

CHAIRMAN: You may.

FONG: From what political treatise are you reading from?

HOLROYDE: I'm reading from the report of the committee. That question should be addressed to the committee chairman.

OKINO: Page 3 of the committee report, last paragraph.

HEEN: In considering the functions of the attorney general, if you will look at the statute, those functions are in the way of duties. It says that he shall do this. He shall advise the governor, the legislature, and heads of departments. They are all duties. And he is not a policy making official. We have to keep that in mind. When they speak about conflicts between the legislature today and the governor, what are those conflicts? The conflicts can only apply to the legal aspects with reference to any statutory enactments made. The legislature might say that, "We feel that this special enactment is valid and constitutional." The Governor will say, "I don't know whether it's so or not." The practice is for the governor to send over to the attorney general's office every enactment made by the legislature. Then the attorney general advises whether or not such an enactment is valid or invalid. Whether it suggests one side or the other makes no difference so far as the attorney general is concerned. I want to repeat that he is not a policy making official.

PORTEUS: This has been a good firecracker bill. And now rather than asking for the previous question, I wonder if we could do it -- I'd like to do it indirectly by asking for a roll call vote at this time.

SAKAKIHARA: Addressing to the motion -- in favor of the motion, I wish to state that those who will vote "no" against the motion will vote for a commission form of government and those who will vote "aye" will vote for the people's government.

SILVA: That's not true.

CHAIRMAN: The Chair is ready to put the question.

SHIMAMURA: May I state that I take exception to the implication contained in the statement of one of the previous speakers that an election of the attorney general means the surrender or in effect the abrogation of the representative government. I believe that the chief legal officer of the State of Hawaii should be elected because we believe in representative government, that the people choose their chief legal officer as their legal representative. And I think we are imposing too much power in the chief executive.

CHAIRMAN: I believe any further expressions can be made by ballot. Roll call has been asked. I believe there is sufficient request. The motion before the house is the amendment. Do you wish for me to read the amendment?

DELEGATE: No.

CHAIRMAN: There are no calls for the amendment. I think it's clear enough. The Clerk will please call the roll. Use the mike, please.

Ayes, 25. Noes, 35 (Anthony, Apoliona, Ashford, Castro, Cockett, Corbett, Crossley, Dowson, Fukushima, Hayes, Heen, Holroyde, Kage, Kawakami, Kellerman, Larsen, Loper, Lyman, Ohrt, Okino, Porteus, C. Rice, H. Rice, Richards, Roberts, Sakai, Silva, Smith, Tavares, A. Trask, White, Wist, Woolaway, King, Bryan.) Absent, 3 (Mizuha, Phillips, Wirtz).

CHAIRMAN: The motion to amend is lost.

J. TRASK: I move for a recess subject to the call of the Chair.

SAKAKIHARA: Second it.

CHAIRMAN: If there's no objection, so ordered.

(RECESS)

CHAIRMAN: Will the Committee of the Whole please come to order. The Chair would like to express appreciation of the committee in the debate on the last amendment. There were twenty-seven delegates who spoke a total of forty-three times. However, very few spoke more than twice, the majority spoke once, and I appreciate your consideration very much.

The motion before the house is the adoption of paragraph three as written, all amendments having been defeated.

Paragraph two? I'll number my paragraphs.

LOPER: There is one minor correction, I believe, that should be made in the middle of that paragraph. It's in line four where it says "unless otherwise provided by law." I think it should read, "unless otherwise provided herein or by law." I would, therefore, move an amendment to insert two words "herein or," between "provided" and "by."

CHAIRMAN: We're discussing Section 10, paragraph two of Section 10.

DELEGATE: Second that motion.

CHAIRMAN: The amendment has been moved to paragraph two of Section 10 to include --

LOPER: I think perhaps better language would be, "otherwise provided in this Constitution or by law." But perhaps that could be left to the Style Committee.

OKINO: I should like to call the attention of Delegate Loper that that is an exact reproduction of the language as it appears in paragraph two, Article 4, New Jersey Constitution. We have considered that, I believe.

LOPER: There is in this Constitution in sections already tentatively adopted provisions other than those stated here, that is, the head of each principal department shall be a single executive unless otherwise provided by law. We have provided in this Constitution otherwise and it should be covered.

CHAIRMAN: Is there any further discussion of that amendment?

CROSSLEY: I have an amendment to the second paragraph of Section 10 and to the third paragraph. I've had my amendment distributed. It's the amendment which says "Amendment to Committee Proposal No. 22, amending Section 10, paragraphs 2 and 3," and begins:

> Each principal department shall be under the supervision of the governor. The head of each principal department shall be a single executive who shall be appointed by the governor, subject to the confirmation of the Senate, and who shall serve at the pleasure of the governor.
>
> For each principal department there shall be an advisory board, consisting of such members as may be provided by law.
>
> Whenever the law provides for the adjudication of private rights, duties or privileges by any principal department, there shall be established by law an administrative adjudication board to determine such rights, duties and privileges.

CHAIRMAN: Delegate Crossley, is your amendment an amendment of the amendment that's before the house now or a substitution to the paragraph?

CROSSLEY: It's a little, I believe -- well, mine would be a substitution of the paragraphs.

HEEN: I second the amendment that was offered by Delegate Loper.

CHAIRMAN: That has been duly seconded. I'm sorry, I may not have stated so.

FONG: May I ask the delegate a question? Did you say that your amendment says that he can be removed at the pleasure of the governor?

CROSSLEY: That is correct.

FONG: Just the governor alone?

CROSSLEY: That is correct, and then the amendment continues, "For each - -"

KELLERMAN: A point of order. Don't we have before the house an amendment to one line - - the fourth line of the second paragraph?

CROSSLEY: Mr. Chairman, I'm offering a new amendment. And I have not discussed it. I haven't even read the amendment thereof.

KELLERMAN: It was my impression that Mr. Crossley's proposed amendment was a substitution for the entire paragraph and not an amendment of the amendment proposed. Wouldn't it clear the picture to vote on the amendment proposed—it's merely a matter of language—and then go into the substance of Mr. Crossley's amendment separately?

CHAIRMAN: The Chair would have to rule that while it would clear the picture to do it in the manner suggested by Delegate Kellerman, the amendment proposed is a proper amendment of the amendment that is before the house. I don't think there's any doubt about that. It deletes the entire thing and substitutes something therefor.

CROSSLEY: If it will expedite it, I will hold my amendment if I can be recognized by the Chair - -

CHAIRMAN: You may.

CROSSLEY: - - when we have voted on what's before you now.

DELEGATE: Question.

CHAIRMAN: Question is Dr. Loper's amendment. All those in favor - - Would you like it stated?

DELEGATE: Who seconded the motion?

CHAIRMAN: Delegate Heen seconded.

OKINO: May I speak to that amendment.

CHAIRMAN: Delegate Okino, you may speak to the amendment.

OKINO: I believe the committee has no objection. Speaking for myself, I think it is an improvement consistent with something which will appear in the following paragraph three.

CHAIRMAN: I'd like to state the amendment for the benefit of several delegates who have asked. In the fourth line after the word "provided," insert the words "in this Constitution or," so it would read "provided in this Constitution or by law." All those in favor of the amendment will say "aye." Opposed. Carried.

CROSSLEY: The only reason that I have to go into paragraph two with my amendment is because the amendment in itself combines those two paragraphs. That's why I've hesitated just a little bit about the procedure on the thing. If you'll read my amendment, it doesn't change the substance of the second paragraph one bit. However, it does combine it with the third paragraph. And I was wondering if it would be proper to go ahead and adopt that - - tentatively adopt that paragraph, if then we could move on to the third paragraph and I could offer my amendment there, which would also incorporate the first. However, if the substance of the second paragraph is changed I would then have to put my amendment in right now.

CHAIRMAN: The question it seems would be whether or not your amendment changes the substance of the paragraph, and it would be up to the members of the committee to decide.

SHIMAMURA: May I ask the proposer of this amendment the reason for the second paragraph of his amendment, that is with respect to advisory boards?

CROSSLEY: I'd be very happy to answer that. It was felt that there are two types of boards, one is an advisory board, the other would be a board with power of adjudication, that they should be separate. Now an advisory board - - In my proposal I say that all departments shall be single executive departments, and where the duties of the office are quasi-judicial or legislative that there be a board to deal with those powers. Now in the case of where there is no need for such a board, the governor may appoint an advisory board to consult with the head of the department. We have advisory boards today. At the present time we have boards that have no power of adjudication, they are simply advisory boards, and this would continue in effect what we have today. However, where we do have boards with quasi-judicial powers, such as the Utilities Commission, Board of Agriculture and Forestry in some respects, that there - - there would be an adjudication board set up for the single-headed department. And that would be what my amendment would seek to accomplish.

CHAIRMAN: The Chair feels that further discussion of the question is out of order until we straighten out the parliamentary procedure.

WHITE: I don't have any copy of that amendment, and I don't know what they're talking about.

CHAIRMAN: Will the messenger - -

CROSSLEY: The amendment was passed out yesterday afternoon and put on every desk.

WHITE: I'd just like to ask one question just as a matter - - for the purpose of trying to clarify this. I might ask the proposer of this amendment whether that paragraph two wouldn't be directly in conflict with what we've already done in the case of the University and the Board of Education or whether he doesn't consider them principal departments?

CHAIRMAN: I would like to leave that, Delegate White, until we discuss the amendment. I would ask the committee to make up its mind how they want to take this amendment up? Do you desire to continue with paragraph two and then discuss whether the amendment is no substitution of substance?

CROSSLEY: Let's vote on paragraph two. I'll take my chances with my amendment in paragraph three.

LEE: As I understand it, your proposed amendment is in substitution of two and three, is that right? And you're now willing to vote on Section 2 [sic] before consideration of your amendment. If Section 2 [sic] passes, there'll be no necessity for considering your amendment, is that correct?

CROSSLEY: No. If Section 2 [sic] passes, my amendment does not change the substance of paragraph two; therefore, it would fit in with the amendment. It simply combines paragraphs two and three.

LEE: Well, then, wouldn't your proper—if we act on Section 2 [sic], wouldn't your proper action then later be to amend Section 3 [sic].

CROSSLEY: I believe that is true. Yes.

LEE: All right.

CHAIRMAN: I think the motion that should be made in order to do this is that we adopt paragraph two in substance with it being clearly understood that -- Would someone care to make that motion?

LEE: The motion has already been made by Delegate Loper that we -- Oh, no. I move that we adopt Section 2 [sic] -- this paragraph tentatively.

H. RICE: Second the motion.

CHAIRMAN: It's been moved and seconded that we tentatively adopt the substance of paragraph two.

CROSSLEY: As amended.

CHAIRMAN: As amended. All those in favor will say "aye." Opposed. Carried.
Paragraph three. Delegate Crossley.

FONG: Point of information. Now in adopting paragraph two, did we adopt the words "and shall serve at the pleasure of the governor"?

CROSSLEY: That's correct.

CHAIRMAN: We did.

FONG: Now I'd like to have an explanation of that phrase, what does it mean?

LEE: In order to allow debate on the matter, I move that we reconsider our action.

FONG: I second the motion.

CHAIRMAN: It has been moved and seconded that we reconsider our action on paragraph two. All those in favor will say "aye." Opposed. Paragraph two is open.

FONG: I would like to ask, do the words mean this, that if the governor is dissatisfied with the department head he can tell him, "You're fired"?

CHAIRMAN: Delegate Okino, would you like to answer that question please?

OKINO: Mr. Chairman, what was your question?

FONG: The words, "shall serve at the pleasure of the governor," the last sentence in paragraph two, does that mean that the governor has unrestricted power to fire him?

OKINO: Yes, that's correct. The words, "at the pleasure of the governor" has been so adjudicated. In other words, the governor would have the absolute right to dismiss anyone of his appointees.

FONG: Now what is the present situation? Has he got the unrestricted right to fire him?

OKINO: Under the present situation, under Organic Act Section 80, the consent of the Senate is required.

FONG: Then this is a modification of that power at the present time.

OKINO: That is correct. To give the governor stronger power insofar as his right to dismiss and remove any of his appointees.

FONG: Now, what protection has the public in a situation like this? Say we predicate a situation in which the governor appoints a certain individual to be public welfare director and the Senate is in session and the Senate confirms the appointment. One month afterwards he fires him and for the next two years he places another man in there. Now, could he do that under the situation?

OKINO: The governor could, under the provisions proposed by this Section 10, but the second appointment is considered as a recess appointment. There must be confirmation before he is considered a permanent appointee for that particular office. The Senate may reject his appointment when the Senate is in session.

FONG: What is the reason for giving the governor such powers?

OKINO: The idea is to strengthen the executive department so that he shall be vested with the responsibilities, so that there will be better team work and harmony insofar as the executive department is concerned.

FONG: If you did that, why do you still leave the confirmation power in the Senate? Why not eliminate that and let the governor run the whole show?

OKINO: Well, that was a compromise. A minority of the committee members felt that the Senate power of confirmation should also be taken away so the governor shall have an absolutely free hand, but the majority of the committee members felt that the Senate should retain the control, in other words, to pass judgment upon the qualifications of the appointees.

FONG: Now that we have reconsidered this passage of this paragraph, I feel again we are concentrating power in the hands of the executive to such an extent that he will build such a political machine in this territory that it is going to be difficult for the people to uproot it. Now I can forsee syndicates coming in from the mainland with millions of dollars, say half a million dollars, and pour it into the campaign of this territory and elect the governor. Now the only man that they have to concentrate upon is the governorship. By concentrating upon the governorship they will run the whole territory. And it is easily conceivable that any group with around $250,000 can easily capture the governorship by pouring that money into the political campaign. We know that the campaign in the territory is costly, that $20,000 to $30,000 probably would be the cost of campaigning for the governorship. Now what would prevent a group of individuals pouring in 50,000, 100,000 or 150,000 to capture the governorship and to control all these departments?

Again I say that we are creating here in this territory one of the most powerful machines that I know in the history of the 48 states of the United States. In no other state of the Union is the concentration of power as potent as we have here in this Constitution. We are going to give to this executive of our State of Hawaii the supreme power in everything that is going to be done in this territory. He now has the power of appointing the individuals, subject however to the confirmation of the Senate, and he can only remove these people subject to the approval of the Senate. We are now going one step further. We are saying that you can remove these individuals without the consent of the Senate.

Now I ask you, are you giving the people whom you represent the protection that they need? You have already given him the judiciary, lock, stock and barrel. He can appoint the judiciary. Now, giving him the judiciary -- giving him control of the second branch of our government, the judiciary, and having some control by the veto power

over your legislature—and you need a two-thirds vote of the legislature to override his veto—and now giving him this absolute power to fire and remove the department heads, you are placing in the hands of this executive the most powerful instrument that I know of. And I can say that in no other state of the Union is there such a concentration of power, and I am opposed to this phrase in which he shall remove the department heads without the approval of the Senate.

LEE: I'm convinced of the argument made by the representative from the fifth district and offer this amendment to that paragraph. Next to the last line after the word "and" insert the words "may be removed by the governor with the approval of the Senate," in lieu of the phrase "shall serve at the pleasure of the governor."

SILVA: Second the motion.

CROSSLEY: I have no particular fight with that but I do take exception to the remarks of the speaker before the last that no state has given the chief executive such power, because they have. Nor do I agree with him that we have made this man so all-powerful, nor would I say that the people of the Territory of Hawaii could be bought any more now than they could at any other time by a half a million dollars or 250,000.

But I do think that there is validity in the principle that we should shape up responsibility to where it belongs. The chief executive is responsible for the administration of the government; he is responsible for appointing these department heads and after he has appointed them they are confirmed by the Senate. In our committee when we discussed this subject and read, not a 60 day report or a two or three months' study by anyone, but a five year study by most competent judges in the country—I do not mean that in the judicial sense, but people who are trained in the study of government—and they came up with the recommendation as a result of their study that not only should department heads serve without term, which means in simple language at the pleasure of the governor, but they should also serve without confirmation. We were voted down in the committee on that. They felt that there should be confirmation.

Now you take the analogy of running a business, the head of a department, or the head of a firm appointing his department head, and something happens in the business. The department head isn't the one who takes the responsibility as to whether or not the policy of the chief executive was carried out or even the policy of the board. It's the president of the company, and the government, whether you like it or not, isn't too much different from a business in that respect. It will not be the department head who will be taking the responsibility, it will be an elective governor.

Now I think the thing we lose sight of here is that we have been operating for the last fifty years under an appointive governor, someone who is not responsible to the people, and it makes a big difference. It takes a lot of change of thought to get the concept of a governor who is responsive to the will of the people, a man who must go before the people and say, "This is my record for the past four years. Will you elect me again on that record?" Now what you're asking him to do is going to the people and saying, "This is my record for the last four years. I don't agree with what these departments have done. I don't agree with the administration of this department but I had no power to change that department head. I had to accept that man in office because in my first judgment he was good but he didn't prove to be good, he didn't prove to be efficient, but because he had a certain amount of political backing I could not get enough votes in the Senate to remove him from office." This does not grant the chief executive a great deal more power, if any, than exists in that office today, and the chief executive is not responsible to the people.

I believe that no matter how the law is presently written today that the chief executive would have no difficulty in removing anyone from office as the offices are set up today. It was for that reason that I offered my amendment, and if this section is now going to be voted on to delete that, I would like at this time to offer my amendment which combines paragraphs two and three and which reads as follows:

> Each principal department shall be under the supervision of the governor. The head of each principal department shall be a single executive who shall be appointed by the governor, subject to the confirmation of the Senate, and who shall serve at the pleasure of the governor. For each principal department, there shall be an advisory board consisting of such members as may be provided by law. Whenever the law provides for the adjudication of private rights, duties, or privileges by any principal department, there shall be established by law an administrative adjudication board to determine such rights, duties and privileges.

OKINO: I am wondering if Delegate Crossley would not move the amendment a little later until we have decided on this very important question, whether the appointees of the governor shall be removed by the governor only with the consent or confirmation of the Senate. The amendment offered by Delegate Crossley will incorporate the third paragraph as well. It is purely a suggestion, Delegate Crossley.

CHAIRMAN: I believe that his amendment is out of order in any event. Since the movant stated previously that his amendment was in substance the same as paragraph two as now written, he would in effect move to amend the amendment proposed by Delegate Fong by deleting it, which I do not think is a proper amendment.

CROSSLEY: I would not move to amend the amendment. I would move to amend the section.

CHAIRMAN: The Chair understands by your previous statement, however, that your amendment is in substance the same as the paragraph as previously written. Therefore, if you move to amend the amendment all you are doing is deleting the amendment which is before the house.

CROSSLEY: I'm not moving to amend the amendment. I am moving to amend Sections 2 and 3 [sic].

CHAIRMAN: I still believe you are out of order.

LEE: I think -- in order to get the proper language I have just been checking the Organic Act. I would like to suggest this language instead of the language previously suggested by myself. Instead of the language, "may be removed by the governor with the approval of the Senate," use these words, "may, by and with the advice and consent of the Senate, remove from office any of such executives."

CHAIRMAN: Did your second accept that?

SILVA: I'm the second. I'll accept it.

KELLERMAN: If that change has been seconded, I would like to speak in favor of the motion.

CHAIRMAN: You may.

KELLERMAN: I think it's a well recognized fact that the power over any executive is the power of removal, far

greater than the original power of appointment. It seems to me that what we would face with a chief executive being removable only at the -- I mean the executives being removable only at the pleasure of the governor, you have this possibility. A governor elected under such circumstances, or possibly with such financial support as the gentleman in the fifth district has suggested, and it can happen—we've had Huey Longs in Louisiana who kept themselves in power through financial pressure and otherwise—such a governor could appoint persons who he considered and knew to be acceptable to the Senate, and the Senate would confirm those appointees. The day after the legislature adjourned such a governor could remove those appointees, and appoint an entirely new slate. Until the legislature readjourn -- reconvened in the next session he would have the means at his disposal to use public funds, as we have seen them used in our history—I'm not speaking of this State but of the United States and in other states of the country—to build up a machine not only to support himself, and his executives through himself, but to support a second legislature that might come back in with the support of his regime. It seems to me that it's giving an amazing amount of power to an executive to give him, through this chance at expending public funds through his department and his power of putting in any executive he sees fit once the legislature has adjourned, it gives him the kind of power that I don't think any community today can afford to have placed in one person.

Yes, you have the concentration of responsibility with power. Your dictator has complete power and complete responsibility. It seems to me between the extremes we must find a mean that will grant a reasonable amount of responsibility and power to one executive to make his department function, and a limitation upon the extreme of that power by granting the Senate the right to control to that degree the executive appointments. The Senate also represents the people as well as the chief executive. We have checks and balances and I believe that is one of the major checks upon the extreme power of any executive.

In the last twenty-five years the world has gone very far in the direction of a very powerful executive. We have seen it reach very bad results in a good many countries. We've seen it go very far in our own country, frankly very much opposed to my own political philosophy and that of many others here at this Convention. I don't see that there's any great . . . [word not clear] in giving the executive too much power and there is certainly a great danger because one never knows who will be elected. It can happen here as it has happened elsewhere. It seems the Constitution, the purpose of it, is to place those safeguards that may make it impossible for such an elected officer to assume the power that will make him a virtual dictator, as we have seen it in other states of the Union. I think the motion of Mr. Lee is excellent and I am very much in favor.

WHITE: I'd just like to say that the type of situation that some of these speakers have painted, where somebody is going to come in and buy the election of the governor for 500,000 or 250,000 or whatever the amount it is, if they buy the governor, they'll probably have control of the whole legislature anyway, so where is your check on it? I certainly feel that it's unsound to hold a man -- to vest executive responsibility in a man, hold him responsible for results, and then not give him the power of removal if he has somebody that's inefficient in his organization. The Senate still has the right, some control over it by not -- by having to confirm anybody that comes in subsequently. And to paint a picture where the governor is going to appoint people and have the Senate confirm him and then wait two days and then fire them all, I think is just building up a lot of imaginary things that can never develop. I am opposed to this because I agree that the governor should have the power of removal.

FONG: I would like to offer an amendment to that amendment proposed by Mr. Lee. At the end of his amendment, to add this sentence, "All such officers shall hold office for the term of the governor and until their successors are appointed and qualified unless sooner removed." This is in the words of the Organic Act except that I have added the words, "the term of the governor." The Organic Act says four years. It will place the term of the people appointed.

HEEN: May I suggest this as the form of the amendment? "Such single executive shall be nominated, and by and with the advice and consent of the Senate, appointed by the governor, and he shall hold his office for a term to expire at the end of the term for which the governor was elected. The governor may, by and with the advice and consent of the Senate, remove such single executive."

FONG: I'll accept that.

LEE: That's agreeable to the maker of the motion, Mr. Chairman.

SILVA: The second accepts that too.

KING: My feeling is that with the changes that have occurred we may be a little bit confused. I would like to suggest a short recess and have the last form of the amendment typed and made available to all the delegates. I so move, Mr. Chairman.

SAKAKIHARA: Second it.

CHAIRMAN: If there is no objection, we'll have a five minute recess while these are prepared.

(RECESS)

CHAIRMAN: The amendment which was prepared during the recess is being distributed. I believe that before we go to lunch it will be in order to vote on this amendment.

ANTHONY: Is there a motion before the house to adopt the amendment?

CHAIRMAN: There is.

ANTHONY: Well, this is a rather serious question. I don't think that we should hurry a vote through before lunch. I would like to have the speaker from Kauai who referred to some eminent authority be given the opportunity to produce that authority. I've got one document here that's just come to my attention, the report of the -- the Connecticut report, and I think that we ought to look into this pretty carefully. Mind you, it is the federal system that the committee has reported, namely, the President can appoint his attorney general and remove him -- with the consent of the Senate and remove him anytime he wants to. Now you're going to change that system if you adopt this amendment, so I don't think it should be done hastily.

LEE: I don't think we're doing this hastily. I think we all have copies on our desk. Actually, it provides that the executive can only remove with the advice and consent of the Senate, and the appointment to expire at the end of the term to which the governor was elected. Now don't forget, we face this realistic situation before this Convention, that the attorney general is appointed by the governor of the State, and the only two elective officers are the governor and the lieutenant governor, and in order to keep the independence of these department heads, particularly the

Attorney General's Department and some of the other very important departments, that there should be this clause inside of this amendment. However, if it's the wish of this committee to recess over this matter, I don't have any objection although it's pretty clear. I'm ready to vote on it.

FONG: I move that we recess to 1:30 p.m. It's only a matter of ten minutes now.

C. RICE: Second the motion.

CHAIRMAN: Before I put that motion, I'd like to ask President King if he would desire that we would rise or that we recess.

KING: Well, if some of the delegates want further time to consider this amendment, the natural thing would be to rise and sit again this afternoon. I had hoped that most of their minds were made up and we could clear this particular amendment, but Delegate Crossley has another amendment that would make this rather moot. So perhaps the best thing would be for the committee to rise, report progress and ask permission to sit again at 1:30 this afternoon.

PORTEUS: Can't we recess? We did yesterday.

KING: May I ask if the Clerk has anything on the table that might be handled? Then a recess would be in order.

CLERK: No.

KING: Then a recess would be in order.

CROSSLEY: Before you put the motion to recess, I would like to say that as far as I'm concerned I feel that I have had ample opportunity to present my arguments. I've quoted my authorities. I don't care to have a long debate. I wanted to point out that under the system that the majority of the committee adopted, the serving at the pleasure of the governor, it's more efficient. It wouldn't cost anything to fire a man. It may have some dangers. I don't agree with the dangers. I would like to point out, however, that if you take the amended language, it means that to fire a department head is going to cost you something like $25,000. You're going to have to call the Senate into special session.

But I feel that there's been ample time on that and I for one am ready to vote on the amendment. I'd like to vote on it before we go out to lunch if possible and come back in here at 1:30 and continue on with the next. This is the last amendment I have on this business. If this fails, why then that's the will of the majority. If it passes, I carry on from there.

DELEGATE: Question.

CHAIRMAN: The question before the house is whether we recess or not. All those in favor -- Pardon. The motion has been withdrawn. The motion before the house is for the adoption of the amendment proposed by Delegate Lee.

C. RICE: May I have the amendment read?

[Objections from the floor.]

C. RICE: Isn't Mr. Crossley's amendment in here too?

CHAIRMAN: No.

MAU: The committee itself has not given us their views on this new amendment. I'd like to hear from them because if their report is a sound report and they cannot go for this amendment, I would like to hear how they stand.

OKINO: Well, insofar as the committee is concerned, it has already filed its report and proposal consistent with the report. Naturally, I take it that all committee members who voted for the committee proposal will vote against this amendment.

CHAIRMAN: The question before the house is the amendment which has been printed.

CROSSLEY: Just one point of order.

CHAIRMAN: State your point, please.

CROSSLEY: I believe you remarked the other amendment has been withdrawn. My previous amendment?

CHAIRMAN: No, the amendment withdrawn --

CROSSLEY: Which amendment were you referring to?

CHAIRMAN: The motion which was withdrawn was the motion to recess.

ROBERTS: I haven't spoken on this question. I'd like just to briefly state my views. I support the recommendations of the committee which to me are sound and provide an adequate opportunity for the executive to carry out his functions. It provides for a check in terms of specific confirmation by the Senate, but gives the executive the authority to see that the work is carried out once the individual is appointed. This amendment, it seems to me, goes to the very heart of the executive power. I recognize the problem of the occasional need for care in the power of the executive. I have voted for shearing his powers on many of the propositions that have come before the house. I think on this particular section, I cannot support the amendment in this form.

I could support an amendment which would provide that, with regard to the attorney general, that such a proposal would be proper, because to me he is an individual who is concerned with three different departments. He is an individual who is concerned not only with the carrying out of his advisory capacity to the governor, he is the legal officer of the State and therefore has got to support and got to prosecute. With regard to the attorney general, I could support an amendment which would provide that you'd have to get the consent of the Senate before the attorney general is removed. But with regard to operating heads of specific departments, it seems to me that is undesirable as a matter of executive function.

ANTHONY: I would like to have one other thing clarified. We were debating the other day the proposition of having a comptroller for a long term. Now would he be subject to removal by the governor without the consent of anybody?

OKINO: Are you referring to the post auditor? The office of auditor?

ANTHONY: I guess it is auditor.

OKINO: That was already voted on. He is to be appointed by the legislature, two-thirds of each house.

ANTHONY: Would he be subject to removal?

OKINO: That is specifically provided in that section.

KELLERMAN: May I answer one point that Mr. Crossley raised, that if you want to remove -- under this proposal, if you want to remove an executive head it would cost $25,000 to do it. You would have to call a special session and pay each member of the Senate $500. That, of course, is not necessarily true. The legislative report has not reached the floor. It can be amended and I have discussed the matter with several members of the committee. It seems to us highly feasible that we introduce an amendment to provide that when the Senate is called in alone for a confirmation

or removal, that they shall be paid only traveling expenses and a per diem. So that matter can well be cared for and it is not precluded at all by this amendment.

KING: I have not spoken on this amendment and since others have explained their stand, I'd like to be recognized to speak in favor of the amendment. I do not visualize any practical difficulty. The governor appoints his department heads and if he is dissatisfied with them, he will send for them and ask them to resign. Nine times out of ten or ninety-nine times out of a hundred the department head will resign. If the department head is obdurate, the governor may sideswipe him or side-step him and deal with the number two until the legislature comes into session. If it's necessary to call the Senate into session, it will be the Senate alone. There's only been once in Hawaiian history where a department head was obdurate and it took a little time to remove. But in fifty years of legislative history, that has only occurred once, so I do not visualize any practical difficulty. Delegate Ashford corrects me, it was twice. So it seems to me the question is merely one of whether the legislature, which confirms the appointment of that department head, or the Senate, shall have an opportunity to decide whether he should or should not be dismissed if he refuses to resign.

AKAU: I think we're already to go, but I just want to say one more word. If we pass this, which I think is a good idea, it will make the governor exercise a great deal of care and precaution in getting his key people for his key departments. Let's vote.

MAU: I want to clear this in my own mind and know how to vote on this question. If this amendment passes, then it is against the arguments that have been made in favor of a strong executive, and part of that argument is that the executive should have the sole power and the sole responsibility for his conduct in office. Now you bring the Senate into the picture. Where are you going to place the responsibility, giving some responsibility to the Senate to confirm and to remove? Where will we put the responsibility, put the blame, for either misconduct in office or pursuing a policy which is not agreeable to the people? You bring in the Senate. The governor says, "Why I wanted to remove this man, but the Senate refused." Are you passing the buck?

The argument also was made this morning which scares me about my theory of election of public officials. Maybe I was wrong. If you can bring into the new State of Hawaii half a million or a million dollars to elect a governor, then maybe we ought to find ways and means to appoint the governor.

I don't know whether I am in order but I'd like to move for an amendment, that we delete the amendment proposed and substitute in lieu thereof this language, "The governor shall have the power of appointment and removal of such single executive," and we bring it right down to the point whether or not you want to place responsibility, sole responsibility, of the executive branch of the government in the governor or not.

CHAIRMAN: Delegate Mau, will you state your amendment again, please.

MAU: My amendment would delete the language suggested in this amendment and place in lieu thereof, "The governor shall have the power of appointment and removal of such single executive." Then we are four square on this argument that has been made in support of a strong executive, stating that the executive should have the sole responsibility for all of his actions. Then if the people don't like how he conducts himself in office, then they can put the finger on him. But in this way he can say, "The Senate was the one that stopped me from removing officer Jones." And then on the confirmation too, as well. I don't know why because of past tradition in this Territory, the Senate having the power of confirmation, we should pursue that if we are going to carry to a logical result this argument that has been so powerfully made, that we should place sole responsibility on one executive head of the government.

CROSSLEY: Believe me, it's an honor and privilege and a rarity when I can second the motion of the delegate from the fifth district, which I do most whole heartedly. I would say, however, that I think Delegate Roberts has raised a very good point. If you're going to consider the adoption of an amendment such as that made by Delegate Lee, that it should apply only to the office of the attorney general and perhaps to the head of the school department and that the rest should serve at the pleasure of the governor. However, I'll second the motion made by Delegate Mau.

HOLROYDE: I move we recess to 1:30.

KAGE: Second the motion.

CHAIRMAN: It has been moved and seconded that we recess until 1:30. You speaking to that motion, Delegate Mau?

MAU: Point of special privilege.

CHAIRMAN: You may.

MAU: If because of my action, we can't get a vote on it before lunch, I withdraw my motion.

A. TRASK: The motion of Delegate Mau has been seconded and I think that motion should be ready for us when we come back from lunch.

SILVA: He's withdrawing that motion.

A. TRASK: Are you withdrawing it, Mr. Mau?

C. RICE: The motion to recess is not debatable.

CHAIRMAN: If there is no objection, we'll declare a recess until 1:30.

Afternoon Session

CHAIRMAN: Does any one know the presence of Delegate Mau, where he is? Delegate Crossley.

CROSSLEY: I understand that after he and I were together on an amendment, it was too much for him. I doubt that he'll recover this afternoon.

CHAIRMAN: The question that I raise -- Delegate Fong.

FONG: What is this getting into, the chairman of Democratic Party left wing and the chairman of the Republican Party getting together?

CHAIRMAN: The question that I raised was a serious one. He rose to a point of personal privilege just before recess and said if his motion was going to prevent a vote being taken before recess, he would withdraw it. It was on that proviso, I wanted to find out from him whether he seriously intended it to be withdrawn at that time or not.

FONG: I gather that the remark was made facetiously anyway.

A. TRASK: I think Delegate Fong is correct. I had asked that the recess be taken with a view that Delegate Mau would

have his motion printed and on that suggestion he withdrew it finally.

CHAIRMAN: He did withdraw it finally? Is that your understanding? If there is no complaint, I'll rule that that motion was withdrawn.

CROSSLEY: Just to ease the Chair's mind, if it would make it any better, I'll withdraw my second, and therefore there will be no doubt. Reluctantly.

CHAIRMAN: That will be satisfactory.

The amendment before the house, in my understanding, is the one printed under the name of Delegate Lee, which is an amendment to paragraph two of Section 10 and was rather widely discussed. Is there any further discussion on this amendment? All those in favor of the amendment will say "aye." Opposed. I'll call for a division of the house. All those in favor of the amendment will please rise.

A. TRASK: Is this on the amendment of Delegate Lee?

CHAIRMAN: That is correct.

A. TRASK: Mr. Lee is not here. I think out of courtesy to him, I think we should defer this matter.

CHAIRMAN: The vote is being taken. I believe the delegate is well out of order.

A. TRASK: It's not concluded, Mr. Chairman.

CHAIRMAN: All those opposed to the amendment will please rise.

KING: Before the vote is announced, may I say that I wanted to vote in the affirmative.

CHAIRMAN: Recognized. The motion is carried in any event. I believe the count is 26 to 17. Is that correct?

We now have paragraph two as amended before us. Any further discussion on that paragraph?

CROSSLEY: I move the adoption of paragraph two as amended.

HOLROYDE: I'll second that.

CHAIRMAN: It has been moved and seconded that paragraph two as amended be adopted. All those in favor will please say "aye." Opposed. So carried.

Paragraph three is the next order of business.

KAM: I move that paragraph three of Section 10 be tentatively approved.

HOLROYDE: Second the motion.

CHAIRMAN: It has been moved and seconded that paragraph three of Section 10 be tentatively approved. Any discussion on that motion? All those in favor will say "aye." Opposed. Carried.

Paragraph four is before us.

KAM: I move that paragraph four of Section 10 be tentatively approved.

LAI: I'll second that.

CHAIRMAN: It has been moved and seconded that paragraph four of Section 10 be tentatively approved. Is there any discussion on that motion? All those in favor of the motion, please say "aye." Opposed, "no." Carried.

LAI: I move for tentative adoption of paragraph six -- five, I mean.

KAM: Second that motion.

CHAIRMAN: It's been moved and seconded that paragraph five be tentatively adopted. Is there any discussion of that motion? All those in favor please say "aye." Opposed, "no." Carried.

ROBERTS: I have a proposal to offer in the form of an amendment as a new section, section or paragraph six. Is this the proper time --

CHAIRMAN: Paragraph six is not before us yet.

ROBERTS: I want a paragraph in between paragraph five and paragraph six.

CHAIRMAN: Proceed.

ROBERTS: The amendment reads as follows. I have copies printed and they'll be distributed to the delegates, so there's no need to write it down.

> The governor shall have power to make, from time to time, such changes in the administrative structure or in the assignment of functions of administrative departments as may, in his judgment, be necessary for efficient government. Such changes shall be set forth in executive orders which shall become effective at the close of the next legislative session, unless specifically modified or disapproved by a joint resolution concurred in by two-thirds of the members to which each house is entitled.

CHAIRMAN: Delegate Roberts, could you give me information as to when this amendment was passed out?

ROBERTS: It's going to be passed out now.

CHAIRMAN: Thank you.

KELLERMAN: I second that motion.

ROBERTS: May I speak to this? This proposal supplements the previous sections that we have adopted and gives the governor the opportunity, not to make the changes in the department, but to present a plan to the legislature which the legislature has the opportunity and power to veto. If we want to maintain efficient government, we have to on occasion review of the operations and departments in the executive branch of the government. This gives the governor the opportunity to make such studies for efficient government. It does not give him the power to put it into effect. It gives the legislature the proper and adequate power to decide that it is undesirable or unnecessary, but at least it puts the question before them as to something which the executive thinks is desirable in the efficient administration of government. I would like to have the delegates support this amendment and have it in our Constitution.

CHAIRMAN: Is there any further discussion on this question?

FONG: May I ask the introducer of this amendment a question? Do you mean that the governor by executive order may consolidate departments as he desires?

ROBERTS: No. The Constitution sets forth the procedure for the setting up of departments within a specified number. You have set that forth in a previous section of the Constitution. This merely gives him the opportunity to make recommendations to the legislature, to suggest within the framework of the Constitution how he thinks more efficient government could be obtained. If you set up your departments and he finds that one department is lopsided, he could recommend to the legislature where perhaps this function properly belongs. If you don't think so, you vote him down, but at least you've had the opportunity to examine it.

FONG: Now what I'm asking you is this, that within the framework of this Constitution, we are saying that he could have twenty departments. Now that's all we are saying about departments here. We are not naming the departments. As I understand from your amendment, you are stating that at the first session of the legislature the legislature will set forth these departments. Is that right?

ROBERTS: The proposal -- May I answer the question, Mr. Chairman? The proposal that we agreed to yesterday indicates that the reorganization would take some time, and therefore some procedure will be set forth in the article dealing with ordinances to give the legislature the opportunity to so reorganize the departments to conform to the twenty departments, as provided for in the Constitution. Once that is set up and goes into effect, it stays in effect. The legislature may from time to time create new branches or parts of that as you go through. Now a time may come when you want to review that. This merely gives the governor the opportunity to call those to the attention of the legislature and suggest that these changes be put into effect. If you do not think that they ought to be put into effect, you then tell the governor that they are not to go into effect and you veto his action. And as you notice, the executive orders that he issues do not become effective until the close of the next legislative session, which means that he cannot put it into effect until the legislature meets and has the opportunity to examine it.

FONG: As I understand it, he will be able from time to time to change the administrative structure and assign functions to the various departments. He may take the function from one department and give it to the other. Is that right?

ROBERTS: He may recommend to the legislature that such be done. He gives the -- he issues the order. The order does not become effective until the end -- the close of the next legislative session which gives the legislature the opportunity by joint resolution to veto his action. It cannot go into effect until the legislature reviews it.

FONG: It seems to me that this is a back way or a backhanded way of passing legislation. The usual way of having legislation passed is to have the House consider it and the Senate consider it and send it to the governor. If he likes it, he signs it. If he doesn't like it, he vetoes it and sends it back to the House and the legislature, and the legislature may by a two-thirds vote pass on it. Now here we have just the reverse of that. We have the governor, first, starting out as the legislative body, and have the legislative body use the veto on the governor. It doesn't sound right. You have a system by which your legislature sets up your administrative branches of the government, and then say that this branch of government shall have these functions and the other branch of government shall have the other function. Then here comes along this amendment that says that the governor may take one function and place it in the hands of the other, and if the legislature in a session does not veto the action of the governor, then it stands. Now this is a backhanded way of giving to the governor the right of legislation and gives to the legislature the right of veto. Now the right of veto lies with the governor. The right of legislation lies with the legislature. I think that this is not correct.

HEEN: The last sentence I think is entirely wrong. It says here, "Such changes shall be set forth in executive orders which shall become effective at the close of the next legislative session, unless specifically modified or disapproved." If it is modified, then it will not go into effect at all. Is that not correct, delegate from the fourth district?

ROBERTS: It seems to me that if the legislature modifies the recommendations of the governor in session, then the proviso would go into effect, just as the legislature could normally establish action in legislative session. There is nothing to prevent the legislature in session to pass such laws as they deem appropriate with regard to these departments. I might say that this language is suggested as the best language I knew of. I certainly have no pride of authorship in this. If the able senator has some additional suggestions to make, I shall be very happy to consider them.

CHAIRMAN: Delegate Heen, are you through? Delegate Loper.

LOPER: I think the desired end could be accomplished by striking out "modified or" and just say "unless specifically disapproved," because in the process of considering it, if they wish to modify it, it would then become law in the usual manner.

A. TRASK: I am opposed to this amendment for several reasons. First, in the second sentence there is nothing set forth at what time and how many days before the legislature meets that this executive order shall be made known to the legislature. Secondly, obviously, these changes are to be made and to receive the notice of the legislature. Third, there is no tangible reason as far as I can see whereby such changes, which will be included in the message by the governor to the legislature as provided in the taxation and finance provisions, that should not be ably taken care of by the governor at that time. I see no reason for this amendment because his suggested recommendations, which recommendations are piously and properly made as suggestions -- We have this powerful plenary power here under executive order which by its mere issuance will make it or have it take such a powerful positive position that you would require the legislature by an extraordinary two-thirds vote to overcome such executive order. Additionally, I see no reason why under this suggested amendment that the entire administrative structure of the departments may not be changed, because the only test which would justify the change would be for "efficient government." Now, what is efficient and what is not efficient is a problem so vital, that's why we have the legislature. What is efficient government at one time as against another time, but for the legislature to determine and not the executive.

ANTHONY: I agree with one statement of the last speaker and I am sure it was inadvertant by the draftsman of this proposed amendment. It can be cured by requiring that the executive orders be issued between legislative sessions, then the legislature would have the executive order the first day of the legislative session. Therefore I would suggest an amendment in the second sentence, "Such changes shall be set forth in executive orders to be issued between legislative sessions." In other words, insert the word "issued" or "to be issued between legislative sessions."

As to the other statement made by the last speaker and the delegate from the fifth that this is reversing the legislative process, I'm not in accord with that. This is not going to usurp the legislative process at all. This is simply saying that you've got forty or fifty substantive programs which are being carried out by various executive departments of government, and the chief executive, whose duty it is to make the executive department run, has reached after a careful study a conclusion that these departments should be consolidated. I say he makes that study, he then finally

culminates the results of his study in an executive order. Full publicity is given to the executive order. It is in the hands of the legislators before they begin their deliberation and they can do anything they want with it. I call the delegates' attention to the fact that no substantive laws will be decreed by the governor. It will be simply an allocation and a rearrangement of administrative functions. I'm not so sure that I agree with the two-thirds vote in joint session, but I certainly think the principle of this proposed amendment is a good one.

ASHFORD: I move an amendment to the last sentence so that it shall read as follows—There's no second, I think, to Mr. Anthony's motion and my motion will incorporate his. "Such changes shall be set forth in executive orders to be issued between legislative sessions which shall become effective at the close of the next legislative session, to the extent in which they shall not be specifically modified, or unless they be disapproved by a joint resolution adopted by the legislature." If there is a second to that, I'd like to speak for it.

LOPER: I'd like to second that motion.

CHAIRMAN: The second is recognized.

ROBERTS: We'll accept that as part of the original motion.

KELLERMAN: But I would like to ask if the movant would accept one more suggestion. "Which shall become effective at the close of the next" -- general or regular, which is our term, Mr. Heen? This would mean the next budget session also, it might mean [that] and our plan is not to have such matters, as I understand it, taken up at the budget session. It seems to me that we have to clear this so it would be at the close of the next regular legislative session.

CHAIRMAN: Delegate Heen, would you like to answer that?

KELLERMAN: Is the term "general" or "regular?

HEEN: The regular sessions are provided for in the article on the legislature and the regular sessions are divided into two types. One a budget session and the other a general session.

KELLERMAN: This would have to be -- This word would have to be "general" then. "Effective at the close of the next general legislative session."

HEEN: No, it could be at any session, whether budget, special session or regular session or general session. Any session. The sooner you get to it, why it would be better.

KELLERMAN: I withdraw my suggestion. The present language will cover it. If we want to include the possibility of this coming up at a budget session, then the present language makes that possible. I had assumed that we were trying to restrict the budget session, not to take up such matters, so that's why I raised the point. The present language would leave it open to any special, budget or general session which apparently would be acceptable to the chairman of the Legislative Committee.

HEEN: I would like to ask the delegate who is sponsoring this amendment this question. Why did he use the term "administrative departments" when in the first part of the bill you speak about departments as "executive departments" or "principal departments"? I was just wondering whether there was some intention to differentiate an administrative department from a principal department.

ROBERTS: May I answer that, Mr. Chairman? This thing was drafted long before we discussed this article. I'm certainly glad to have it conform to the others, or first part of the section of the article now before us. There was no intention to provide any other language. But this thing was drafted before this article and the language in that article was unavailable to me.

ASHFORD: I suggest, in view of the remarks calling attention to the use of the "administrative departments," that Section 10 starts, "All executive and administrative offices, departments and instrumentalities." Would it not be better to insert "such changes" -- "assignment of functions of executive or administrative departments" and use the "executive or administrative structure" in both cases to conform to the first paragraph of Section 10?

CHAIRMAN: Does the movant accept that?

ROBERTS: That's acceptable. I think we could handle that either in the Committee on Style or on the floor.

CHAIRMAN: Delegate Ashford, would you mind reading the proposed paragraph, please.

ASHFORD: (Reads amendment) "The governor shall have power to make, from time to time, such changes in the executive or administrative structure or in the assignment of functions of executive or administrative departments as may, in his judgment, be necessary for efficient government. Such changes shall be set forth in executive orders to be issued between legislative sessions which shall become effective at the close of the next legislative session to the extent in which they shall not be specifically modified, or unless they be disapproved by a joint resolution adopted by the legislature."

CHAIRMAN: Thank you.

KELLERMAN: May I propose another amendment. We have set up in the Constitution under the provision on education, the Board of Education and the Board of Regents to which we have assigned certain functions. I therefore would propose a proviso at the end of the first sentence, "provided that such changes shall not be inconsistent with other provisions of this Constitution."

ROBERTS: The thought of that is acceptable. The language I think could conform to the other sections where there was no intention to modify action which we've already taken and which are going to be part of the Constitution.

HEEN: The amendment is somewhat involved, and I'd rather trust my eyes in looking at it in writing than to trust my hearing. Therefore I would suggest that that amendment be written before any further action be taken on it.

CHAIRMAN: May the Chair suggest that instead of a recess, we go on to the next paragraph.

RICHARDS: May I ask one question before we go on to the next paragraph? As I understand this proposal, this amendment, the question comes up to my mind, after modification by the legislature of any of these executive orders, they might modify them to such an extent that they would not be acceptable to the governor. Under those circumstances does the governor retain his veto power or not?

ROBERTS: That was the question raised, I think first, by Senator Heen. I'd like to suggest when this article is being prepared for re-submission, redrafted form, that perhaps it might be desirable to leave the word "modified" out. If the legislature wants to take the governor's proposal

and turn it down and then wants to draft one of its own in such form as it cares, it would then be regular legislation?

HOLROYDE: I move we defer action on this amendment.

PORTEUS: If people are going to take various matters into consideration in the redraft, may I point out this. As far as I can see under the Constitution, what you're going to do is leave to the legislature the determination over a period of years, perhaps four, what functions should be consolidated under what departments. Once the legislature has said this is it, and you're not leaving it to the governor in the first instance, you're reversing the situation. What you're doing is, you're giving the power of legislation to the governor with the veto in the legislature. Now if you do it the other way around, you would have it the way we start. Our concept is that the legislature will determine the grouping, it will be subject to veto by the governor. Now if that's out and you want to be consistent, then I think it's necessary to say that these orders shall not become effective unless approved by the legislature rather than disapproved. Because what you're doing there is giving, as I say, power of legislation to the governor, power of veto to the legislature. I think it's reversed.

CHAIRMAN: Delegate Loper has the floor.

LOPER: I have a question to put to the former speaker, Mr. Secretary. If I followed your line of reasoning, it was that it should be stated that these would become effective if approved by the legislature. However, in Section 1 or paragraph one of Section 10, I believe we've amended it so that there would be a four year period in which to consolidate government departments, and there is no automatic provision for that to happen, if the legislature chose not to consolidate. The fact that we write it into the Constitution doesn't necessarily bring it about, because we have the reapportionment provision in the Organic Act and it has not happened. This would enable the chief executive to bring that about even if the legislature did not act during the first four years.

PORTEUS: If you say that, that's what will happen, but that's not what's said here. You want to say that if the legislature, in the ordinance that you write, does not consolidate at the end of four years the governor will have the power to do so. That's something else again. What I'm pointing out is that you are relying in the first instance on the legislature to accomplish this by law. Having accomplished something by law, you then say the governor may change this setup, but with the power of veto in the legislature. I think you've got the functions reversed.

H. RICE: I have always been against the rules and regulations by the different departments that are not presented to the legislature for their approval. Now besides those rules and regulations you are going to have executive orders. To me, this is all wrong. If the governor wants that provision, and I can see he might make some wonderful suggestions, let him put them in the form of a joint resolution to be presented to the legislature when it comes in session. Then you have them in the books and it's all right. Besides rules and regulations that govern the Board of Health, the Board of Agriculture and so forth, civil service, all of them, and a lot of other -- and now they have some in the Highway Department that the people don't know.

We've got in a jam just lately on Maui on a new law put into effect by the Territorial Highway Department on the subdivisions. The people didn't know that it was necessary to get a permit to join in the public -- the territorial highway and they practically had the project complete and then they held up. To me, a lot of this should be statutory so it's in the books and we know what it's all about.

ARASHIRO: May I ask the sponsor of this amendment to point out some specific incidents where the necessity of this amendment was proposed?

ROBERTS: I'd like to answer that question and then perhaps to touch on briefly what was said by the speaker just prior to that. The purpose of this thing is not to change what you have done before in your present proposal which puts it in the hands of the legislature to set up the twenty basic departments and their functions through a commission perhaps of study and then have the legislature act.

This thing provides -- this Constitution is not for next year or the year after. It's for a long period of time. I can very easily visualize where a whole series of functions are established in one department whether they belong there or don't belong there. You may have an individual who is interested in building up a little empire. Through pieces of legislation, he has a tremendous number of functions which have no actual relationship in terms of the efficient operation of your executive department. In other words, you have a problem. It seems to me that you've got to give the executive—and we're talking now not about the power of legislation but about the operation of the executive department which the legislature has set up—the governor isn't taking over the functions of the legislature. This merely permits him to present to the legislature a program which will provide for more efficient operation of his department, the executive department. The legislature under this thing does act, and it acts in terms of what it conceives to be proper. If they think that the governor's recommendations are out of line, all they've got to do under this proposal is to say, "No soap. We like it the way it is and that's the way it stays." There is no infringement on the power and the prerogatives of the legislature.

Now the prior speaker suggested that perhaps these executive orders that will be issued would have some force or effect. The proposal does not permit the governor to issue executive orders on reorganization. He merely issues an executive order and submits it to the legislature. If the legislature approves it or doesn't veto it, either form, then it takes power and effect, but it's got to be first by a joint resolution of the two houses. It seems to me that that provides adequate opportunity for the legislature to decide whether the executive functions are properly set up or improperly set up. If they don't think they're proper, all they've got to do is to say, "That's not a good reorganization for the executive department," and that's the end of it.

ARASHIRO: May I ask the sponsor a question? Do you think the deletion of this amendment would jeopardize the governor from sponsoring such intention through his legislation?

ROBERTS: The question of jeopardy, I think, is a very serious question. We're writing a Constitution and we're trying to make provisions for it -- provisions for the three branches of government to operate effectively and to divide those powers as we think most desirable. I think it's extremely desirable to permit the executive to present such a plan, just as it has been, for example, in the federal government now. President Truman has made various proposals to the Congress. Those that they thought desirable were accepted and those they thought undesirable were vetoed, they were thrown out. It seems to me that this calls attention to the fact that the executive should constantly keep in mind the need for efficient government which you have already

recognized in the first part of your proposal. I think it's a desirable section.

CROSSLEY: I would like to speak in favor of the amendment as further amended. This in part accomplishes some other job that I had in mind when speaking earlier this morning and that is getting a more efficient department. I think that if we would lose sight of some of the arguments that have been made that this is infringement on other departments or other branches of government and keep in mind only that this is a device, a means of getting a more efficient department in itself, that this amendment would find much more support.

I wouldn't attempt to answer my colleague's question here as to jeopardy, but even if the answer were no, that wouldn't be the final answer because it's not what a person may or may not be able to do but the fact that we are trying to build a basic form of government here, a basis for government, in which we are trying to spell out everything that we can as clearly as we can, and this certainly would help the executive branch of the government to more fully participate in carrying out the very function that we have assigned to it.

A. TRASK: I would like to direct attention to two points raised here. First, what is an executive order? An executive order, as I understand, is not something that is published in the newspapers for the notoriety of even people over on Molokai to read, publication is given to an executive order by mere filing with the Office of the Secretary. That's how the Nuuanu tunnel was going to be built, whereby the city situation here, the master plan of the City and County of Honolulu was dumped without a hearing. You have an executive order issued whereby the City of Honolulu and the legislature, which for a period of about six years had endorsed the Kalihi tunnel, and you have this situation by a mere overnight executive order coming out, throwing over the work of many sincere citizens over a long period of years. I think it is wrong.

The next point. President Truman's plan for reorganization came as a result of congressional legislation over a period of many years and former President Herbert Hoover worked on that situation. To me it is not altogether proper to say that this amendment is a mere reference to the legislature whether or not they'll accept or reject the proposition. It is not that. It is what more properly the Secretary mentioned, an act which if left and not acted upon has the force and effect of law which I think is bad, which doesn't give the people the time enough to consider, debate and talk about and to see how this change would effect their own welfare.

After all, the departments are created by the legislature. Any modification of that should be left up to the legislature and the people who are affected. A person who is born on Oahu, reared on Oahu, whose interests are altogether on Oahu, would not be concerned about governmental administrative functions in Milolii, over on Molokai, over in Kauai, or over in some part on Maui.

Now, let us understand, we must give notoriety. Some places on Oahu, there are no newspapers, and certainly when an order is filed with the Secretary's Office you don't see it in the newspapers, hardly ever. And that's how Honolulu was taken for a ride, as I consider, when the master plan approved over many years was set aside by an executive order.

CHAIRMAN: Is there any further discussion of this amendment?

ARASHIRO: I'm not against this amendment, but the question in my mind is whether it should be spelled out, where at present the governor makes a recommendation to the legislature and the legislature then passes legislation by the request of the governor, and that's how it's done. Whether this should be spelled out or whether he will maintain the same authority and go through the same procedure that we have at present.

CHAIRMAN: If there are no more speakers on this subject, I'd like to know if we can put the motion before having it printed. Oh, I see, we have the printed copy. The Chair will declare about a three minute recess while the copies are passed out.

(RECESS)

CHAIRMAN: Will the committee please come to order.

ASHFORD: May I call the attention of the Committee of the Whole to the fact that the Committee on Ordinances and Continuity of Laws has been directed to prepare a provision in the ordinances to care for the four year interim period, and what shall happen thereafter in the consolidation of departments to bring them within the twenty - - the number of twenty included in an earlier paragraph of the section? I call this to the attention of the Committee of the Whole at this time because the language used in the draft that has so far been prepared runs somewhat to this point, but it would be strictly limited to that four-year period. May I read that.

> The requirements of consolidation, grouping of functions of government and limitations of the number of departments shall not be absolute for a period of four years after the effective date of this Constitution. During such period, the governor shall have power to make from time to time such changes in the administrative structure or the assignment of functions as may in his judgment be necessary to achieve such limitation and provide an efficient administration. Such changes shall be set forth in executive orders which shall become effective at the close of the next session of the legislature unless disapproved by a resolution adopted by the legislature. The first governor of the State shall appoint a commission to study such consolidation, grouping of functions, and limitation, and report thereon to the governor and to the legislature.

This is merely an interim provision and it provides for executive orders in that respect because if the legislature does not act, then those executive orders must take effect in order to comply with the constitutional requirements of limitation to the twenty departments.

HAYES: I'm confused and suspicious at the same time. I want to know, and I stand to be corrected, I want to know that when this, if provided - - if this amendment went through and the governor appoints this administrative manager and the legislature goes into session and creates the different departments as so provided in the Constitution, then this administrative manager comes in after we have adjourned, can he disorganize what the legislature has provided by law?

HEEN: It seems as if the delegate is looking at another amendment about the appointment of an administrator.

CHAIRMAN: Has your question been answered, Delegate Hayes? Delegate Roberts.

ROBERTS: I'm sorry, I can't answer that question.

CHAIRMAN: Is there any further discussion on this proposed amendment?

ROBERTS: I'd like to suggest that perhaps this proposal ought to be taken from the floor. The question doesn't seem

to be fully understood on the floor, and rather than create feelings of dissatisfaction, or uncertainty or doubt or confusion, I'll withdraw the motion if the person who accepted it will do so.

ASHFORD: I'll withdraw my amendment of his amendment.

CHAIRMAN: I believe that if the motion is withdrawn to adopt the amendment, that's sufficient, unless someone else would like to make it.

HOLROYDE: I move that we tentatively approve the last paragraph of this article.

ASHFORD: I move that the last paragraph of this article be deleted and there be substituted for it a Section 11 which shall use the language of Proposal No. 6, to wit:

> No person shall be eligible for office or employment in or by the State or any of its political subdivisions other than on the teaching staff of the University unless such person shall have been a resident of Hawaii for a period of three years prior to assuming such office or employment, and no period of tenure of office in or employment by any branch of government, whether federal or local prior to the expiration of three years' residence in Hawaii, shall be construed as a part or the whole of the requirement for three years' residence.

J. TRASK: I second that motion by the delegate from Molokai.

CHAIRMAN: Is that Section 6? Of what document?

ASHFORD: That language comes from Proposal No. 6 and is a new section, Section 11 in Proposal 22 in substitution for the last paragraph of Section 10. I would like to speak to the proposal -- to the amendment.

CHAIRMAN: You may.

ASHFORD: Everyone who is familiar with the operations of our territorial government knows how outrageously the three year residence provision has been evaded or flaunted. This is a constitutional provision to prevent that and to prevent it in the most effective way, because very often before the legislature or any branch of interested citizens, any group of interested citizens, catches up with the violating officers the person who has been employed has been employed for three years and has therefore established residence. Now the provisions of this proposal which was suggested as an amendment -- moved as an amendment to [Committee] Proposal No. 22 provides that no one who has been employed in violation of the section or by the federal government here shall have that period of employment construed as the necessary period of residence. This is a true protection of the three year residence requirement.

A. TRASK: I wholeheartedly agree with the movant, the delegate from Molokai. This provision has been in the books for a long time. It was fought for by my father vigorously in the depression years, 1933, and I certainly think that it should be in the Constitution permanently, not only for the benefit of those in private employ -- in public employment, but that the private employers in the territory may get wise and hire local people for local employment.

HOLROYDE: I'd like to ask the committee why they did not adopt this proposal. They evidently gave it a lot of consideration.

OKINO: If you will refer to the committee report, page number 7, paragraph number 5, you will note the following: "Proposal No. 6 relating to government office or employment has been adopted in part. No person shall be appointed an officer under the provisions of Section 10 of this committee proposal unless such person is a citizen of this State and shall have resided in the State for at least three years."

Your committee recommended that the remainder of this Proposal No. 6 be referred to the Committee on Miscellaneous Matters for the reason that the subject matter is related to civil service laws which are now under consideration of said Committee on Miscellaneous Matters. You will note as you refer to Section 72 of the Revised Laws of Hawaii 1945, similar provision is a statutory matter, and your committee felt that that portion of Proposal No. 6 may adequately be regulated by statute.

LOPER: I would like to raise one question about the proposed amendment. If the language recommended for inclusion in Committee Proposal 22, the last paragraph of Section 10, is the exact wording of Proposal No. 6, there's no provision for bringing school teachers into the Hawaiian Islands from outside, and we have during past years had to employ from a hundred to a hundred and fifty teachers from outside of the territory each year. During the period of years, some years back, it went as high as 300 and we are still understaffed. Of course, we always give preference to local people but we do not get enough yet to fill all those positions.

CHAIRMAN: As the Chair understood the proposal, it included that. Is that correct, Delegate Ashford?

ASHFORD: That's true, the only exception is the teaching staff of the University. I was not aware that there was a shortage of teachers. I knew a lot had been brought in from the mainland and our experience was that the local teachers, the locally trained teachers were better than the malihinis.

HEEN: The paragraph as written in this Committee Proposal No. 3 refers only to officers of the State, and the employees like those who teach in the University and those who teach in the public schools are not officers, they are employees. This section is limited to the appointment of officers under the provisions of this article.

OKINO: That is correct. That is the reason why we have said that it was adopted -- a portion of the Proposal No. 6 was adopted. With reference to employees, we thought it would be a statutory matter.

ANTHONY: I think that this is a very bad amendment. What we're going to do if we adopt this amendment is to have a sort of ingrowing situation here. In other words, we can't get -- draw on the vast resources of the United States for experienced personnel in fields in which possibly we do not have proper persons to fill the jobs here.

I'll give you one specific example. You take in the courts. We have a terrific job to get a court reporter and you can go up and down this land and you can't find anybody who is a competent court reporter. The reason for it is, it's a highly skilled job. Most of the court reporters that are presently working in our courts have come from the mainland. They have had years of experience there and they have come down here.

Now, this sort of an amendment to my way of thinking is laudible in its design to protect our own people, but in reality it's going to injure us because it's going to prevent us from drawing on resources from the rest of the forty-eight states. Leave this matter to legislation. The legislature will take care of this all right. They will provide

for residence requirements, but don't freeze it in the Constitution so that we can't get people outside of the territory -- outside of the State and we just would be left high and dry with no employees competent to do the work in a specific case.

SMITH: May I ask the chairman of the committee if any other state constitutions have such an article in their constitution?

OKINO: I believe not.

AKAU: I would agree with the delegate from the fourth district if he had said this ten years ago when our boys and girls perhaps were not moving along as rapidly in the fields of science and education, and sociology and law even, but I think today we are arriving at a real good pace of getting trained people from our University who have had some experience. Now, the example of a court reporter may be one of the few exceptions. There may be others. Perhaps some little clause might be added to make allowance, or practical legislation might be able to make some allowance by adding a clause. But I don't agree with the fact that we can't always find people here. If we look hard enough we can find them, teachers, workers in our pineapple experimental labs and even in the courts.

CROSSLEY: I know that the popular thing would probably be to get up here and agree that the amendment is good and that we can do what the last speaker and one of the previous speakers from the fifth district said, "Get wise to ourselves in business and hire local boys." But I wonder just how much they know about what they are talking. How many people do I hire in my companies, for instance, who are not local? I don't think they know or they wouldn't have made the statement because I am one of the coast haoles in my company, and I have been here over twenty years, and there is one other. The rest are all local. But there does come a time when you can't find local people. On the one hand you tell us to go out and build new industries, employ more people, and at the same time you condemn us if in doing such a thing we hire someone from outside the territory.

Now, what is so sacred about this territory? If we were one of the forty-eight states and had crossed a state line, there wouldn't be a great deal of attention paid to it, but because we have a body of water in between us, why that seems to make us some sort of sacred ground, regardless of whether we have qualified people or not. A court reporter is not an isolated instance. All you have to do is to start a new business here, for instance the flower business, and go out and get a trained horticulturist and see how many have qualified, see how many people have had the experience.

Now then, what should we do? Should we not build a new industry because of a restrictive clause? Should I sit in here as an employer and hear twice in fifteen minutes the condemnation that the present employers are not very wise to themselves. I would venture to say that 99.44 per cent of the employees in the pineapple industry are local, and when that industry was singled out and called by name, I took especial resentment because in my own company, in over three hundred employees there were only two who were not born in these islands.

KELLERMAN: May I point out the fact that our present Teachers' College has a capacity of one hundred teachers a year. It now does not turn out, according to our statutory requirement of certification, enough teachers to man the public schools with the vastly increasing number of children coming into the schools in the next ten years. It seems very unlikely, as a statement made to me by the dean of the Teachers' College, that they will be able to increase that number of teachers for at least eight years.

[A portion of the debates and the vote on Delegate Ashford's amendment are not on the tape. Delegate Ashford's amendment was defeated.]

CHAIRMAN: The question before the committee is the last section of Committee Proposal No. 22 as it stands. If there is no further discussion, all those in favor of this section will say "aye."

DELEGATE: Question.

MAU: Are we considering the last paragraph now?

CHAIRMAN: That is correct. That's what we have been considering for the last 30 minutes, I believe.

MAU: I thought you had two or three amendments to it.

CHAIRMAN: The amendments have been lost. The amendment lost.

MAU: What are you voting on now?

CHAIRMAN: I believe the Chair might have been out of order, but I don't think so. All those in favor of the paragraph as moved will say "aye." Opposed. The last paragraph is carried.

HEEN: I move for a reconsideration of the fourth paragraph of this Section 10. I think we went through that too hurriedly.

HOLROYDE: Second the motion.

CHAIRMAN: It's been moved and seconded that we reconsider paragraph four. All those in favor will say "aye." Opposed. All those in favor will please raise their right hand. All those opposed. Motion to reconsider is carried.

HEEN: The paragraph reads: "The governor shall grant commissions to all officers elected or appointed pursuant to this Constitution." Now the governor is elected under this Constitution. Is he to issue a commission to himself? Is that the intention of this particular paragraph?

CHAIRMAN: Delegate Okino, can you answer that question?

OKINO: I'm afraid not. I don't think the committee gave any special attention to that very specific question.

LARSEN: Could I answer that? When the King of England abdicated he had to sign his own abdication.

HEEN: That was with reference to his removal but this is in connection with the election of the governor.

CHAIRMAN: Does the delegate have an amendment to propose?

HEEN: I don't think you need that paragraph at all. If an executive officer is appointed by the governor and nominated, "and by with the consent of the Senate appointed by the governor," all he has to do is to issue the commission showing what he did in the way of appointment. You don't need any constitutional provision for that. There is nothing like this in the Organic Act or, as stated by my colleague here, there is nothing like that in the Federal Constitution.

CHAIRMAN: Any further discussion?

OKINO: I might say that that particular paragraph is incorporated in some constitutions of some other states. We got that.

CHAIRMAN: Is there any further discussion.

ANTHONY: I move we delete it.

MAU: I would be in favor of that motion but I was just wondering, before that motion is put, whether the committee had considered whether or not this provision could not be carried out by the legislature itself.

OKINO: I think it could, and I don't think the committee members will too strenuously object to the deletion of that paragraph.

LARSEN: I second that, Delegate Anthony's motion.

HEEN: I move that that paragraph be deleted.

DELEGATE: Second.

PORTEUS: As I understand it, we talked on the sentence, not on the paragraph. Now the motion is to delete the paragraph. I have heard no discussion about the catch-all provision here, but if you don't provide for the manner of appointment of an officer and unless it is otherwise proposed by law, this is the way you pick them up right in here. So I would like some discussion on the second sentence before you start deleting that sentence itself. As I understand it, that second sentence is a catch-all provision. If you don't say in the Constitution how a necessary officer is selected either by appointment or election, and the legislature overlooks providing by law for his appointment or selection, then you have a provision that says what will happen.

HEEN: I withdraw my amendment that was offered by me and make this motion to amend. Amend paragraph four by deleting the first section of that paragraph -- first sentence of that paragraph.

CHAIRMAN: I believe there'll have to be one other change.

HEEN: And change the word "he" in the second sentence to "The governor."

DELEGATE: Second the motion.

CHAIRMAN: Is there any further discussion? All those in favor of the motion to amend will say "aye." All those opposed, "no." The amendment is carried.

ANTHONY: Has Section 5 been adopted -- agreed upon by the Convention?

CHAIRMAN: It has.

ANTHONY: I was not here when it was --

CHAIRMAN: Did you say Section 5 or paragraph five?

ANTHONY: Section 5.

CHAIRMAN: I believe that what would be properly before the house is the adoption of paragraph four as amended.

ANTHONY: Am I out of order to address myself to that now, Mr. Chairman?

CHAIRMAN: Address yourself to Section 5, you mean?

ANTHONY: Yes.

CHAIRMAN: You would be unless there is a motion to reconsider.

LARSEN: I so move, Mr. Chairman.

CHAIRMAN: I would like to ask for the adoption of paragraph four, Section 10, as amended, first.

CROSSLEY: I so move. My colleague will second.

HOLROYDE: I second it.

CHAIRMAN: The adoption of paragraph four, Section 10 as amended has been moved. All those in favor say "aye." Opposed. It is carried.

Delegate Anthony is recognized.

RICHARDS: I rise to a point of order. I should think that we should close off Section 10 and tentatively adopt Section 10 before we proceed to the discussion of other sections. I move that Section 10 be tentatively adopted.

DELEGATE: I second it.

OKINO: I rise to a point of information. Wasn't Section -- wasn't paragraph one of Section 10 deferred to consider whether or not the departments shall be limited to twenty?

CHAIRMAN: I believe it was.

OKINO: Yes, I believe that was deferred.

ASHFORD: Was it not adopted with instructions to prepare something in the ordinances that would delay its absolute effectiveness for a period of four years?

CROSSLEY: That is correct.

CHAIRMAN: If that is the understanding of the committee we'll let it go that way, as I recall it. Otherwise, I'll ask the Clerk to look back. Are there any objections?

Delegate Richard's motion is in order.

RICHARDS: I now renew my motion.

HOLROYDE: If you'll add the words "as amended," I'll second the motion.

CHAIRMAN: It has been moved and seconded that Section 10 in its entirety, as amended, be adopted. All those in favor say "aye." Opposed. Carried.

ANTHONY: I wasn't here when Section 5 was voted on and I wish that somebody would make a motion for reconsideration. I've got a simple suggestion to make.

J. TRASK: I so move.

SILVA: Second.

CHAIRMAN: It has been moved and seconded that Section 5 of Proposal No. 22 be reconsidered. All those in favor say "aye." Opposed. Carried.

ANTHONY: I suggest the substitution of the word "proper" in the second line for the word "faithful." I think it carries a little different connotation. Maybe the Style Committee would feel that that was a style matter, but I think "faithful" is the appropriate word.

SILVA: Second the motion.

CHAIRMAN: It has been moved and seconded that the word "proper" in Sec -- I understand that the word "proper" is to be replaced by the word "faithful." All those in favor of the motion will say "aye." Opposed. Carried.

OHRT: I have an amendment that will add a new section to Proposal 22.

KING: Point of order.

CHAIRMAN: Will you hold it, please?

KING: If Delegate -- Mr. Chairman, if Delegate Ohrt will reserve his motion, is it proper now to adopt Section 5, as amended?

CHAIRMAN: Correct.

KING: I so move.

SAKAKIHARA: Second.

CHAIRMAN: It has been moved that Section 5, as amended, be adopted. All those in favor say "aye." Contrary minded. Carried.

OHRT: I have an amendment that will add a new section to [Committee] Proposal 22. I think it's been circularized and on all of the desks. It reads:

> Section 11. The governor shall appoint an administrative manager of state affairs whose term shall be indefinite at the pleasure of the governor. The governor may delegate any or all of his administrative powers to the administrative manager. The administrative manager shall be assisted by such aides as may be provided by law.

I move that that amendment be adopted.

SAKAKIHARA: Second it.

OHRT: Speaking to that section, I think those of us who have to administer government departments know that one of the essentials is that you have enough help around you. Now most of you are familiar with the governor's office. He sits up there in a little cubby hole, he has three or four people around him but he has about seventy-five different units that he has got to keep in touch with, and in the time he has, why it's just impossible for anyone to do that. I think that if you really want to have the Territory properly administered you have to give him the assistance.

CROSSLEY: I would like to ask Mr. Ohrt, is this creating another Bassett department?

OHRT: No, it's just to give the governor the assistants around him that he should have. I notice in the judiciary section they provided for an administrative assistant. Apparently the chief justice recognizes that he's got to have some help, and without help I don't see how the governor can run that office.

HAYES: I'd like to know what the lieutenant governor is going to do.

KAGE: May I partially answer that question? In Section 2 of [Committee] Proposal 22 it says here, "The lieutenant governor shall perform such duties as may be prescribed by law." And in our report of the committee we find that, "Because the lieutenant governor has very little to do, your committee recommends that the legislature by law allocate the usual duties of the secretary, hereinabove mentioned, to the office of lieutenant governor." And I have a report here made out by the Legislative Reference Bureau and it outlines the duties of the Secretary of Hawaii and the powers of the lieutenant governor and I see that he has quite a bit to do. Government administration as is today is not a "hit or miss" affair. The governor has to do so many things that if you would like to have him do a good job, I think it's absolutely necessary that he has an administrative assistant to coordinate all of the administrative branches of the government.

MAU: I wonder if the sponsor of the motion would agree to this amendment. "The governor may delegate any or all of his administrative powers to the lieutenant governor."

OHRT: No, I don't think that would work out.

CHAIRMAN: Delegate Anthony has asked for the floor. No? Delegate Kage.

KAGE: If we were to go back to Section 2 of Committee Proposal No. 22, we deleted that particular section that says "or as may be delegated to him by the governor."

J. TRASK: I am just wondering whether this amendment is not covered by the fourth paragraph in Section 10. It says, "The governor shall appoint, subject to the confirmation of the Senate, all officers for whose election or appointment provision is not otherwise made by this Constitution or by law." I personally believe that this is a statutory matter and I do not believe that it should be written in, as this fourth section in Section 10 should cover it. So I want to move at this time, Mr. Chairman -- no, I'll withdraw my motion.

FUKUSHIMA: I would like to ask Mr. Ohrt a question.

CHAIRMAN: Proceed.

FUKUSHIMA: If this amendment passes, would the function of the administrative manager to the governor be similar to what Mr. Bassett does for the mayor of Honolulu?

OHRT: Why, I thought that would come in, but you want to remember that the governor has a newspaper man over there at the present time. But that's not my idea of an administrative assistant. My idea of an administrative assistant is a man of the competence of say Ernest Kai who when he was over there as attorney general was doing administrative work for the governor instead of being the attorney general. That's the way it works. The governor calls in the department heads and they're brought in and taken away from their work and the governor has no one to depend on. And I think if you want to see the governor's office run properly, you better give him the help because that's one of the essentials of proper administration, that you have plenty of help.

FONG: We have already cluttered our Constitution with a lot of things, and I think that we could forego this provision in our Constitution. We have a legislature that will be able to provide for the proper help of the governor. The legislature has provided for the help of all the various departments. In other words, there are seven thousand government employees, I understand, and the legislature has provided for those employees. Now I can't see why the legislature, if the governor can prove that he needs this administrative assistance, why the legislature will not give it to him. Now the City and County mayor has shown to his supervisors that he needed an administrative assistant, and he got it. Now why shouldn't the governor be able to sell that to his legislators. I think this is purely statutory. I don't think that we should clutter our Constitution with too many of these small items.

LOPER: I'd like to speak briefly in favor of this by way of just simply asking the maker of the amendment one question. Delegate Ohrt, would you object to the change in the first line, saying "The governor may" instead of saying "The governor shall"? If you have a governor who doesn't want one, it wouldn't be unconstitutional for him to forego it.

OHRT: I would be very glad to accept that amendment. But, answering Delegate Fong, I had a great deal to do with trying to give the mayor an administrative assistant, and a public relations man is not my idea of public -- of an administrative assistant. Somebody that knows just as much about these various departments as the department head himself, or almost as much, is my idea of an administrative assistant, but public relations and all the press releases, those are very different things.

Now I don't believe that the governor should have to ask the legislature whether he can have this type of assistance. I think it's so necessary that he ought to be permitted to employ it without legislative approval. This is one little

shift in there where the governor, I think, should be separate from the legislature.

CHAIRMAN: Delegate Richards.

HEEN: Mr. Chairman, the legislature of course, could - -

CHAIRMAN: Delegate Richards was recognized, Senator.

RICHARDS: Mr. Chairman, I yield to the senator.

CHAIRMAN: Delegate Heen.

HEEN: Under this provision the legislature can nullify the provision by making no appropriation for the compensation of the administrative manager.

OHRT: I'd be willing to take that chance because it would indicate that the Convention wanted to give the governor the help that he really needs. Now if you analyze the governor's office, how many hours has he got in a week and how much night work has he got to do? How many of these extemporaneous speeches does he have to devote some time to? I think - - according to Delegate Tavares, he said that the attorney general's office spends a great deal of time writing speeches for the governor. Now there is so much miscellaneous work going through the governor's office and if you really want him to administer the department heads, then you must give him some help.

RICHARDS: There is one question I would like to ask the attorneys here. That is, it says here in the second sentence, "The governor may delegate any or all of his administrative powers to the administrative manager." Now as far as creating the administrative manager is concerned, I can understand my cohort from the fifth district that the legislature could create such a position, but will the legislature have power to permit the governor to delegate any and all of his administrative powers witout having something in the Constitution about it? I raise that question.

ROBERTS: I'd like to - - May I have order, Mr. Chairman?

CHAIRMAN: Will the committee please come to order? Is that satisfactory?

ROBERTS: Thank you, Mr. Chairman.

I'd like to speak in favor of the principles suggested by the amendment to the section now before us. We adopted in our article on the judiciary that there was need for administrative assistance and administrative help. It seems to me that there is as much urgency if not more for administrative assistance in the office of the governor. The fact that you may make no appropriation doesn't answer your question because you make no provision for appropriation in the section dealing with the judiciary.

I do have some objection to the delegation of power which we discussed yesterday. I think if we adopted the identical language which we used in the previous article dealing with the judiciary that we would accomplish the same purpose. I think there ought to be an administrative director similar to the one suggested before to serve at the pleasure of the governor. I will therefore move, Mr. Chairman, to amend the proposal - - amend the amendment to provide: "The governor shall appoint an administrative director to serve at his pleasure."

Now that language is identical with the language that we have already adopted in Section 8 of the article on the judiciary and I would suggest that as much urgency exists for having it here as exists in having it in the other section. I would therefore move that amendment.

H. RICE: I second the motion of Delegate Roberts. In the Army and the Navy you have a chief of staff, you need one in government just as much. I think this carries on the purpose of the delegate who made - - who proposed this amendment. I don't believe the governor should delegate his powers but he should have a chief of staff, he should have the assistants, an assistant manager, you might say, to go around and pick up certain information that the governor should have and get it in shape for the governor, and I think that Delegate Roberts' suggestion is a good one and I say that I'll support this Section 11 as amended.

OHRT: I'll accept the amendment.

SILVA: There's a question in my mind. I think that the word "at" should be deleted and in lieu thereof insert the word "for." Rather than "at his pleasure," the words should be "for his pleasure."

ASHFORD: I will support the latest amendment, but I wish to call the attention of the delegates to the fact that there is no comparison between the chief justice and the governor. The chief justice has thrust down his throat certain necessities of administration. The great qualifications for his office are a sound judgment and good legal scholarship. Those qualifications can exist without having any administrative ability and therefore an administrator is vital.

SHIMAMURA: May I ask the chairman of the Committee on Executive Powers and Functions a question?

CHAIRMAN: You may.

SHIMAMURA: I understand that this original proposal was considered in the committee and rejected. Is that true?

OKINO: Do you mean this amendment now offered?

SHIMAMURA: No, the original amendment offered by Delegate Ohrt. My understanding is that that was considered and rejected.

OKINO: It wasn't really rejected, but it was passed up. To be more exact, what I mean is that it was discussed but no vote was taken on it. Delegate Ohrt decided that he will furnish that to the floor by way of suggested amendment.

CHAIRMAN: Is there any other question on the amendment? The amendment before the house now is the amendment which reads, a new section, "The governor shall appoint an administrative director to serve at his pleasure."

HEEN: Shouldn't that word "shall," shouldn't it be read "may"?

CHAIRMAN: When the section was last amended, Delegate Roberts put the word "shall" back in.

ROBERTS: I used the language which is in Section 8 of the judiciary article. The language there says, "He shall appoint an administrative director to serve at his pleasure."

SAKAKIHARA: I offer further amendment. Delete all the words "administrative" in Section 11 and insert in lieu thereof, "campaign."

CHAIRMAN: Beg your pardon?

ANTHONY: I hope that the delegates don't vote for or against this motion, this amendment, having in mind what they've done with the judiciary article. That argument has been advanced but to my way of thinking there is no comparison at all, as the delegate from Molokai said. The judges are lawyers, learned in the law. They're not supposed to take care of the typewriters and the pencils and what not, and this job is supposed to take away from the judge his administrative detail and put it in the hands of an administrator who will leave the judge free to do his judicial duties.

So let's vote on this thing on its merits, let's not confuse it with the judiciary article. I don't feel seriously one way or other about it, but I don't want the two things confused.

MAU: With all due respect to my colleague from the fifth district who is sponsoring this amendment, I think that it's purely legislative. I think Delegate Anthony ought to realize that and vote accordingly. I don't see why we should clutter up the Constitution with legislative matters.

CHAIRMAN: If it's strictly not a constitutional matter, I think we should vote on it now.

LOPER: I'd like to ask Delegate Ohrt for his opinion of Delegate Roberts' amendment.

OHRT: I have accepted Delegate Roberts' amendment. And I think the approach to this -- we've had two attorneys tell us that the attorney's department or the judiciary is quite different from the governor's. I think it depends on which side of the fence you're standing on. I see the governor as being responsible for the expenditures of some sixty-six million and unless he can cover those departments himself and show some leadership, why millions can be spent or misspent. From my point of view as a taxpayer, I think the governor is probably much more important than the judges over there.

H. RICE: Isn't the trouble that too many of our governors have been lawyers?

CHAIRMAN: I believe that the conversation is getting a little out of hand. We'll call for a vote. All those in favor of the amendment will say "aye." Opposed. I think it would be sufficient if we had a standing vote. All those in favor of the amendment will please stand.

DELEGATES: Roll call.

CHAIRMAN: How many want roll call? Roll call is ordered.

KING: Point of information. May the proposed section be read again in its final form?

CHAIRMAN: As the Chair understands it, the section is: "The governor shall appoint an administrative director to to serve at his pleasure."
The Clerk will call the roll.

Ayes, 36. Noes, 14 (Anthony, Apoliona, Ashford, Cockett, Fong, Hayes, Kawahara, Lai, Nielsen, Sakai, Shimamura, St. Sure, J. Trask, Yamauchi.) Not voting, 13 (Arashiro, Dowson, Gilliland, Ihara, Kauhane, Lee, Luiz, Mizuha, Noda, Phillips, Tavares, White, Wirtz.)

CHAIRMAN: The motion is carried. The Chair will declare a short recess while we consider the latest proposal.

APOLIONA: Second the motion.

(RECESS)

CHAIRMAN: Will the Committee of the Whole please come to order?

HOLROYDE: I move for the adoption of Section 11, as amended.

WOOLAWAY: Second it.

CHAIRMAN: It's been moved and seconded that Section 11, as amended, be adopted. All those in favor please say "aye." Opposed. Carried.

CROSSLEY: This amendment that I have on my desk, is someone bringing it up?

HOLROYDE: I move the adoption of Committee Proposal 22 as amended.

FONG: I have an amendment, amendment to Committee Proposal No. 10. Add a new section to read as follows: "Treasurer. The treasurer shall be elected by the duly qualified electors of the State and shall hold office for a term of four years." I move for the adoption of the amendment.

SAKAKIHARA: Second the motion.

KING: That was an amendment to Proposal No. 10. The Committee of the Whole is still considering [Committee] Proposal No. 22.

FONG: Section 10.

CHAIRMAN: Is that an amendment to Section 10?

FONG: Oh no, this will be a -- I delete that. I want to withdraw that and add a new section to that [Committee] Proposal No. 22, reading as follows: "Treasurer: The treasurer shall be elected by the duly qualified electors of the state and shall hold office for a term of four years."

CHAIRMAN: It's been moved and seconded that we add another section. Has that amendment been passed around? Is there any discussion on that?

FONG: I'd like to state that I have consulted the report of the Legislative Holdover Committee [sic] on pages 189, 187, and 186, and have looked at the appendix to see which states appoint their treasurer and which states have their treasurer elected. I find that out of the forty-eight jurisdictions there is only one state which appoints their treasurer and that is the sovereign State of Virginia. I feel that the treasurer is the fiscal officer of the state, that he should be elected by the people and be free and independent of the chief executive.
I have heretofore propounded the theory that the attorney general and the auditor should be elected. I do not go as far as the others in trying to elect all the various officials of government. I feel that we should have a governor, a lieutenant governor, an attorney general, an auditor and a treasurer who should all be elected by the people. I do not propose to go any further than that. And I feel that the treasurer should be independent and free of the governor.

CHAIRMAN: Any further discussion of the motion? All those in favor will please say "aye." Opposed.

DELEGATES: Roll call.

CHAIRMAN: Will a division of the house be sufficient? Standing vote? Roll call was demanded. How many want roll call? It is sufficient.

KING: Point of information. I would like to ask the sponsor of the last amendment. He remarked that he felt that the governor, lieutenant governor, attorney general, auditor, and treasurer should all be elected, but the amendment only provides for the election of the treasurer. Is it the intention of the sponsor to propose other amendments after this one?

FONG: No, I have been defeated in all the rest except this one. The governor and the lieutenant governor have been provided for by --

CHAIRMAN: Delegate King, I feel any further discussion is out of order since the vote has already started. We're

going to have a roll call. The Chair did not rule on the vote taken. The Clerk will please call the roll. There was sufficient number.

Ayes, 16. Noes, 34 (Anthony, Apoliona, Castro, Cockett, Corbett, Crossley, Doi, Fukushima, Heen, Holroyde, Kage, Kanemaru, Kellerman, Lai, Larsen, Loper, Lyman, Mau, Ohrt, Okino, Porteus, C. Rice, H. Rice, Roberts, Sakai, Sakakihara, Shimamura, Silva, Smith, A. Trask, Wist, Woolaway, Yamauchi, Bryan.) Not voting, 13 (Arashiro, Dowson, Gilliland, Hayes, Ihara, Kometani, Lee, Luiz, Mizuha, Phillips, Tavares, White, Wirtz.)

CHAIRMAN: The motion is lost.

A. TRASK: I'd like to move for reconsideration of paragraph four of Section 10 which as amended upon reconsideration reads as follows: "The governor shall appoint, subject to the confirmation of the Senate, all officers for whose election or appointment provision is not otherwise made by this Constitution or by law."

MAU: Second the motion.

CHAIRMAN: It's been moved and seconded that we reconsider paragraph four—is that correct?—of Section 10.

A. TRASK: Yes, if you please.

PORTEUS: May I have some statement as to why so I can vote intelligently upon it?

A. TRASK: A provision of this type appears to be in the Federal Constitution, but I think the wording here is such that it does not state the sense of the Federal Constitution, namely, it appears to me here that the governor shall appoint without provision made by the Constitution or by law, appoint officers and so forth, only if he can induce the Senate to confirm them. Now, it seems to me that you are going to therefore expend money for officers without payment. Now I do know that the sense and the thought is that the governor shall appoint people confirmed by the Senate where there are responsibilities or duties conferred, but no provision made for their appointment. That is the sense of that particular provision, but this particular sentence, it seems to me, does not state that particular sense.

J. TRASK: Point of order. I should think that that would be sufficient cause to call for a vote on the reconsideration of the section.

CHAIRMAN: It may well be. All those in favor of the motion to reconsider will say "aye." Opposed. The section is open for reconsideration.

HEEN: I think there's one word there, two words there that should be deleted, "election of " - - "election or." If he's elected, he doesn't have to be appointed by the governor. "He shall appoint, subject to the confirmation of the Senate, all officers for whose election or appointment provision is not otherwise made by this Constitution or by law."

CHAIRMAN: Delegate Heen, perhaps if we ask the delegate who asked to reconsider this paragraph what his amendment is, it would help. Does the delegate have an amendment to offer?

A. TRASK: Not immediately, Mr. Chairman.

ANTHONY: Will the speaker yield for a minute, please?

A. TRASK: Yes.

ANTHONY: Mr. Trask has - - the delegate has raised a question with me during the recess and I was wondering if the delegate would not be content to leave it this way. Obviously his purpose is to make this conform to the Federal Constitution, and he has some doubt whether or not this language does it. I think that was a clear import of the section. Couldn't we get this report out and then before we vote on it, on the Committee of the Whole report, maybe we could iron out any difficulty that the delegate has with that rather than take the time to debate it at this point.

A. TRASK: Yes, with that proviso I would second the motion, and let it go at that.

CHAIRMAN: That would not be a proper motion, however.

J. TRASK: I think the proper motion would be to withdraw the motion to reconsider Section 4 - - paragraph four of Section 10. I withdraw the motion for - - I so move, Mr. Chairman, that we tentatively pass Section - - adopt Section 4 - - paragraph four of Section 10 tentatively.

CHAIRMAN: As amended?

J. TRASK: As amended.

HOLROYDE: Second the motion.

CHAIRMAN: It's been moved and seconded that we again adopt paragraph four of Section 10, as amended. All those in favor will say "aye." Opposed. Carried.

ROBERTS: Wouldn't it be sufficient if you left that thing to the Style Committee? The intent is clear. We can take care of the language on that.

CHAIRMAN: I believe that it's too late to discuss it very much further, although that is a good idea.

HOLROYDE: I move we adopt Section 10 now as amended.

CHAIRMAN: We did.

HOLROYDE: I move we adopt Committee Proposal 22 as amended.

DELEGATE: Second the motion.

CHAIRMAN: It has been moved and seconded that we adopt Committee Proposal No. 22, as amended. All those in favor will say "aye." Opposed. Carried.

J. TRASK: I move that the committee rise and report progress and beg leave to sit again so that the chairman might be able to file his report.

APOLIONA: I second the motion.

CHAIRMAN: It has been moved and seconded that we rise, report progress and beg leave to sit again.

KING: Will the sponsor of that motion authorize the chairman to file his written report at that time?

CHAIRMAN: I believe he did.
All those in favor please say "aye." Opposed. Carried.

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CHAIRMAN: Will the Committee of the Whole please come to order.

ROBERTS: Would it be in order to obtain a five minute recess so that we can read this report?

CHAIRMAN: I think so.

ROBERTS: May I so move?

LAI: Second the motion.

CHAIRMAN: You may. If there's no objection, a five minute recess is declared.

(RECESS)

A. TRASK: With reference to second paragraph of Section 1 of the Committee of the Whole Report No. 17, on page 2 - -

CHAIRMAN: Would you like to hold that for just a second, please.

A. TRASK: I will.

CHAIRMAN: The business before the committee this morning is the consideration of Committee of the Whole Report No. 17 with attached recommendations to the Convention, and I think in order to properly discuss this, it would be in order that we have a motion for the adoption of the report.

OHRT: I move that Committee of the Whole Report No. 17 be adopted.

HOLROYDE: I'll second the motion.

CHAIRMAN: It's been moved and seconded that we adopt Committee of the Whole Report No. 17.

A. TRASK: It's an excellent report. I just want to call to the attention of the Convention, however, that on page 2, paragraph two on Committee of the Whole Report No. 17, the third sentence with respect to the election of the governor is this expression, "In case of a tie vote or a contested election, the selection of governor shall be determined in such manner as may be provided by law." I have taken up this matter with Judge Shimamura of the Ordinance and Continuity of Laws Committee and with Delegate Heen. The time that the State legislature will be elected will be the same election that the governor and other officers will be elected. In case there is a tie vote for the governor or a contested election, the contested election may be provided for by the Supreme Court, but with reference to a tie vote, the legislature would have at that time not made provisions in law. So I think the report should suggest that - - or the report have a notation that the continuity of laws section will make adequate provision for this tie vote. Now, H. R. 49 does not provide for any such contingency and so I would move that the report in that respect be amended and I will - -

CHAIRMAN: Delegate Trask, are you referring to a tie vote in case of the first election of the first governor?

A. TRASK: That is correct, and so in the discussion of Section 2, paragraph two, that consideration should be included by a sentence perhaps in the last paragraph thereof before the comment made on Section 1, of paragraph - - third paragraph.

CHAIRMAN: I ask the delegate to refer to page 3 in the middle of the page where it starts, "It was also agreed that provisions for the election of the first governor who would probably be elected at a special election would be made in the section on Ordinances and Continuity of Law." Wouldn't that cover the tie vote on the first governor?

A. TRASK: Not adequately, with the consideration in mind perhaps with respect to my other statement.

HEEN: I don't think it's necessary to amend the written report of this committee. What might be done is this. There might be a motion that it's the sense of this committee that adequate provision be made in the article on continuity of laws to take care of a tie vote.

A. TRASK: I would so move.

CHAIRMAN: Is there any second to that motion?

TAVARES: I don't want to second the motion because I don't think it's necessary at all. We have a law now which, unless we repeal it in the Constitution, it will be in effect when the Constitution goes into effect. Section 173 of our Revised Laws which says, "In case of the failure of an election by reason of the equality of votes between two or more candidates, the ties shall forthwith be decided by lot under the supervision of the Secretary of the Territory" and so forth. Now, whoever takes over the Secretary's duties will have to - - will decide the tie in that manner. There is a law providing for it which will be in effect.

CHAIRMAN: Will you hold just a minute, Delegate Trask?

DOI: On the discussion of the same question raised by Delegate Trask, it says on page 3, Committee of the Whole Report No. 17, that, "It was also agreed that provisions for the election of the first governor, who would probably be elected at a special election, would be made in the section on ordinances and continuity of law," and I think that could be extended to include ties and contested elections. So I don't think we need to amend nor to make any motion to carry over suggestions to the Committee on Continuity and Ordinances.

SHIMAMURA: At the time Delegate Trask discussed the matter with me, I asked the query whether or not there was not a section in present Revised Laws providing for tie votes, and now I discover in our Revised Laws the section adverted to by Delegate Tavares. Therefore I think it's covered since under our sections on continuity of laws with Section 1 thereunder, or Section 2 rather, provides for the continuity of all existing laws of the Territory.

A. TRASK: I wondered whether or not probably it could be said that this territorial statute contemplated the office of governor. Now, certainly we've never had any elected governor and a person may very well contest the fact if he is defeated. It's a real problem and I'd like to pose the question because I do not believe, as I told Delegate Shimamura, that this law, this territorial law did not contemplate such an office as governor.

KING: I feel that either the Revised Laws would hold or the chairman of the Committee on Ordinances and Continuity of Law can accept this discussion as a mandate to amplify the provision that he's going to bring in in accordance with the paragraph on page 3. In other words, it doesn't say explicitly that he shall provide in such a proposal for a tie, but it does say it shall provide for a special election of the governor prior to the final adoption of the Constitution. I think that Delegate Shimamura should take this discussion as instruction to include in there some provision regarding a tie vote if he doesn't want to let the Revised Laws stand, or his committee doesn't want to.

CHAIRMAN: Is that sufficient, Delegate Trask? Any further discussion on this report?

ASHFORD: On page 6 just about the middle where it refers to "increases or decreases based upon reasonable classifications so as not to constitute a discrimination against the governor or lieutenant governor as members of the applicable class," I think what was intended by the Committee of the Whole was that it should not constitute a discrimination for or against, and I, therefore, move for the insertion of the words "for or" between "discrimination" and "against."

TAVARES: I think the word "against" is broad enough to mean for or against. There's certainly no intention there of making a distinction. I think that's going a little far. A discrimination for is a discrimination against in some ways. I think that the intent is clear there. What it means is that when a law is reasonably drawn which places the governor in a reasonable classification with other members of the same class, and there is a uniform cut for the members of that class and in a proper classification, that the law will not be invalidated; and the same way with an increase, if it's a uniformity increase with relation to the same class. I think that is clear enough from the context. I have no objections to adding a few words but I really think that the intent is clear.

CHAIRMAN: There was no second to the motion to amend.

NIELSEN: I'll second the motion.

CHAIRMAN: It's been moved and seconded that we add the words "for or" between the word "discrimination" and the word "against" in the middle of page 6 so that the intent would read "so as not to constitute a discrimination for or against the governor or lieutenant governor as members of the applicable class." Is there any further discussion?

AKAU: Isn't that really a question of style? Couldn't we leave that to the Style Committee?

CHAIRMAN: I think you'll find, Delegate Akau, that the Committee on Style does not deal with the writings of the report, just with the articles that are for inclusion into the Constitution.

AKAU: Well, discriminate means to be for or against a particular issue, it seems to me. It's very obvious that we don't need it.

ANTHONY: There's a good deal in what Delegate Akau said. The Style Committee did take that very language, "equal measure," concluded that those words were not workable, and in the article on judiciary changed it. I don't think that it's necessary for us to amend this report. If you will examine what we did with the article on the judiciary, you will find that the words "apply in equal measure" were deleted and other language was used. So I don't think it's necessary to amend this report. The intent is perfectly clear.

ASHFORD: It is my view that the intent is not perfectly clear when the committee report construes it, and the committee report construes it as "discrimination against" only.

CHAIRMAN: Is there any further discussion?

ROBERTS: I have a question on this same paragraph, on compensation.

CHAIRMAN: Delegate Roberts, does it pertain to this discrimination for or against the governor?

ROBERTS: No, it does not.

CHAIRMAN: Well, let's withhold it, and let's get a vote on that. All those in favor of the motion to include the words "for or" will say "aye." Opposed. Carried. The words will be included.

ROBERTS: The language of the section as we adopted it in the Committee of the Whole previously reads that, "In no event shall the compensation be less than $18,000 or $12,000 respectively," and then three lines later it says "unless by law" it can be changed. I have a little difficulty there with the meaning. If it is to be a minimum fixed and in no event to be less than, then it seems to me that "unless by law" changes that basic thing in the section.

CHAIRMAN: I think that -- Delegate Roberts, may I interrupt you for a moment. I think it refers to the words, "and shall not be increased or decreased for the term unless by law." In other words, the minimum of $18,000. The salary might be set at 20,000 and then it might be increased or decreased from 20,000, but only by law applying equally if it's done within the term.

ROBERTS: Then you cannot change 18,000 and 12,000 in any event. Is that correct?

CHAIRMAN: No, that is the minimum.

ANTHONY: That is not -- that is obviously not correct. The purpose of this was to permit the governor to suffer any general cut that every other officer including judicial officers would take. The language is perfectly clear to my way of thinking.

ROBERTS: Well, I had the same recollection that this was to be a minimum fixed and then permitted to change depending upon the economic conditions in the community. If they happen to be going up or down, there would be general adjustments made for the salaries of the governor and lieutenant governor, but this language says that "in no event shall it be less than." If it says, "in no event," then you can't provide an event under which it does change. Am I wrong in the construction?

CHAIRMAN: Personally I am inclined to agree with you.

TAVARES: I think that there is reason for the delegate's feeling of doubt about this, the meaning of this sentence, but I think the history of it would make it clear that, at least as I interpret it, what it meant was that the initial salary fixed by the legislature must in no event be less than these particular amounts. However, if later there is a uniform pay cut or uniform pay increase applicable to the same class, then such pay cut or pay increase may validly be granted during the term. I think when you have in the same sentence as the words "in no event" the exception, "unless," that they do qualify the "in no event." That's the way I read it. It's a little bit awkward but I think that's what it means.

CHAIRMAN: Would it be satisfactory to Delegate Roberts if we let the Style Committee ponder that question as long as the intent is clear?

ROBERTS: I was thinking of the Style Committee because I sit there, too, and I'd like to get the expression of feeling from the Committee of the Whole. My feeling would be that the words "in no event" should be eliminated and to say that the legislature shall set the salary at 18,000 and 12,000 unless by law applying otherwise.

CHAIRMAN: I think that was the intent of the Committee of the Whole when it first came up.

ASHFORD: I think it should be made clear that it is the intent. I concur with Mr. Roberts. I think otherwise our Committee on Style might have to refer back to get the expression of the committee.

CROSSLEY: It was my understanding that these figures would apply as minimum figures, and that they could never be cut by law except where there was a general cut in all of the salaries of the territorial government. It could be raised and lowered above this figure at the will of the legislature in a term not to apply in the term of the office, however. In other words you could go to 25,000, back to 20,000

or play at any figure above these minimums, but these minimums could never be cut unless there was a general cut through all territorial salaries. Then it would apply in equal measure.

ROBERTS: May I suggest that we eliminate the difficulty by deleting the words "in no event" and adding the word "not" after "shall," so that the sentence would read: "but shall not be less than 18,000 unless by law" etc., and leave out the words "in no event."

APOLIONA: I second that motion.

CROSSLEY: If you do that, what's to prevent, then, the legislature from lowering this salary by itself.

ROBERTS: The rest of the paragraph says, "unless by law applying in equal measure," so they cannot change it up or down unless it's applied generally.

ANTHONY: I'd like to speak to this motion. The Style Committee had difficulty with that language, "equal measure," and I'm suggesting to Delegate Roberts that this particular section can be handled the same way it was done in the Style Committee and in Section 3 in the article on the judiciary. This is what is now before the delegation referring to the judges' salaries. "They shall receive for their services such compensation as may be provided by law which shall not be diminished during their respective terms of office unless by general law applying to all salaried officers of the State." Now if that's the sense of the body, as I understand it is, the Style Committee can dove-tail the provision that we've already adopted in the judiciary article and correct the difficulty that Delegate Roberts has—and I can see there is some difficulty with it—and make the two sections -- coordinate the two sections. I think the intent is perfectly clear that the governor shall accept any general cut that anybody else will take.

CHAIRMAN: Delegate Anthony, one question. Would that clear up the problem of the minimum being stated, which was not stated in the other article?

ANTHONY: That could be handled. You could still state the minimum and still have the same proviso for the diminution of the minimum in the event of a general decrease as a result of change in economic conditions, applicable, of course, only in the event a general law applying to all State officers is passed.

ROBERTS: That suggestion is acceptable if it is the sense of this committee. We do not have to make any amendments to the section, and I will withdraw my motion.

CHAIRMAN: Your motion has been withdrawn. Any further discussion on this point?

ROBERTS: I'd like, however, to move that it be the sense of this committee that the expressions that we have placed on the floor would be applicable to the Committee on Style.

CHAIRMAN: You may so move.

OKINO: I second the motion.

CHAIRMAN: It's been moved and seconded that the sentiment of the committee as presented here this morning be put in the record for the use of the Style Committee. Is that the intent, Delegate Roberts? All those in favor of that motion, please say "aye." Opposed. Carried.

Are there any other discussions? If not, the Chair will put the question.

TAVARES: I have two amendments which I would like to propose for the consideration of the Convention. I must apologize to the members. I hope someone will second each one for discussion. I was unfortunately absent the afternoon when there was further discussion on these sections, and I did not bring them to the attention of the Convention. I think they're important.

Taking up the first one, the proposed amendment to Section 8 of Committee Proposal No. 22, RD 1, I move to add at the end of the section the following sentence: "The legislature may provide by general law for granting commutations and pardons by the governor before conviction and for the granting of reprieves, commutations and pardons for impeachment and for the restoration by order of the governor of civil rights lost by reason of conviction of offenses by jurisdiction other than this state."

Mr. Chairman, I'm sorry, in my haste I left the word "commutations" in the second line of my suggestion. I think it has no place. May I reread that again? My amendment is that we insert the sentence "The legislature may provide by general law for granting"—and delete from my amendment the words "commutation and,"—"for granting pardons" and so forth.

WOOLAWAY: I will second the motion.

TAVARES: The reason for my motion is this. The Convention decided not to delete the words "after conviction." I still feel that the time may come when during the stress of heavy investigations or otherwise, the legislature may feel it desirable to give the governor some power to pardon before conviction in order to assist in investigations and induce persons to testify.

Secondly, I think that impeachment should not be subject to the untrammeled power of the governor. At one of my suggestions, I believe the legislature deleted -- I mean this Convention deleted the exception on impeachment and, of course, that would allow the governor to nullify an impeachment. I think that ought to be taken care of in this way, which by implication at least—unless we amend another section or another provision—show that commutations are subject to regulation by the legislature and they should prescribe conditions under which a pardon from a -- rather, I'm sorry, impeachment, rather, would be subject to pardon by the governor only under conditions laid down by the legislature.

Finally there is a hiatus in this pardoning section which is also very serious, I think, at least for the individuals concerned. We have had situations in which a man has been convicted in a jurisdiction other than the state of a felony, and he comes here and wants to vote. Now I raised the question, and it was not decided during the argument, and I have decisions here to show that the states, that is the authorities are divided on whether a disqualification to vote and hold office for felony applies only to felonies under convictions by the courts of the state, or whether it includes felonies, convictions by other jurisdictions. They are not evenly divided. I think there are -- in one situation there are two decisions one way, and one decision the other; but it is an open question and there is a conflict on whether that applies to foreign convictions. Now I believe it should apply to foreign convictions, and this will make it clear by implication that it does. I don't see why a man convicted of murder in the Federal Court here or in the State of California should have a greater right to vote here than a man convicted of murder in our own courts. And, therefore, I think we should make it clear that it applies to convictions in all jurisdictions.

Secondly, however, if it does, does the governor's pardoning power apply to those foreign convictions? Obviously, we cannot go into that foreign jurisdiction and give a pardon

under the laws of that jurisdiction, and so there is another conflict of authority on that, or rather it's rather uncertain. I think there is only one decision on the point, directly in point, which says the governor does have the power to pardon against foreign offenses. I think that's very far-fetched and I don't think we should assume that power, but we should have the power to grant restoration of civil rights notwithstanding such convictions in foreign jurisdictions, and my amendment will take care of that in accordance with law. The legislature will have prescribed the conditions under which the governor, presumably after a hearing before a board or after recommendation by the Parole Board or some other investigation, that the legislature may provide that the governor may issue an order restoring civil rights.

Now that's important for a number of reasons. For one thing, our laws are not always the same as laws of other jurisdictions, and what we call a felony is sometimes -- or rather what we call a misdemeanor here is sometimes a felony in another jurisdiction. Some jurisdictions have very barbarous penalties for very slight offenses and, therefore, if a man is convicted of that offense in another jurisdiction our governor ought to be able to restore him to civil rights if it wasn't a serious offense. It would be a misdemeanor under our laws.

The other situation, if a man is convicted in a jurisdiction that doesn't have due process of law, like some of these Iron Curtain countries, we might feel that he was unjustly convicted, but to be on the safe side he should be disqualified and then restored to his civil rights in a regular process by order of the governor after a hearing to determine whether he was given due process and so forth.

Finally, there's another situation where a country has convicted a man, perhaps properly, of a felony. The country has now been overrun and taken over by another country and nobody is in position to grant a pardon from that offense, so our governor could then restore civil rights. I think my amendment is necessary.

ANTHONY: Delegate Tavares has spoken about three very distinct things. Number one, the power of the governor to give some person his blessing before conviction. That amendment I am against. We don't want the governor going around -- A man has committed a crime, he has not been convicted. We don't want any chief executive going around and saying, "Well, Joe, it's all right with me. Here's your pardon even though you haven't -- no case has been brought against you, even though you have not been convicted." That was debated fully on the floor of this house and I am against that amendment.

The other, the second question that he poses is whether or not conviction in a foreign jurisdiction would take away a person's civil rights. By an appropriate statement in our Committee of the Whole report, we can construe this language to include that. Therefore, I think that amendment is unnecessary.

The third suggestion that he makes is that he gives the governor the power to pardon in cases of impeachment. That, I think, is simply outrageous. Here if the legislature should impeach an officer or a judge, then the governor could turn around and say, "What the legislature has done is a lot of hot air. I am going to undo it." I'm against that. Now if there is any doubt as to whether or not the governor can pardon in cases of impeachment or removal of officers by the state legislature, certainly we ought to go back to the words of the Federal Constitution and insert appropriate language in Section 8 providing an exception, "except in cases of impeachment."

CHAIRMAN: Delegate Anthony, one question. Would your remarks be applicable in view of the words, "provide by general law," in the first line?

ANTHONY: They certainly would. We don't want the legislature to provide by general law. There are three distinct things that we're talking about. We don't want the legislature to provide by general law that a man can commit a crime, not be tried, not charged, and pardoned by some benign friendly executive. I'm against that. If a man commits a crime, he ought to stand trial in the criminal courts and let justice take its course. After conviction, if the governor wants to pardon him, that's the responsibility of the governor; but this idea of having by lettres de cachet some secret blessing given to a criminal whose offense has not been made public I am against.

Now as to impeachment, I don't think we should have any statute that would authorize the chief executive, in cases of impeachment, to remove the effects of the impeachment.

TAVARES: I am a little surprised at the concern expressed that the governor might violate his authority in the case of pardoning before offenses were -- before conviction, and apparently no worry at all about 999,999 cases out of a million when he pardons after conviction. If the governor is so low, if he is so poor in judgment that he would violate his discretion in pardoning before conviction, why do we trust him with the 999,999 other cases of after conviction? If he can be bought in the one case out of a million maybe, or one case out of a hundred thousand before conviction, he can certainly be bought after conviction too. So why the distinction? Why trust the governor with so much power for pardons after conviction and be so afraid to trust him with a few cases before conviction? That's number one, Mr. Chairman, and I think that answers the argument.

Number two. I wonder where the last delegate -- the delegate who last spoke was when we removed the exception for commutations [sic] in this Convention. I mentioned the fact that unless we did what other constitutions did and allowed for some kind of restoration of civil rights after impeachment, the result would be that an impeachment above all other crimes would be the kind of a case where a man never got any commutation or never got any pardon, and so unless we provided for it by special provision that we ought to have it left out. Now it was decided to leave it out. I am now coming back to tie it up a little bit more and say, but the legislature is to provide by law for the conditions under which impeachment shall be granted. Now, don't you think the legislature is to be trusted under general law not to give the governor too much leeway when they have acted? I think that they can be trusted.

I think the other, the last point I suggest has been admitted to be well taken, so that evidently at least two of my points are well taken. Either we ought to put in the exception about impeachment and then provide a method of restoring civil rights after a reasonable time and under reasonable condition or we ought to leave my amendment here and let the legislature take care of it.

MAU: I say this smiling so that the movant won't take offense at what I am calling attention to. Many times it's been said on the floor that when a certain issue has been decided that it would not be renewed. I think when we took up Section 8 before on the granting of pardons before convictions, that issue was lost and the Convention decided to give the pardoning power only after conviction.

Second, the movant has spoken the second time. The rule is that he should close the debate. Although I won't raise

the question, I'm sure that he would want to talk again on the subject.

Now on the second point he raises in his amendment, if it is limited to political refugees of foreign countries, and I took it to mean that because he had that in mind in civil rights, I am in hearty accord there. However, I think that Delegate Anthony is correct. Generally the constitutional provisions read as they are in Section 8 and I don't believe there are any provisions calling for pardon for convictions in foreign jurisdictions, particularly foreign countries. So that if the committee report would cover that phase on restoration of civil rights so far as political refugees are concerned from foreign countries, I think it would cover the point.

CHAIRMAN: Is there any further discussion?

PHILLIPS: In regard to the first point that Delegate Anthony brought up, I address the Convention rather timorously because I have a feeling here that this "before conviction," I can't see how you could pardon an individual for something he hasn't done, and I assume that in the American court he hasn't done anything until he's been convicted, or at least that's what I thought. So I thought that if it was the intent of Delegate Tavares to remove charges from an individual who is being arraigned or has been indicted, then that would be a different thing entirely, and I would suggest and I would wish he would answer why he wouldn't change it to have the power to remove charges, or some similar wording. Not that I'm encouraging him to do this, but I mean in order to understand the full intent of "before conviction," which has a hidden meaning for we laymen. I might further say that if he did such a thing, or if such a thing was voted on, that it would be, to my knowledge, the first time in American history that they ever had anything like that. It's the power of the governor traditionally to pardon after conviction, but before an individual has done anything it's almost impossible for the governor to do anything about it.

CHAIRMAN: I might say, Delegate Roberts, that this -- I mean Delegate Phillips, pardon to both gentlemen—that this subject was covered quite well in debate. However, it happened that Delegate Tavares was absent on that date unavoidably and was unable to—I assume you were too, Delegate Phillips—to make himself known at that time.

ROBERTS: I'd like to speak in opposition to this amendment. In the first place this was rather fully, I think, and carefully discussed on the floor of the Committee of the Whole and, as I recall, on the section dealing with "before conviction" and "after conviction" Mr. Tavares took part in the debate. It seems to me that the language that we adopted in Section 8, which left the words "after conviction" in there, was perfectly proper and perfectly sound and ought not to be removed.

On the second point, on offenses except treason and cases of impeachment, that was discussed on the floor and we deleted, as I recall, that language on the ground that we wanted to provide broader powers for the governor. In our report of the Committee of the Whole it clearly states that under its general grant of legislative powers, the legislature can enact general laws providing for immunity from prosecution where persons are compelled to testify under certain circumstances. So it seems to me that we have taken care of that problem and taken care of it adequately.

On the question of political refugees, I think a general statement in the Committee of Whole report as to our intent would cover that. I believe Section 8 as we adopted it previously ought to stand as it is.

ANTHONY: Delegate Tavares has said, "Why do we trust the governor to pardon after conviction and we don't want him to go around spreading around immunity prior to conviction?" The answer is perfectly simple. After conviction we have the notoriety of the press, a free press, and no governor would dare to exercise his pardoning powers after conviction unless he could give a suitable accounting to the people. However, if you're going to let him do it in the secrecy of his office without any publicity, without any notice to the press, before any suit has been filed, you may get a Mayor Hague in office and he may grant these immunities to his henchmen. That is the complete answer to that statement.

As to the words, I agree with Delegate Roberts this has been fully debated. I would have preferred if we'd adhered to the Federal Constitutional provision and make an exception, "except in cases of impeachment." But evidently it is the will of this body that we delete that particular section. I do want to call attention to this fact, that the judgment in cases of impeachment is very different than judgment in cases of a felony. The judgment in cases of impeachment extends only to the holding of office, present or future, any office of trust or profit under the State or the United States. In other words, it has nothing to do with the right to vote. An officer that has been impeached can still vote, his civil rights are not taken away from him, he simply may not hold office in the future. So I would favor a reinsertion of the words "except in cases of impeachment."

CHAIRMAN: Delegate Ashford, do you wish to speak? Is there any further discussion?

TAVARES: It's been mentioned that I have spoken twice. I wonder how many times that rule has been applied during this Convention. Since I am the proponent on this I am going to, unless further objection is made, assume that I will get the same courtesy that has been extended to other proponents.

In the first place, the last speaker says that there will be no notoriety. That is the very purpose of saying, "The legislature shall provide." The legislature can and should provide that when the governor does such a thing, some provision be made for reporting to the legislature or otherwise providing notoriety.

Now in this business of granting pardon before conviction, some members don't seem to realize the President of the United States has had that power for 150 odd years and the only case I've been told about where it is alleged he abused it was the Aaron Burr case, and I am not certain that all authorities agree that Aaron Burr was improperly tried. Only one instance out of 150 years isn't such bad abuse.

Secondly, the governor has had that power for 50 years. We've heard no instances of abuse by him. Now here's what can happen among other things. You have a conspiracy, perhaps of a lot of criminals, and you have one fellow willing to talk but if he's got a good lawyer he says, "Now look, unless I'm protected, I'm not going to talk." Well, the prosecuting attorney says, "I won't prosecute you." Well, if his attorney is good and tough he'll say, "Well, look here now, that's not binding on your successor or either on you. What guarantee have we got that this man will be protected if he testifies against his confederates?" So unless you can give him a pardon, he can't be made to testify and he probably won't. He'll claim his privilege against self-incrimination against all the other criminals. There is a reason for that. It can be abused but so can the pardoning power under every other situation be abused and so has it been abused.

Now as to the statement that I was here part of the argument. That is true, Mr. Chairman, but only half true. I

was here in the morning up to 11 o'clock and I had to go to Maui. I was excused. I spoke to a number of members here and they have said that if I would move to reconsider, they would support me. I was not here to move to reconsider after lunch. That's my excuse, Mr. Chairman, not my justification.

Finally on the question of disqualification, is it proper even in impeachment to have a man forever disqualified from holding any office of profit or trust just because he's been impeached? The impeachment may be for reasons not at all reflecting on his integrity. It may be that he did something that the legislature didn't like, the kind of thing that we don't consider malum in se or even malum prohibitum, just some improper act that they didn't like, and so he is to be disqualified forever and ever from holding any office. If the Convention wants to do that, okay, but I think it's barbarous.

SHIMAMURA: May I ask the proponent of this amendment a question?

CHAIRMAN: You may address the Chair.

SHIMAMURA: In his opinion would a person who has been subjected to impeachment and convicted by the body impeaching him necessarily lose his civil rights? I'm wondering as to that, it's a question.

CHAIRMAN: Delegate Tavares, would you care to answer that?

TAVARES: Well, isn't the right to hold office one of the civil rights? If it isn't, it's the first time I have heard of it. It certainly is a civil right, the right to hold office.

ANTHONY: Mr. Chairman, that is not correct - -

CHAIRMAN: Delegate Shimamura still has the floor.

SHIMAMURA: I understand that, but I'm wondering if conviction of impeachment per se deprives a person of the right to hold office. I don't see any provision in our Constitution or anywhere else that provides for that. If I'm mistaken, I would like to be informed.

HEEN: In the legislative article, we have provision for impeachment of elected officials, impeachment charges to to be filed by the House of Representatives and the charge to be tried by the Senate. Now there is this provision in that article: "Judgment in cases of impeachment shall not extend further than through removal from office and disqualification to hold and enjoy any office of honor, trust or profit, under the State." So certain civil rights are taken away from the person convicted in impeachment to that extent that he can never hold any office of trust or honor under the State. It seems to me only the exercise of the pardoning power will restore that right to the person convicted of impeachment.

FUKUSHIMA: I believe we've gone through this on two occasions. When the Committee of the Whole first met I was the movant of the amendment and I amended the section to delete the words "after conviction." I'm in sympathy, complete sympathy with Delegate Tavares, but since that time I've polled the delegates here and apparently that will not succeed. I only want to point out the fact that we should be a little more practical and get down to work. This is certainly a fine amendment as far as I'm concerned, and I'd like to support Delegate Tavares but I know after polling the delegates here that we have no chance, like the election of judges. I'd like the Convention to be practical about this matter. Let's get down to business and vote on it.

HEEN: I would like to ask Delegate Tavares to illustrate what type of legislation would be necessary in order to carry out the intent he has in mind here of pardoning a person before he is charged.

CHAIRMAN: Delegate Tavares, would you care to answer that.

HEEN: It looks to me, it can only apply in conspiracy cases where you need the testimony of one of those involved in the conspiracy in order to get the testimony of one of them to testify against the others.

TAVARES: I don't believe it necessarily includes only conspiracy. There may be a crime committed in which, of course, conspiracy might or might not be involved, in which this person was either an accessory before the fact or an accessory after the fact and the persons could be charged either with conspiracy or with the crime itself. Ordinarily if it's murder they don't charge him with conspiracy to commit murder, they charge him with murder. I think there are a number of other instances where you can get a lesser crook to testify about the other - - the bigger crooks in a whole crime syndicate, and have him expose a great deal of the criminality there, by giving him some immunity.

Now, my idea of legislation would be this. A law could be passed stating that before the governor grants a pardon before conviction, there must be a report by the prosecuting attorney to the attorney general, and an investigation by the attorney general, and a recommendation to the governor for that matter and that such report and recommendations and the governor's action must be reported at the next succeeding legislature, or something like that to the legislature. I believe that would insure proper action and proper restrictions on the exercise of that power. Or they could provide that the parole board or some other board set up must first approve it as reasonably necessary under the circumstances before the governor could grant a pardon. The legislature could lay down all of those conditions and I think they would be your safeguard.

ANTHONY: I'd like to ask the delegate a question also.

CHAIRMAN: Delegate Anthony, just a moment please, if you will.

The Chair has been pondering the question of whether this entire discussion is not out of order. Actually any amendments to the committee report would be proper. This is an amendment to the committee proposal which I think would require a reconsideration before we could actually talk on it. The Chair has been in error in allowing the debate to continue this long. I believe unless there is some appeal to that ruling - -

ANTHONY: For purposes of discussion, I'll move to reconsider that section.

TAVARES: I'll second the motion.

CHAIRMAN: It has been moved and seconded that we reconsider Section 8 of the committee proposal, Redraft No. 1. All those in favor say "aye." Opposed. The ayes have it.

ANTHONY: I'd like to ask the delegate at what stage in this immunity proceedings prior to conviction would the public press know that the governor is about to pardon Jelly Smith for his connection with the underworld. Just at what stage?

TAVARES: That question is as broad as the power of the legislature. At whatever stage the legislature choose to set it, that's my answer.

ANTHONY: That answer, of course, shows the inherent weakness of the amendment. Now, either Jelly Smith is going to have his pardon in his pocket or he's not going to talk. Now at what stage of the proceeding is the press going to have access to the extraordinary power of the governor to give him that thing so he can stick it in his pocket? Is it before he gets it or after he gets it? Obviously if it's before he gets it, he's not going to talk. If it's after he gets it, then all the damage has been done.

KING: Well, all I was going to say is I think the two points of view have been well explained, and the committee is ready to vote. I suggest that the question be put.

CHAIRMAN: The question before the house is the amendment to Section 8 proposed by Delegate Tavares. All those in favor of the amendment will say "aye." Opposed. The Chair is in doubt and will call for a standing vote. All those in favor will please rise. All those opposed. The ayes have it by one vote.

The motion is in order for the adoption of Section 8 as amended.

HAYES: I don't know too much about these legal points that have been argued on the floor this morning, but I feel that the governor should not have that privilege of doing the things that were expressed by Governor Anthony -- I mean—I first called him Savage Anthony, now I give him a title of Governor Anthony—Delegate Anthony, and I think the points that he pointed out are most dangerous for a governor to have. That's my own expression and it's my own feeling on the matter, and therefore, I shall vote against it.

CHAIRMAN: The vote as far as that question is concerned has actually been taken.

CROSSLEY: I now move that Section 8 as amended be adopted.

TAVARES: I second that motion.

ROBERTS: I would like to speak in opposition to that.

CHAIRMAN: Delegate Roberts, in speaking in opposition to this, you would infer that you have no Section 8. Is that correct?

ROBERTS: Beg your pardon?

CHAIRMAN: The amendment has been adopted.

ROBERTS: That's right. I speak in opposition to adopting the motion as amended.

CHAIRMAN: That would mean that we would have no Section 8 when we finish. Is that correct?

ROBERTS: Or we then move for another section. It seems to me that this is a problem of quite vital concern, a problem that was given very serious and very careful thought by the entire group. Coming back when we are not fresh on one problem, after we had considered the entire article in its context, to take the problem in and submit an amendment and to get it through, to me does not show good sense and careful consideration. I believe that the words "before conviction" were fully and very adequately discussed before, and care taken by the entire group, and I believe we had a full vote at that time with a very few members absent. The entire delegation is not present here this morning. I would therefore suggest that this section be deleted and a new section substituted for it. I will therefore vote against the amendment.

ANTHONY: I think there is a good deal in what Delegate Roberts said. I accordingly move to defer action on this section until after the discussion is had in connection with the legislative powers and functions.

PHILLIPS: I second the motion.

CHAIRMAN: It's been moved and seconded that we defer. I'll allow a discussion only on the motion to defer.

KING: I rise to speak against the motion to defer. As a matter of fact, there are very few absentees here. We have a very good attendance. There's no excuse for deferring action on this section, and if Delegate Roberts' motion is carried, then it would be in order to adopt another Section 8. We should get along with our business and report out the proposal on executive powers this forenoon promptly, so we can take up the next order of business. So I am opposed to the action to -- the motion to defer.

CROSSLEY: I'd like to speak against the action to defer, and also I'd like to say that I take exception to the remarks --

ANTHONY: I'll withdraw the motion.

FUKUSHIMA: I'd like to correct Delegate Roberts' statement that this thing was gone into very thoroughly. If you will remember, after I made the amendment the debate was only for about twenty minutes participated in only by Arthur Trask, Delegate Trask, and Delegate Tavares. It was not, as Delegate Roberts pointed out, that this was adequately debated when the thing was fresh in the delegates' minds. I don't believe half of the delegates knew that there was such a thing as "pardon before conviction" and the thing, the records will bear me out that the debate was not more than twenty minutes, participated by only three or four delegates.

KING: I'd like to speak against the motion to strike out [Section] 8. The amendment we adopted says, "The legislature may provide by general law," and then it goes on. Now, if the legislature doesn't do it, then nothing we've done today will give the governor any more power. If the legislature does grant it, it will be because the legislature after quite full consideration has considered it necessary.

On the last feature of this particular amendment, the restoration of civil rights "lost by a reason of conviction of offenses by jurisdiction other than this state," seems to be well in order, and there doesn't seem to be too much objection to that. So I'm opposed to Delegate Roberts' amendment. I feel the action of the Committee of the Whole in adopting Delegate Tavares' amendment is quite in order, and does not expose the future State of Hawaii to any unusual danger.

CHAIRMAN: The Chair would like to question Delegate Roberts. Did you make a motion that this section be stricken, or did you threaten to make that motion?

ROBERTS: Mr. Chairman, I don't make any threats; there's no basis for making threats before this group. I merely said that if the amendment as proposed were not adopted there would be, as you pointed out, no Section 8. I then would move for the substitution of language for Section 8.

CHAIRMAN: The motion before the house actually is adoption of Section 8 as amended, that's what I wanted to clear up. I want -- didn't want to accuse you of threatening.

Roll call has been asked. How many in favor of roll call? Sufficient. Those voting aye will be in favor of the adoption as amended. Those voting no will not be in favor of this section. The Clerk will please call the roll.

AKAU: Mr. Chairman, excuse me, I thought we were voting on deferring.

CHAIRMAN: The motion to defer was withdrawn.

AKAU: Oh, will you please repeat now then?

CHAIRMAN: The motion before the house is the adoption of Section 8 of Committee Proposal No. 22, RD 1, as amended. The amendment was adopted. Now the motion is the approval as amended. The Clerk will please call the roll.

Ayes, 36. Noes, 23 (Akau, Anthony, Arashiro, Ashford, Corbett, Gilliland, Hayes, Ihara, Kage, Kawahara, Kometani, Luiz, Mau, Mizuha, Nielsen, Phillips, H. Rice, Roberts, Shimamura, St. Sure, Wirtz, Yamamoto, Yamauchi). Not voting, 4 (Kawakami, Lee, Sakai, White).

CHAIRMAN: Section 8, as amended has been approved.

TAVARES: I believe -- I may be out of order. I don't know whether -- I haven't read the rules as to whether, since I wasn't present when Section 10 was voted on I believe, I can move for the reconsideration, but I would like to ask some person who voted for that section to move a reconsideration because I think a very important situation should be covered.

MAU: I move that Section 10 be reconsidered.

SAKAKIHARA: I second it.

CHAIRMAN: It's been moved and seconded that Section 10 be reconsidered. Delegate Tavares, you may speak. All those in favor, please say "aye." Opposed.

TAVARES: I move to amend the fourth paragraph of Section 10, RD 1, by adding thereto at the end the following sentence, "The legislature may provide by law for the suspension or removal for cause by the governor of any officer for whose removal the consent of the Senate is required by this Constitution." May I have a second to that so I can speak on it.

SAKAKIHARA: Second it.

CHAIRMAN: It's been seconded.

TAVARES: I'm not bringing this up for delay. I really feel there's a situation that needs to be covered. The legislature has in the past, in spite of our Organic Act requiring consent of the governor [sic] to removal, provided that if a certain type of officer engages in political activities the governor shall remove him forthwith, and I think that there is room for such a provision. If the legislature in addition to the requirement that the Senate must consent to removal of an officer wants to give the governor the power to suspend say, or remove for causes by requiring a hearing and so forth, it seems to me the legislature ought to be given that power. I can imagine a situation where the legislature would say that if the attorney general accepts a fee, instead of waiting -- a fee for doing something that is his duty to do, instead of waiting for the Senate to convene, the governor, after hearing, shall forthwith suspend him to the next session of the Senate or remove him. Or for the legislature to say if certain types of officers engaged in political activity, the governor shall forthwith remove them, or after a hearing. It seems to me that that would not be going too far. In the Senate, which has the prerogative of consenting, if it doesn't want to give the governor that power, it can vote against the law, and thereby prevent the law from going into effect. So that it seems to me that here is a situation that isn't covered by the existing Constitution, and that gives the legislature the power to allow for those situations, special ones, where they think the governor ought to have immediate power of suspension or immediate power of removal for cause.

ANTHONY: We had a long debate about a week ago on whether or not we should concentrate all powers of the State in the governor.

CHAIRMAN: That was two weeks ago, I believe.

ANTHONY: Yes. It's not very fresh in the minds of this body at the present time. It was pointed out by those of us who favored appointed officers that there was always a check upon the powers of the executive in the form of confirmation and removal by the Senate. Now, if I could have the attention of the proponent of the motion for a moment, I'd like to proceed.

CHAIRMAN: Proceed.

ANTHONY: We have just adopted a section which will deposit in the governor further power, in other words the power to reprieve in advance persons who have committed crimes. That is the will of this body. Now we are going further, and we're going to say that a governor who may possibly dominate a legislature may secure the enactment of a statute which will circumvent the very thing that we did about two weeks ago, namely, will deprive the Senate of its right of advice and consent upon removal. I think that we're going entirely too far in depositing this vast power in the governor, and I'm against the amendment.

MAU: I am of the impression that the power to appoint, with that power goes the power of removal if nothing is said. If we're correct on that premise, then I don't know why this provision need to go in at all. Particularly do I address that -- this point to those who want to see a brief Constitution, a concise Constitution.

HOLROYDE: I'd like to ask Delegate Anthony whether the governor could remove someone from office immediately after the legislature went out of session if there was just cause? That's the thing that worries me a little bit.

ANTHONY: If he's been confirmed by the Senate, it requires under the -- as we've adopted this article thus far, it will require the consent of the Senate. In other words, the Senate would have to reconvene, and we debated that, I might say, in great length. That could be done very expeditiously.

A. TRASK: I am for this amendment. It would seem to me that we are not giving the governor any more power then he already has. He has nominated a person for the office of the twenty departments. Certainly the person nominated is his friend. All we need is confirmation of the Senate, and if there is just cause for his removal, I think the governor should be empowered to do so.

TAVARES: I've been asked by another delegate to explain that the word "cause" means the legislature would prescribe or could prescribe the causes for which the governor could remove, and unless the legislature passed a law expressly stating the types of causes for which the governor could remove, or that he could remove for just cause and prescribing the situation under which he could remove, the governor could not exercise such power. I don't think it's giving to the governor all that power, and I think it's assuming quite a bit to say the governor's going to dominate fifty-one representatives and twenty-five senators. He must be a pretty powerful governor to do that. I don't think he will to that extent.

CHAIRMAN: If there's no further debate, the Chair will put the question. The motion is for the adoption of the proposal to amend Section 10. All those - -

HEEN: I rise to a point of information. Is this proposed amendment intended to be substituted for paragraph four of Section 10?

CHAIRMAN: It's an addition. Delegate Tavares, would you clarify the placement of this?

TAVARES: It is an addition. I don't know whether it's in the right place but the Style Committee could take care of that. But this Section 10 in other paragraphs provides that in the case of single cabinet officers, the governor must appoint with the advice and consent of the Senate, and it requires the advice and consent of the Senate to removal. Then there is another section that says as to officers or members of boards, provision for their removal shall be provided by law. Evidently we're not afraid to give the legislature power to tell the governor how to remove members of boards of principal departments, but we're afraid to pass a law giving them power to remove single executives.

CHAIRMAN: Does that answer your question, Delegate Heen?

HEEN: It does.

CHAIRMAN: The Chair will put a question. Delegate Arashiro, did you - -

HAYES: I have a question.

ARASHIRO: Another question I wish to ask the proposer of the amendment. What are the causes that you are thinking of giving the governor the authority to remove for? What kind of causes?

TAVARES: That's pretty hard to explain, but I can think of this. Supposing it should be found—heaven forbid and I know of no such situation—that the attorney general had received a bribe. I wouldn't even want to wait till the Senate could be convened before the governor at least could suspend him, and the same would be true of any other officer. I'd want to get him out of there just as fast as I could, at least suspend him, and the legislature could so provide.

ARASHIRO: If the governor abuses this power and has the tendency of creating a political machine, then - -

TAVARES: Then all the legislature has to do is repeal the law.

CHAIRMAN: O. K. All those in favor of the amendment, please say "aye." Opposed. The ayes have it.

CROSSLEY: I move the adoption of this Section 10, as amended.

WOOLAWAY: I second the motion.

CHAIRMAN: It's been moved and seconded that Section 10, as amended, be adopted. All those in favor say "aye." Opposed. The Chair is in doubt. All those in favor say "aye." Opposed. The ayes have it.

The motion before the committee is for the - - There is no motion before the committee.

CROSSLEY: If there are no further corrections, additions, deletions, or substitutions, I move that the Committee of the Whole Report No. 17 be adopted as amended and pass second reading and that we rise and report.

APOLIONA: I second the motion.

CHAIRMAN: It's been moved and seconded that the Committee of the Whole report be adopted as amended.

ASHFORD: One of the difficulties of that is that the explanations will no longer apply.

TAVARES: I move to amend the motion to adopt, so that it is a motion to adopt the Committee of the Whole report, as submitted, with leave to file a supplementary report incorporating and explaining the amendments approved at this hearing of the Committee of the Whole.

WOOLAWAY: I second the motion.

CHAIRMAN: Delegate Crossley, will you accept that amendment, please? The amendment is accepted.

HEEN: I think what might be done is this, that the report of the Committee of the Whole be adopted recommending the passage of the committee proposal which is incorporating and attached to the Committee of the Whole report, subject to the amendments which have been made today.

KING: If Delegate Heen will make that as a motion, I'd be glad to second that if the others will withdraw their preceding motions.

HEEN: I so move, by way of an amendment.

CHAIRMAN: Is that satisfactory to the various movants? All those in favor of the motion will please say "aye." Opposed. Motion is carried.

The motion before the house now in order, I think, will be to rise and report adoption of the committee report.

HOLROYDE: I so move.

SAKAKIHARA: I second it.

CHAIRMAN: It's been moved and seconded that we rise and report adoption of the committee report. All those in favor say "aye." Opposed. Carried.

Debates in Committee of the Whole on

JUDICIARY

(Article V)

Chairman: RANDOLPH CROSSLEY

JUNE 8, 1950 • Morning Session

CHAIRMAN: The Committee of the Whole please come to order. At ease. The Chair recognizes Mr. Anthony.

ANTHONY: For the convenience of the delegates I suggest that you have before you Standing Committee Report No. 37 in letter size, not the one that was inadvertently run off in full legal cap, so we'll all be reading from the same document. And before proceeding, there is one error in the report which I'd like to correct at this time and that is on page 4, about the middle of the paragraph entitled "Section 2," the sentence, "Only two states," that should read, "Only three states," and in the parenthesis, "Arizona, Nevada and Wyoming have a supreme court of three."

I will briefly take up the sections. As stated in the committee report, the guiding principle in the drafting of this article has been an effort on the part of your committee to erect a judiciary article which will attract the best caliber of material to the bench, and in order to do that, the problem of selection and tenure and security in office has been uppermost in the thinking of the committee.

Section 1 deposits the judicial power in the supreme court, the circuit courts and such inferior courts as the legislature may, from time to time, establish. That is an ample deposit of the judicial power. It states that there will be two constitutional courts, namely a supreme court and circuit courts, but leaves to the legislature the designation of the number of circuit judges and leaves to the legislature the creation of inferior courts, such as the police courts or district magistrates, which we now have. Similarly, the matter of jurisdiction is fully left with the legislature, that is both original jurisdiction and appellate jurisdiction.

The second section provides for a supreme court of five justices. That is a departure from the existing system, and there was some debate in the committee whether or not there was need for a court of this size. The final consideration and judgment, unanimous judgment of your committee was that a court of five is desirable. One of the reasons is an effort on the part of the draftsmen of the article to erect a supreme court that would have a minimum of disqualifications in cases that came before it.

There is this to be pointed out, however, that our present supreme court does not have too heavy a docket, some 80 or 90 cases per annum. But when we change from a Territory to a State, the supreme court will be passing final judgment on constitutional questions that arise under the State Constitution and, therefore, it is considered desirable by the committee that that be done by a court of five, instead of three as we presently have. I might point out to the members -- the delegat es that the actual expense involved is not very great because the whole judiciary department is relatively small when you compare it with other departments of government.

There are three states, as noted in the report, that have a supreme court of three. All of the rest of them have any number, varying from five to nine. New Jersey until just recently had a supreme court, I believe, it was 15. And in the early days, New York had a supreme court of like number on which there were certain lay judges.

Section 3 is the one section -- and I might state at the outset that your committee is unanimous in the recommendation of the adoption of this article except for Section 3 relative to appointment of judges. Section 3 makes the judges appointed by the governor with confirmation by the Senate.

I wish to make a correction. There was one dissent on five judges. Yamauchi thought that there should be a court of three, and so indicated on the report.

This was the chief bone of contention in your committee. The majority of the committee feel very strongly that we should have a system of appointive rather than a system of elective judges. In the first place, the idea of the judiciary is to have an independent branch of government. It is to have judges who will be independent, who will not be swayed by partisan whims, will not be swayed by the mores of the day but will interpret the law as the law should be interpreted without regard to particular political pressures which may from time to time be brought upon the judiciary. It is the balance wheel, the conservative balance wheel of our government, and therefore it is essential, your committee feels, that this should be an appointive system.

I would like to point out that every single change that has been made in regard to state constitutions has been a change away from the system of popularly elected judges, within the last 25 year. There has been an effort on the part of states to go back to the original system, come closer to the present Federal system, which is life appointment of judges by the executive. I might say, as stated in the report, that the matter of popularly elected judges came up in the Jackson Era when many states departed from the system of appointive judges and the western states, particularly, adopted the system of elections.

Now you simply do not get good judges in a popularity contest. If you were going to have your appendix taken out, you wouldn't put it up to a popular vote. What you've got to have is persons of skill, persons of integrity, persons who are good lawyers, and you don't get persons of that character offering themselves on the political stump in a political partisan campaign to run for judicial office. It is extremely distasteful to any lawyer to campaign for office -- for judicial office. I accept the correct.

The reason for it is perfectly plain. This is a lawyer's profession, and no lawyer who is worth his salt is going to stump up and down the country and say, "What a fine lawyer am I." It just isn't done. As a matter of fact we are prohibited by the canons of the American Bar Association from advertising, and certainly a political campaign is one exception and not a very nice exception.

So your committee has reached the conclusion, despite the dissent of some seven members who favor some form of an elective system, that there is no good reason that has been advanced why judges should be elected.

The minority has not filed a report. They have not stated their reasons why they favor an elective system, and I can

assure the members of this Convention that all of the leaders in the field of jurisprudence favor an appointive system. So we hope that this Convention will adopt such a system.

I would like to point out one further thing, that Hawaii has enjoyed a long and rather fine tradition of an appointive system. It goes all the way back to the Constitution of 1852 under the Monarchy, the Constitution of 1865, the Constitution of 1887 and the Constitution of the Republic. As a matter of fact, we had under those great documents, we had life tenure on the supreme court or tenure during good behavior. After the adoption of the Organic Act we again retained the appointive system but for a short term. But those early Constitutions of Hawaii contained very wise provisions relating to the judiciary. And it would be a great step backward, in my judgment, if we were to go from that tradition to the tradition of partisan, politically-elected judges. As a leading authority on this subject has said, "This is an unfortunate legacy in the state judicial systems and they are trying to get away from them the best they can."

Section 4 deals with the removal of judges by the impeachment process. This follows the traditional pattern set up in the Federal Constitution. The House of Representatives makes the charge. It is then referred -- it makes the charge by a simple majority vote. It is then referred to the Senate which sits as a court under oath or affirmation and tries the case. And upon impeachment, the conviction must be with a concurrence of the members of the Senate present, two-thirds of the members of the Senate present. That doesn't mean the entire number. It means those that are present and voting. That ties in directly with a proposal that is pending before the Committee on Legislative Powers and Functions.

There is one improvement upon that, we think, and that is where a judge is impeached, this article provides—and mind you, the impeachment is the charge, it is not the conviction—the judge is not permitted to exercise the powers of his office until his case has been disposed of. In other words, if the House of Representatives should charge an impeachment, that judge would no longer exercise the power of his office until the Senate had passed on his case and he was acquitted, which we think is a distinct improvement on the Federal provision.

I neglected to state one thing. In the framing of this article we have had before us as a pattern the New Jersey plan. We have incorporated into the judiciary article what we consider a wise provision of the New Jersey plan which provides that the governor must give ample notice, public notice, before sending any name to the Senate for confirmation. This would avoid any hasty action upon the part of the executive. It would avoid any arrangement between the executive and a majority of the Senate whereby we could have "midnight" judges and the public know nothing about it. In other words, there will be full publicity, full opportunity in the press and the radio and public debate to discuss the qualifications of any man before he is confirmed.

Section 5 of this proposal is likewise taken from the New Jersey Constitution. One of the ills of the judiciary system is that sometimes judges get on the bench and they are decrepit and there is no way -- nothing you can do about it, very much. This section will provide, where a judge is mentally or physically incapacitated, upon a certificate of the supreme court to that effect—now that means a majority of the supreme court and they could certify as to either the chief justice or one of the associate justices—the governor is obliged to appoint a commission of three who will examine into the matter and make their report, and upon that report, the chief executive may retire such incapacitated judge from office. We think that that is a wise safeguard against having a judge on the bench who is not able to perform his duties.

Section 6 authorizes the legislature to fix the compensation of judges and provides that it shall not be diminished during their term of office. The reason for that is to strengthen the judiciary, make it independent.

We had considerable debate in regard to the matter of pensions. Orginally the committee had in mind and discussed whether or not we should attempt to fix in the Constitution pension for full salary after a stated number of years of service or a certain proportion of it. After turning that over again and again, we decided that this was a matter of legislation and that we felt -- even though we felt strongly that it was essential there should be a pension system, we felt equally strongly that this is a matter for the legislature to decide and that is where it has been left.

Section 7 prohibits a judge from holding any office of profit under the State or the United States. That means he can't hold two jobs. It doesn't prevent, for instance, the judge from service -- a judge of the state court from serving on the Board of Regents of the University or on the Public Welfare Advisory Board or any other board on which he does not receive -- from which he does not receive compensation. There was a question that arose in the committee discussion, namely, what effect this would have upon reserve officers who would be called into active duty, and that was finally decided in favor of leaving the provision as we have drafted it, since it is important and essential that the civil power remain supreme. In other words, we feel that there is ample room by legislation or regulation in the military service to provide for that situation, and rather than to make any exception for military service, we have stated the provision as it stands.

Section 8 is a departure from the present system. We think it a wise one. The purpose of it is to make the chief justice the administrative and the responsible head of the judicial system. In other words, it puts the burden of administrating the judiciary department right on the chief justice. It provides him with an administrative arm in the form of a director who will attend to the business of the court. We think it is a very necessary and wholesome provision.

Section 9 preserves our existing system and authorizes the chief justice to make assignments of circuit judges from one circuit to another. That is a very convenient, very effective device. Witness -- there are two judges that are from here, you have seen them around this floor from time to time, Judge Wirtz and also Judge Rice, who presently from time to time are doing assignments in Honolulu, relieving the congested calendar due to congestion or absence of local judges in the First Circuit.

Section 10 is an extremely important section, and that is the section which deposits in the supreme court the rule-making power, governing practice, procedure, appeals in all of the courts. That is one of the most needed provisions that we have and the way it will work is this. The supreme court, following the pattern set by the Supreme Court of the United States, will call in a group of lawyers, have them draft rules, then there will be publication of the rules for a stated number of months, and after everybody has had his say about it, the rules will become effective. When they become effective, they will have the force and effect of law. It has the great merit of this. If there is something awkward or inconvenient in any rule, that can be called to the attention of the court and after full exploration can be promptly corrected. In other words, you don't have to wait for the next session of the legislature.

There is one other matter which the committee was divided on and that was the matter of the judicial council, and I would like—that is not included in the article—but I know that inasmuch as certain members have talked about it, I would like to briefly explain the position of both sides. I voted with the majority against the judicial council. I think my friend on my right here voted for a judicial council. The judicial council program was devised in an effort to get away from the ills of popularly elected judges. That was the reason for it. That was why the American Bar Association did not feel equal to going "whole hog" and asking for an appointive judge system, such as the Federal system, such as has been clearly, by the best writers, said to be the one desirable system, but felt that this was the easiest compromise and transition from popularly elected judges to a system in which there is an executive appointment. Now, in that regard, we're a very small community here, and there are a number of us that feel that if we have a judicial council, that possibly might deposit too much power in the members of the council, some of whom, probably a majority, would be members of the bar and thus they would have at least the accusation of seeking the appointment of a certain judge and then seeking favors at his hands when they practice before him. On the other hand, the members of the -- the other members will speak for themselves on that. It does have the merit, if you're going to have any elections, to get away from partisan elections, but since it is my hope that this Convention will not favor election, I see no need for including the judicial council.

We have examined a series of other proposals. They are all -- the disposition of them is referred to in the report. The matter of advisory opinions, which is a departure from our present system, the committee felt was inadvisable. I believe I am correct in saying that there are only three states, or four states, Maine, Massachusetts, New Hampshire and Rhode Island, I believe, that have advisory opinions. But that has never worked very well, the simple reason being that when the legislature sends over to the supreme court a request for an opinion, naturally the legislative body or the executive can't have all the facts that are necessary for a court to render an intelligent and enlightened opinion. For that reason, the opinions of the justices in the Massachusetts courts and in the Maine courts have not proved a very workable device. In our tradition of the common law, we deal with cases and controversies. We don't deal with theoretical ideas, theoretical problems. We have a method of handling that sort of thing, what is known as a declaratory judgment statute which amply gives litigants the desired security of judicial opinion, if they have a real case.

In the matter of women on juries, we made our recommendation; that has been adopted by the Committee on Bill of Rights.

The question of the recall of judges, of course, was so foreign to the views of the committee, I believe the entire committee, that that was rejected. You'll never have an independent judiciary if you are going to have them subject to a popular election. That was the great hue and cry when Teddy Roosevelt conducted his Bull Moose campaign in 1916, I believe it was, in which he went for the recall of judges and the recall of judicial decisions, a thing that would be utterly destructive to our doctrine of separation of powers, our doctrine of the supremacy -- the co-supremacy in their respective spheres of the three departments of government. Your committee is unanimously against any such proposal.

I would be very glad to answer any questions that may be asked in regard to the proposal. Thank you, gentlemen.

CHAIRMAN: The Chair would like to ask the chairman of the Committee on Judiciary just how he would like to take up the proposal.

ANTHONY: I would like to take it up section by section, if that's agreeable to the Chair.

ASHFORD: In that regard, the attitude of one of the delegates, and perhaps more, on Section 3 will depend somewhat upon Section 4. May we not discuss those together?

ANTHONY: I have a suggestion which I think will meet the delegate's suggestion. The members will note that the committee is unanimous in every section with the exception of Section 3. We could, if the Convention and the chairman desires, we could discuss all sections but Section 3, and then come back to Section 3. Will that accomplish the purpose of the delegate?

MAU: I want to correct an impression that was given by the chairman of the committee. I believe he stated that there would be no minority report filed. That is correct. Because of the persuasive powers of the chairman, we all agreed to the sentence reading, "A minority of your committee is not in favor of Section 3 which provides for appointment of judges by the governor and confirmation by the Senate, and this minority dissents from the reasons given in the report in support of the executive appointment of the judiciary."

If I believed that a minority report would make any difference insofar as the vote goes, we would file a minority report, but it was with unanimous consent and, as I said, the persuasive powers of the chairman, that we all signed this with that provision in the report. For the --

CHAIRMAN: The Chair would like to ask, what pages are you reading from in the committee report, Delegate Mau?

MAU: Page 8, at the bottom, the last sentence, and it goes on to page 9. It's just a one sentence statement placing the position of the minority in this report. For the information of the Convention, I think it might be wise to state that the majority consisted of eight, as against the minority of seven. We had a committee of 15, so that it was a very close vote. For the further information of the Convention, I think it might be wise to name the delegates voting for the appointment and those against. Those in favor: Garner Anthony, Nils Tavares, William Heen, Herbert Lee, Harold Loper, Jack Mizuha, Harold Rice, Cable Wirtz. Those against: Nelson Doi, Hiram Fong, Y. Fukushima, Chuck Mau, Steere Noda, Thomas Sakakihara and T. Yamauchi.

I think that the chairman was correct that the minority agreed to place their position merely on Section 3 but a comment on Proposal 7. In this article for judiciary, all that would be sufficient would be Sections 1, 2, 3 and 10. The remainder could have been taken care of by legislative act. However, we're not making a contest about that, but that is just a comment for those who believe in a concise Constitution.

CHAIRMAN: If there's no objection, we'll take up the Committee Proposal No. 7, section by section. It's therefore in order for the adoption of -- moving to adopt Section 1 of Committee Proposal No. 7.

ASHFORD: Does that mean that Section 3 will be deferred until the end?

CHAIRMAN: Section 3 will be deferred until the end.

BRYAN: I would be very happy to move for the adoption of Section 1 of Committee Proposal No. 7.

DOWSON: I second the motion.

CHAIRMAN: The Chair will be happy to recognize anyone else.

MAU: I want to call attention to the fact that this is a different team playing today.

ANTHONY: What was the motion? I didn't hear - -

CHAIRMAN: The motion was to adopt Section 1 of Committee Proposal No. 7. Any discussion? All those in favor say "aye." Opposed. Carried unanimously.
Section 2.

BRYAN: I move the adoption of Section 2 of Committee Proposal No. 7 as written.

DOWSON: I second the motion to adopt Section 2 of Committee Proposal No. 7.

CHAIRMAN: Same motion, same second. Any discussion?

MIZUHA: There is one question that must be clarified. What would constitute a quorum of the supreme court?

CHAIRMAN: Would the chairman of the committee care to answer that, or Delegate Tavares?

TAVARES: I think it is a universal rule that where nothing has been stated, a quorum is always a majority, and they must always act by a majority of all the members. I don't believe that there will be any question in the court's mind about that, but we can, in the Committee of the Whole report, reinforce that by a statement that a quorum would naturally be a majority and the court would have to act by a majority of all its members.

FUKUSHIMA: I don't believe that's the correct statement of the facts. "The supreme court shall consist of a chief justice and four associate justices." There's no such thing as a quorum. A court is a court. It consists of a chief justice and four associate justices. In order for a court to be legally functioning, it has to be by five. Isn't that correct?

ANTHONY: That statement is correct.

TAVARES: I want to correct my statement, Mr. Chairman. That's correct, the first part. I meant that they would have to act by a majority.

ANTHONY: When the court acts, as stated by Delegate Tavares, it must act by a majority, not less than three. In other words, if there is a vacancy for any reason, then there has to - - then that vacancy by reason of illness or absence or whatever it is has to be filled, and the mechanics of filling it are right in the article.

MAU: Point of information. I got the impression that we were to delay consideration of Section 3.

CHAIRMAN: This is Section 2.

MAU: Oh, two, excuse me.

GILLILAND: We have at the present time a chief justice and two associate justices and apparently they haven't got enough work to do. Now in this proposed Section 2 we intend to have a chief justice and four associate justices. What in the world are they going to be doing? I'd like to know why we want four associate justices and the supreme court [chief] justice.

HAYES: I just wanted to inform the delegates here that, if I remember correctly, when one of the judges passed away—Judge Moore?—it was Cristy—that the court couldn't function until the appointment had been made. Is that correct?

MAU: I think that Mr. Gilliland's - - Delegate Gilliland's question should be answered. He stated that presently the court is constituted of a - - by a chief justice and two justices and they don't have enough to do.

CHAIRMAN: Do you wish to answer it?

MAU: Yes, I think that the true situation is this. I don't believe that there have been many, many years in which the court has caught up with its calendar. They have always been behind on their cases. And I think this is also true. Lawyers are reluctant to take an appeal to the supreme court because of the time element. It takes them quite a while to get a decision rendered, and the litigant's interest must be considered in that respect. But if you have five justices and they could process and do their work more readily and more quickly, the litigants would have better satisfaction in their courts, and I believe that that would be one of the beneficial results in having a larger supreme court.

TAVARES: One other reason, and the one which impelled me to decide in favor of five as against three, was this. At the present time with our three-judge supreme court, if an act of our legislature is declared invalid under our Organic Act or under the Federal Constitution, we have an appeal to the Ninth Circuit Court of Appeals and a possibility of an appeal to the United States Supreme Court. But once we become a state, any question under the State Constitution is going to be decided finally by this supreme court, and it seemed to me that I'd rather have three out of five declare a law unconstitutional than just two out of three.

ASHFORD: I think a supreme court of five is desirable for just the opposite reason stated by Delegate Mau. In other words, if you have a crowded calendar a lot of people appeal because they say, "Oh, well, that will give us another six months, or another year." And if you have a court that can keep up-to-date, the appeals will be fewer.

MIZUHA: Following up my question, is it my understanding that the supreme court cannot hear any appeal unless they have five members sitting there? There are other supreme courts in other states that hear appeals with a lesser number sitting on the court and their decision is final.

ANTHONY: The delegate's statement is correct. If you wanted to have a decision by a division of three, then an amendment would have to be made to this article to permit the court to sit in divisions of three.

MIZUHA: Maybe an amendment is in order because the criticism we hear now is that it takes so long to have an appeal decided. If we are going to assign judges every time to fill a vacancy in case of illness or absence or disqualification, it may slow up the process of appeal there in the supreme court.

TAVARES: There is a provision in this Constitution - - proposed article rather, that will take care of the situation by, as the delegate who has just spoken says, by assignment of circuit judges. Now that only takes a five minute telephone call and catching the first plane over here to hear the argument. I don't think it will hold up the writing of the opinions at all, or substantially, to do that. Undoubtedly, in most cases there will always be a full - - there will be a full court, and in those rare instances where a judge is disqualified or absent or ill, his place can be filled by circuit judges under this article just as they are filled today in similar situations, except recently, where a judge is absent and not dead.

By the way, that's been taken care of, the law has passed the Congress and is before the President to take care of that situation at the present time, where a judge of the supreme court dies.

CHAIRMAN: Any other discussion on this?

TAVARES: Our article will take care of that situation specifically, also.

ROBERTS: Which article is that?

TAVARES: Section 2.

CHAIRMAN: Are you through, Delegate Anthony?

TAVARES: I was just asked a question. Shall I - -

CHAIRMAN: The question wasn't addressed to the Chair and I'd appreciate it if you would recognize the Chair.

HEEN: May I address the Chair?

CHAIRMAN: I recognized Delegate Yamauchi.

YAMAUCHI: In the discussion that has been held here, I have signed this report favoring - - I mean against the number of judges, that is the number of associate justices, and I believe from the standpoint of the element of cost as well as to the area that we have comparable to many of the states, and also for the reason that the number of cases that are being held in the supreme court at the present time, and also for that reason that the case stated in this report in regard to Justice Cristy's appointment, I think that could be taken care of by this section at the present time, and therefore I would like to amend Section 2 to read as follows: "The supreme court shall consist of the chief justice and not less then two associate justices."

CHAIRMAN: Is there a second to that amendment? Delegate Heen, you are recognized.

HEEN: What I wanted to say was this. In reference to the question of quorum, the provision in our Organic Act does not say anything at all about a quorum. It simply says this:

> That the supreme court shall consist of a chief justice and two associate justices, who shall be citizens of the Territory of Hawaii and shall be appointed by the President of the United States, by and with the advice and consent of the Senate of the United States, and may be removed by the President: Provided, however, that in case of the disqualification or absence of any justice thereof, in any cause pending before the court, on the trial and determination of said cause his place shall be filled as provided by law.

Now, with the absence of any provision relating to quorum, the supreme court of the Territory of Hawaii has rendered a decision by a majority of two and that has been the practice right along. However, the court must be a full court at all times in order to hear a case, and that's taken care of in this particular provision in Section 2. The second section of Section 2 reads - - or rather the second sentence, "When necessary, the chief justice shall assign a judge or judges of the circuit court to serve temporarily on the supreme court."

OHRT: I'd like to ask the chairman of the committee a question. I'd like to know, from all that I've been hearing here, whether or not the fixing of three or five is not statutory and should not be left to the legislature.

CHAIRMAN: I recognize the chairman of the committee.

ANTHONY: The Federal Constitution does not provide for the number of judges on the Supreme Court of the United States. It provides for a Supreme Court. The court originally started off, I believe, at seven. One time there were eleven; one time it was eight. That has been one of the rough spots in our Federal judiciary - - judicial history. For instance, during the Civil War there was a wrangle over the Reconstruction Acts and the court refused to - - the legislature - - the Congress refused to increase the number from eight to nine simply because they didn't like the executive then in office, President Johnson. In one case, they denied the appellate jurisdiction of the Supreme Court.

For that reason, the committee felt it desirable to put that number beyond the realm of any tinkering by legislation. In other words, we want to know what the court is and whether or not we are going to have a full court. Most state constitutions, I will say, do have a stated number of justices on the supreme court.

The other matter, of course, judges of the circuit courts is, of course, left to legislation as the business of the several circuits requires.

CHAIRMAN: Delegate Ohrt, does that satisfy you? Is your question answered?

OHRT: Not quite. I'd like to know whether it's statutory or not. We have been hearing so much about this constitutional law and statutory law. It is an exception, in my mind, and I think the chairman has admitted that.

ANTHONY: It could be enacted in statute. But I'll say this, most state constitutions, I think, uniformly state the number.

TAVARES: I think the main reason why it is necessary to set the number in the Constitution is that it will prevent court-packing, and that is something that we very narrowly escaped, if the members will remember, in the last decade or so where there was an attempt to pack the Supreme Court by creating 15 justices so that they could put their own people in and get their own philosophy over. I think it's a dangerous thing to leave to the legislature and the governor, who, at one time may feel that they want to accomplish some results by simply packing the court. I think it's very desirable and necessary to fix that number in the Constitution, so it can't be monkeyed with, the proper way.

KAUHANE: I'd like to ask a question. Under Section 2, "The supreme court shall consist of the chief justice and four associate justices," as stated here before, if in open court, a full quorum of the supreme court shall be present to hear cases in open court, what number is then required when hearings are held in chambers?

ANTHONY: The supreme court does not hear cases in chambers. That is a single judge, Delegate Kauhane, in equity, under our present system.

KAUHANE: I'm only thinking of other jurisdiction which - - or other states which have similar provisions in the formation of the supreme court, with certain businesses delegated to a number of the associate justices to carry out. If we feel the associate justices are to be given special powers and duties, and if, as stated here, in open court a full quorum of the supreme court is necessary, and if delegation or allocation of business is made to the two associate, the four associate justices, then, I certainly believe that it will be a department doing one - - conducting one affair of the court, and another department conducting another affair of the court. That's the reason why I ask if such matters are necessary and practical, and if it requires that hearings

are to be held in chambers, I'd like to know what number is sufficient to allow such judgments if it is rendered in chambers. Maybe Section 2 needs to be amended to allow something of that nature.

HEEN: It's not an accepted practice at all that I know of, that cases are heard by the supreme court in chambers. The people who appeal their cases to the supreme court are entitled to have their cases heard by the supreme court sitting with a full membership. Now in the circuit courts, the legislature can provide for the hearing of various types of proceedings before the judge sitting in chambers. For instance, the probate cases are heard by the circuit court sitting in chambers, and there are cases in equity [which] may be heard by a judge sitting in chamber, and by statute judges sitting in equity may assign certain type of work to referees, or masters, rather.

KAUHANE: I'm not lawyer but a common, ordinary layman. I want to read from the Constitution of California, "Supreme Court, Distribution and Conduct of Business." Maybe California has the very thing that I feel is necessary for Hawaii to help the common people.

> Section 2. The supreme court shall consist of a chief justice and six associate justices. The court may sit in departments and in bank, and shall always be open for the transaction of business. There shall be two departments denominated, respectively, Department 1 and Department 2. The chief justice shall assign three of the associate justices to each department and such assignment may be changed by him from time to time. The associate justices shall be competent to sit in department and may interchange with each other by agreement amongst themselves, or as ordered by the chief justice. Each of the departments shall have the power to hear and determine causes and all questions arising therein subject to the provisions hereinafter contained in relation to the court in bank. The presence of three justices shall be necessary to transact any business in either of the departments except such as may be done in chambers and the concurrence of three justices shall be necessary to pronounce a judgment.

CHAIRMAN: May the Chair ask - -

KAUHANE: That's the thing I'd like to raise here. If this provision, as contained in the Constitution of California, is workable and has served the purpose to help the common man in getting the court to have his cases heard in the respective courts, certainly we should give some consideration to this matter. That's the reason why I raised the question as to a quorum.

CHAIRMAN: May the Chair ask Delegate Kauhane if he has any amendment to offer on this section?

KAUHANE: Well, Mr. Chairman, until the question is answered as to - - As I stated in the first instance, the statement was made, if in open court a full quorum is necessary with the supreme court, my understanding to that statement is, if the court is in session, both the supreme - - the chief justice and the four associate justices shall sit to hear cases that comes before them. I'm concerned about cases, and if it is practical to have cases heard in chambers, how many of the five members shall constitute a quorum to do business in chambers?

Certainly, if we allow in the lower court the hearing of cases in chambers by the judge who presides in the lower court, we should then follow that practice up to the supreme court, if necessary, with the express purpose to alleviate as much of the cost as necessary on the poor man who wants to carry his case right through to the supreme court.

CHAIRMAN: The Chair will recognize the chairman of the committee to answer the question, then will recognize Delegate Gilliland.

ANTHONY: The State of California has some ten million people in it. I don't know the exact figures. It has an appellate court of 12. It has a vast volume of judicial business that comes before that appellate court and in order to transact the business of the highest court of California, they have found it necessary to divide it up into departments. Some cases are held - - heard before a department, others are heard before the full court, en banc.

That is a totally different situation than we have here. We are a small country of roughly a half million people. A court of five is ample, more than ample in the judgment of some of us, to transact the appellate business of the Territory, and the court will always be available to hear any litigant.

There is no distinction, or comparison, rather, between what is done in a trial court and chambers. That expression "in chambers" is simply some ancient lawyer's lingo which distinguishes trial in jury cases from other trials, such as probate, divorce, and receiverships and things of equitable nature, hence the expression "in chambers." As a matter of fact, you go in the same courtroom, you hear your case before the same judge, you have the same clerks. You have a different number up at the top of the file, which is entitled, "Equity number so and so, in chambers." So there is no occasion for putting anything into the Constitution relative to appearance or hearings in chambers.

Each judge—if that's what the question was addressing itself to—each judge could have - - would have the power under this article to issue a writ of habeas corpus, a single judge. In other words, if a litigant walked up to the supreme court right now and found one judge in, he could get a writ of prohibition or writ of mandamus or writ of habeas corpus, if he could persuade that single judge he was entitled to it. It would then be returnable before the court. It would not make for expediting the business of the court to divide it into departments, in my judgment.

GILLILAND: I know of only one restriction now that prevents a case being heard in chambers, and that is where a counsel demands a jury trial. In that case, the cases would be heard - - have to be heard in the public courtroom. Under the Organic Act it provides that divorce cases shall be heard in the public courtroom, but I know, in my own experience, I've had cases where the court has asked counsel to stipulate, for the purpose of that particular divorce case, the judge's chambers shall be considered the public courtroom. So there is only one restriction, Mr. Kauhane, on having cases heard in public courtroom, that is when you demand a jury trial. I think I'm correct, if the delegate from the fourth district will bear me out on that.

A. TRASK: I just have one question I'd like to ask the chairman. It's not explained in the Section 2 on page 4 of the report. Namely, it has to do with, "In case of a vacancy in the office of chief justice, or if he is ill, absent or otherwise unable to serve, an associate justice designated in accordance with the rules of the supreme court shall serve temporarily in his stead." Now, I'm concerned about the question of whether or not the words "vacancy, ill, absent or otherwise unable to serve" would include death, because the language is different from the language in the second sentence, "When necessary," which would include any contingency, an

associate justice may be appointed from circuit. I wonder why that tenor of language was not followed with respect to the absence of the chief justice.

CHAIRMAN: Will the chairman of the committee answer?

ANTHONY: I'd be very glad to answer that, Mr. Chairman. The word "vacancy," if the office is vacant that would include death, in the first place. The reason we didn't follow the same language of the preceding sentence, "When necessary, the chief justice shall assign a judge or judges of the circuit court to serve temporarily on the supreme court," was this. That sentence gives full authority to assign a judge in any case that is necessary. Whether it's death, absence, inability, disqualification, or any reason, the court can assign a judge from the cirucit court to sit on the supreme court.

Now when we came down to dealing with the powers of the chief justice, we had to take care of the situation where there was no chief justice. In other words, the chief justice might have died, or the chief justice might have resigned, and therefore, the difference in the language. "In case of a vacancy in the office of chief justice, or if he is ill, absent, or otherwise unable"—that means otherwise, for any reason—"unable to serve, an associate justice designated in accordance with the rules of the supreme court shall serve temporarily in his stead." Does that answer your question, Mr. Trask?

A. TRASK: Yes, if the word "vacancy" does include the word "death," and the supreme court we know recently struggled over the matter, well that satisfies me.

CHAIRMAN: Any further discussion?

HOLROYDE: I'd like to be a little further convinced why the supreme court cannot be allowed to operate in the absence of one or two members for the reason that we've had a three-man court for a long time and they have functioned pretty well. Now you increase it to five. Five men, if they have a vacation of a month a year, they are gone for five months. In other words, for five months you have a man moved up from the lower courts where the greatest load of our courts is at the present time. Now I sort of sympathize with Delegate Mizuha's suggestion there that maybe that court ought to be allowed to operate with fewer members present. I'd like to hear a little more discussion on that point, from the chairmen of the committee.

ASHFORD: I would like to speak very briefly to that point. I think it has been the sad experience of this Convention that where two lawyers are gathered together there is a difference of opinion and I think that the chairman of the Committee on Style, who is cursed with eight attorneys on his committee, will bear that out. Now the great advantage of having five rather than three is that you get all sides of the case presented in arguments among the judges before the decision is determined, and they may agree for different reasons, all of them valid, or there may be a necessity of dissenting opinions setting out a different theory. I think that that could be carried to an extent where you would be prevented from having a speedy administration of justice if you got too many, but I think five would certainly present all aspects of the case.

MAU: Mr. Chairman, I concur heartily with the lady.

CHAIRMAN: The Chair will recognize Delegate Mau. I recognize you now.

MAU: I'm sorry. Speaking to the point raised by the delegate from the fifth district, he has the impression that the justices of the supreme court take their month or two month vacation during different months of the year. That does not happen in practice. The practice adopted by this supreme court is like the practice in vogue in the Supreme Court of the United States. In the summer months, I think for a period of two months or so, there is no full hearing of the court. They don't hear any cases. There is a justice remaining to administer the administrative affairs of the court, but at least nine, ten months out of the year, they sit as a full court. So that they don't take their vacations during different months in the year.

KAUHANE: I'd like to ask another question of the chairman. The word "absent" is used in Section 2. It also provides that in the absence of the chief justice, an associate justice may serve in his place—absent from the state with respect to official business. Does that - - has the committee given any consideration as to how long a period of time must the chief justice be absent in order to allow the associate justice to serve? Could he leave the state and be absent from the state on business other than that of the court's work?

CHAIRMAN: I believe the article says can fill any vacancy.

ANTHONY: That is correct. If the chief justice would go to San Francisco over the week end and any business would arise requiring an acting chief justice, then under this article, the person designated by the rules would serve.

KAUHANE: Yes, but if he stays away for six months and doesn't come back to the State to conduct or take his position in the supreme court, are we to grant him that long period of time to be absent from the State without cause? Or should he be penalized if he absents himself from the State without cause?

ANTHONY: In my judgment, that would be grounds for impeaching the chief justice or any other justice.

CHAIRMAN: Is there any other - - any further discussion?

NIELSEN: I would like to know if the committee has given any consideration to the expense of the five justices over three, as I understand that the State is going to have to pay the bill from now on out instead of having the Federal Government pay it.

CHAIRMAN: That was given in the chairman's original statement on the proposition. He covered that subject. Do you wish any further answer from him, Delegate Nielsen? Will the chairman restate the position he stated on that?

ANTHONY: That's covered in the report and I'll briefly restate it.

The total cost of operating the judicial department of government is relatively insignificant when you compare it to any one of the many departments of the executive branch. So, if the considerations warrant a court of five, I do not believe that the added expense of salaries of two judges and secretaries for two judges and, of course, chambers for two judges, is an overwhelming consideration. If it is desirable to have five, I think we should have five. In other words, the actual cost of it is relatively small as compared with other departments of government.

ASHFORD: I am an example of disagreeing right here. I disagree with the gentleman's statement that if a man remains away six months, that's ground for impeachment. Where is that a high crime or misdemeanor within the provisions of that section?

CHAIRMAN: Delegate Anthony?

ANTHONY: That would be a matter for the House of Representatives in the first instance to make a charge. If a justice had no valid excuse, was just going up to look around the mountains of Canada and letting the judicial business of the Territory go to pot, in my opinion an argument could be made that that would be nonfeasance or misfeasance in office. That would come before the House of Representatives and ultimately before the Senate.

ASHFORD: The language of the section on impeachment refers to "high crimes and misdemeanors," not malfeasance or misfeasance in office.

BRYAN: I think that subject can be aired properly when we take up Section 4.

CHAIRMAN: I didn't understand, Delegate Bryan. Did you move for the previous question?

BRYAN: No, I didn't move for the previous question. I suggested that they withhold discussion of that matter until we took up Section 4.

CHAIRMAN: Oh, thank you.

KAUHANE: I'd like, if I'm in order, to offer an amendment, and I don't know where to put it. I'd like to meet with the chairman of the Judiciary Committee, to safeguard the abuse of being absent out of the State.

CHAIRMAN: The Chair would like to state that, if you'll suspend a moment, that the clerks have been taking down - -

KAUHANE: I move we take a short recess, subject to the call of the Chair.

CHAIRMAN: No objection? We'll have a five minute recess.

(RECESS)

HOLROYDE: I move the previous question.

H. RICE: Second the motion.

CHAIRMAN: The previous question has been moved and seconded. All those in favor of the previous question say "aye." Opposed. Carried unanimously.

The question is the adoption of Section 2 as it is written. All those in favor will say "aye." Opposed. Carried.

BRYAN: I move the adoption of Section 4 as written.

DOWSON: I second the motion to approve Section 4.

CHAIRMAN: Same mover, same second. Adoption of Section 4. Any discussion? Are you ready for the question?

RICHARDS: I have a question that I would like to ask the chairman of the committee. In Section 4, in the chairman's statement he seemed to be particularly exercised when discussing Section 10, that it was necessary to do a lot of things between sessions of the legislature. Now Section 4 providing for impeachment does not permit the removal of any judge prior to the next meeting of the legislature regardless of what crime he may have committed. And I wonder of the chairman of the committee if there is no way that could be provided to remove from the actual conducting of his office any judge so accused.

CHAIRMAN: Ask the chairman of the committee to answer that, please.

ANTHONY: Section 4 accomplishes just that, only he is not removed. The member will read the language of Section 4: "Any judicial officer impeached shall not exercise his office until acquitted." In other words, once the charge is made in the House of Representatives, and I understand they're going to have annual sessions, then he shall not exercise his office until he has been acquitted.

RICHARDS: That does not answer my question. A man can commit murder in office right after a session of the legislature and, even if there are annual sessions, he can still perform his office until impeached by the next session of the legislature.

ASHFORD: I know that in the Constitution of the United States the word "impeachment" alone is used. In the opinion of the committee, does the word "impeachment" carry with it the necessary connotation that it is upon charge by the House of Representatives to be tried by the Senate?

CHAIRMAN: Will the chairman please answer that?

ANTHONY: That is correct, and so referred in our report. This will tie into an impeachment proposal pending before the legislative powers and functions section.

ASHFORD: May I make a further statement in that connection? If we have a unicameral legislature then there would be no means of impeachment.

HEEN: The Committee on Legislative Powers and Functions have already decided for a bicameral legislature. And it has also approved the proposal relating to impeachment following the language of the Federal Constitution. In other words, impeachment must be made by the House, by a majority vote, and then the charges in the impeachment tried by the Senate, and that requires a concurrence of two-thirds of the members present to convict. This provision goes one step further, however, that once the judicial officer is impeached he shall not exercise his office until acquitted.

BRYAN: I would like to ask the chairman of the committee if he feels it would be necessary to make a change in this section in order to get around the question that was brought up by the delegate from the fifth district.

ANTHONY: I'm sorry, Mr. Chairman, someone was whispering to me when that question was - -

CHAIRMAN: Would you repeat the question please?

BRYAN: Do you think it would be advisable, or is there a possibility of making a change in this section to get around the question brought up by the delegate from the fifth? Also, I might say that I believe it would be up to the Committee of Style that, should we have a unicameral legislature, to point this inconsistency out to the Convention.

ANTHONY: I think the case that the delegate from the fifth district has put, namely, the justice of the supreme court committing murder the day after the legislature adjourns, is such a remote one that I don't think it's necessary to include such a remote contingency in the Constitution. I know of no state constitution that has such a provision in it. Of course the governor could call the House and the Senate into session immediately if there was any public demand for an impeachment, and that could be speedily done. Otherwise, the judge would sit on the court but he would only be one of five, in any event.

RICHARDS: This does not refer to just supreme court judges. It refers to circuit court judges as well. I know that there are a good many circuit court judges who use alcoholic beverages. They drive automobiles, and negligent homicide I imagine would be subject to impeachment. And can that judge sit and judge other people for nine, ten or eleven months? That's the question I asked.

ASHFORD: I would like to give notice that if the only method of removing a judge is by impeachment for high crimes and misdemeanors, I shall not vote for Section 3.

TAVARES: In the first place, I'd like to give notice that I am going to propose an amendment which will to a large extent take care of the situation, although not exactly what the delegate from the fifth district has raised.

There is a very remote possibility that some judge might be accused of a crime and that the legislature might not be in session for some time and that the governor might not want to call a special session and go through that expense for removing him. However in the 50 years that this Territory has been in existence and the -- I don't know, maybe 50 or 70, I don't know how many years before that when we had a judiciary, I know of no instance where that has occurred. Nor do I know of one on the Supreme Court of the United States where they hold office for life. I think the possibility is very remote.

I'd like to point this out also. If there is that kind of a crime committed, it is probably in view of the care which, under any system, goes into selection of a judge. The crimes that are committed are more likely to be of that negligent type, and that negligent type does not, as a rule, disqualify a man to sit fairly on most cases. It is usually not the type that reflects on the morality and character of the judge, it's perhaps—I mean his ability to judge fairly, which is the main thing. I think that we could manage to suffer along a little while, before the next session of the legislature.

Finally, it seems to me that if a man is accused of crime, most of them will have the good grace to resign if they are guilty, or they will be put away within such a time that they won't do too much harm in the meantime.

I will offer an amendment at the proper time allowing the legislature by a two-thirds vote after certain procedures, rather than -- in addition to the impeachment procedure, to remove a judge for any cause showing unfitness to remain in office.

CHAIRMAN: Did the delegate offer that as an amendment now or would you like to defer this section until the end of the proposals?

TAVARES: In order to facilitate the discussion, I will offer it now as an amendment to go in as Section 4A. As an addition, yes, to the article, to go in as Section 4A to supplement Article [sic] 4.

> Section 4-A. A justice of the supreme court or a judge of a circuit court shall also be subject to removal from office for unfitness to continue in office, by resolution adopted by two-thirds of the membership of both houses of the legislature sitting in joint session, upon written charges made by a commission or agency established by law, after notice and an opportunity to be heard before a joint committee of both houses, and an opportunity to address such joint session in his defense.

CHAIRMAN: I'll have the Clerk read the amendment. If the messenger has enough copies to distribute, we'll distribute copies of the amendment.

KAUHANE: I'd like to ask the learned attorneys the --

CHAIRMAN: We have 17 of them. Which one?

KAUHANE: Any one who is a member of the Judiciary Committee, relative to impeachment. If an impeachment proceeding is filed in the House against Garner Anthony and the Senate is to hear the case, what penalty will be instituted if Anthony walks around to the members of the Senate and asks them to drop -- to vote against the impeachment proceedings against him? In other words, intimidating the senators to gain their confidence. Is there some provisions for penalty made to take care of cases like that?

CHAIRMAN: I'll ask Chairman Anthony to answer that.

ANTHONY: Each house is the judge of its own rules, and that would be direct contempt of either house. And either house could promulgate any penalty it saw fit, depending on the character of the offense committed.

KAUHANE: That rule only applies to members of the legislature, not to a judge who has to escape from the proceeding of impeachment. The thing that I'm worried about is when the impeachment proceedings is pending before the Senate, the Senate hasn't held a hearing yet, and the accused gives a party and invites the members of the Senate and gets them to vote against an impeachment against him.

CHAIRMAN: Does the delegate have an amendment to offer?

KAUHANE: Well, I'd like the Judiciary Committee to think of that and prepare the necessary amendment to take care of that. We, the laymen, are penalized for almost anything we do. We certainly would like to penalize them when they begin to interfere with the judicial proceedings of the Senate in relation to impeachment proceedings.

CHAIRMAN: May I ask the chairman of the Judiciary if any thought was given to the problem that Delegate Kauhane has raised?

ANTHONY: I confess that it has not, but I say this. There is ample room for the legislature to pass any laws which will penalize anybody for interfering, whether it's by way of lobbying or giving luaus or whatever they are doing, in any of the deliberative processes of either house. I don't think that the members of the House of Representatives, on a solemn occasion like an impeachment, I don't think the delegate and his associates on the House floor or in committees, would pay any attention to any luau. In fact they'd probably vote for the impeachment quicker if anybody started to do that sort of thing to him.

CHAIRMAN: The Chair would like to recognize Delegate Tavares on this motion.

KAUHANE: I have another question to ask.

CHAIRMAN: The Chair will recognize you in just a moment.

KAUHANE: I yielded only for distribution of this amendment, to the question from the delegate from the fifth district.

TAVARES: I offer this amendment as an addition to supplement Section 4 but for convenience, to be numbered 4A, leaving the final numbering to the Style Committee, a section or an additional provision providing for a more liberal method of removal of judges.

CHAIRMAN: Is there a second?

ROBERTS: I'll second that motion.

CHAIRMAN: It's been moved and seconded.

TRASK: I'd like to ask a question of Delegate Tavares.

CHAIRMAN: Well, before I can recognize you, do you wish to speak any further on the motion, Delegate Tavares?

TAVARES: I'll speak later. I thought I'd have this before the members in the discussion and a little later I'll try to answer some of the questions.

CHAIRMAN: I'll have to recognize Delegate Kauhane, who was asking a question before, then I'll recognize Delegate Trask.

KAUHANE: I realize the answer given by Anthony, Garner Anthony, but I still say because of the fact that we have no prohibition against lobbying, I think it should be -- what I am attempting to safeguard should be made a part of the committee proposal.

Another thing relative to impeachment. If the Senate fails to hold a hearing on the impeachment proceedings, and the legislature adjourns, I presume that the accused is still suspended from office. Am I right or wrong, Mr. Chairman?

CHAIRMAN: That is correct, I believe. That's correct.

KAUHANE: Then if the legislature reconvenes two years later, we go through the same process of filing the complaint again in the House and then it's submitted back to the Senate. Nothing is done in the next two years, so he is out four years. What provision is made so that the continuation of this thing could be protected to allow a man fair trial under a democratic system, so that he can return to his office without any further jeopardy on the part of the impeachment proceeding hanging before the Senate.

CHAIRMAN: Does some member of the committee wish to answer that?

ANTHONY: The question propounded by the last speaker is a situation in which the Senate, the elected Senate of this State, has flagrantly refused to do its duty, commanded by the Constitution, and there is no answer. If the legislatures -- legislators whether they are in the House or in the Senate, or even the executive or judicial branches of the government, if they are going to flagrantly disregard their clear duties, then we might as well fold up and have no government at all. I don't think for a moment that any Senate of this State, having on its Clerk's desk a charge of impeachment, would have the temerity to go back -- leave the capital and go back to their own districts and islands without disposing of that important business.

A. TRASK: Just one question. Section 9, Delegate Anthony, seems to provide for the appointment of a circuit judge to serve temporarily in the place of another circuit judge, and during the time that the trial is on, the impeachment trial, the chief justice may appoint a circuit judge from Kauai to sit for a judge on Hawaii. That seems to be so, but it seems to me there ought to be consideration in Section 4 of either the executive branch temporarily appointing a judge to sit in a particular circuit, instead of taking one judge from one circuit and have him temporarily double up on his work. I think some provision should be given. During the time when the impeached judge is not authorized to exercise his office, there should be some provision made for the appointment of a temporary judge by the executive. Did you consider that? Because I don't think Section 9 satisfactorily covers that situation when the people should have continuing judicial service.

HEEN: Mr. Chairman, may I answer that question? If a justice, say, of the supreme court is unable to serve because of charges of impeachment as provided in Section 4, then under Section 2, "When necessary, the chief justice shall assign a judge or judges of the circuit court to serve temporarily on the supreme court."

A. TRASK: That doesn't quite answer the situation, Delegate Heen, because that is when a justice in the supreme court is under impeachment. But where -- the question posed by me was the circuit judge. When he is under impeachment, he cannot exercise his office. The chief justice is empowered to get a judge temporarily from one circuit to have him double up on his duties on another island, or circuit. It doesn't provide for it. I think there should be an inclusion so that the Section 4 be amended whereby while such officer -- judicial officer is incapacitated to exercise his duties, the executive shall have the power, in whatever previous section we may refer to, for appointment, temporarily.

HEEN: I think Section 9 is broad enough in language whereby the chief justice may assign justices from one circuit to another for temporary service.

A. TRASK: That is correct, but I do not think it is fair for the people of one circuit to have only the part-time service of a judge from another circuit when there is no telling how long a period this impasse may last. So I think the committee should seriously consider an amendment to this, so that -- it's not fair to the judge who is doubling up, it's not fair to the people.

HEEN: Of course, if there is considerable work in the particular circuit court, where the judge of that circuit is unable to serve because he has been impeached, the chief justice can assign one circuit judge from another circuit for, say, a few days or a few weeks; then relieve that circuit judge and take another circuit judge from another circuit to do the temporary -- to serve temporarily.

BRYAN: I'd like to ask the chairman of this committee, if many of the things that have been brought up here can't be taken care of by legislation, by the way of removing a judge from the bench temporarily under certain circumstances and so forth.

ANTHONY: That's precisely the basis that the committee proceeded upon. The case that delegate from the fifth district, Delegate Trask, referred to, if there is any danger, if that is any problem—and never in our judicial history has it been a problem—that could be amply covered by legislation. In the meantime, under the mechanics of this article, the chief justice could assign a judge to take -- do the business of any particular circuit. If something more need be done, it can be filled in by legislation.

TAVARES: One more thought to be added to that, and that is, there is no limit in this article on the number of circuit judges that may be appointed -- that may be created by the legislature. And it would be quite feasible in my opinion for the legislature by law to provide for appointment of acting circuit judges who could then be assigned to take up the load when the regular circuit judges were unable to handle it all.

MIZUHA: I would like to ask a question of the chairman first. Is this amendment proposed by delegate from the fourth district before the committee?

CHAIRMAN: The amendment 4A is before the committee.

MIZUHA: I would like to ask the delegate from the fourth district who proposes this amendment the question as to the "resolution adopted by two-thirds membership of both houses of the legislature sitting in joint session." Do you mean that the combined vote, two-thirds vote of both houses of the legislature, or a separate two-thirds vote of the legislative branch and the Senate?

CHAIRMAN: Before the delegate answers that, may I remind the delegates here that we're not in recess, we're still in the Committee of the Whole, and there is a lot of

extraneous noise going on that makes it very difficult to hear.

MIZUHA: The question is two-thirds vote of the House of Representatives or whatever they call it, and the Senate, separately or combined?

TAVARES: I think from the words, "sitting in joint session" it's very clearly implied that the vote must be a vote of the combined houses sitting in session. Two-thirds of all the members sitting in session, not two-thirds of each house.

MIZUHA: Then I'll ask the further question. Don't you think that perhaps it will be giving the House of Representatives too much power inasmuch as the division of representation may be much greater in the House of Representatives than in the Senate?

TAVARES: I am thinking of the words in this article -- of this section, which says that the removal must be a "removal from office for unfitness to continue in office." I am assuming as I believe I have a right to assume, that when that body gets together, there will be enough good men in there to see that the majority does not act from such motives as to allow mere political or other improper influences to result in removing a judge as unfit for office, unless he really is unfit for office.

MIZUHA: The reason for -- Mr. Chairman, I still have the floor. The reason for asking this question is, traditionally impeachments of public officers have been vested with the Senate of any legislative branch of government. The reason for that is that the Senate usually has a proportionate representation from smaller areas as compared with larger areas. If the recommendations of the Legislative Committee carry through with this Convention, we will find perhaps the combined Oahu vote in the legislature will be much greater, if they sit in joint session, than the outlying islands. And sometimes I wonder whether or not this combined vote may work against the giving a judge from the outside circuit the kind of trial he deserves.

TAVARES: In the first place, the only situation under which I can imagine there would be a possibility of the question other than unfitness coming up, would be if it were a pure political vote. There will always be a split even in the Oahu delegation on political lines. In the first place, I do not believe that where such a trial comes up, they will split on political lines.

LUIZ: I would like to understand the mechanics on this Section 4A. It specifies here only "upon written charges made by a commission or agency." In other words, will it only be the commission or agency that can apply to 4A or [if] any other, like the group IMUA, would like to petition, that they would petition one of the commissions -- the commission or the agencies, that they can bring it up in that fashion.

TAVARES: That provision was put in there advisably. It is neither -- it neither befits the dignity of a judge or court nor is it advisable in the public interest to have any individual be able to run to the legislature and file a charge and force the legislature to have a hearing on any kind of trumped-up charges. For that reason this provides that the legislature by law must set up a commission—it can be a judicial council as is recommended in the Model Constitution and is provided in some other constitutions; it can be some other commission, perhaps a bipartisan commission created by the legislature, before which the person who wants to make a charge must bring his charge, and they sift it through and see if it's a charge serious enough to bring before the legislature. Once they vote to bring that charge before the legislature, they are the accusers. Now the reason for a separate commission is this. We do not want any legislator disqualifying himself from voting because he has to file a charge. So we provide for an outside agency to do it so that the legislator will not be prosecutor and judge and jury at the same time.

CHAIRMAN: Delegate Luiz, does that answer any further question? He asked a question. He hadn't yielded the floor. Are you through?

GILLILAND: May I ask the delegate from the fourth district a question? You have in here that he shall "be subject to removal from office for unfitness to continue in office, by resolution adopted by two-thirds of the membership of both houses of the legislature sitting in joint session." Don't you think it should properly be sitting -- that the House of Representatives should control this man's dismissal? Since he was confirmed by the Senate, why should the Senate sit in judgment on him.

TAVARES: The thought was that here are all of the representatives and senators of all of the people sitting in judgment on the removal of a member of a coordinate and independent branch of government. It was felt that it was desirable to add to the geographical distribution on the one side, the population distribution on the other, and have both elements consider the matter together as to whether this person was unfit to continue in office.

Let me explain how this procedure works. A person having a grievance goes before whatever commission is set up by the legislature. They prepare the charges and file them in the legislature. The first thing the legislature does under this section is to appoint a joint committee of both houses, not both houses because you can't get both houses to sit on a long trial. That has been the vice of impeachment. You can't get the Senate. It's very difficult to have a quorum sit day after day after day to have a trial. So they appoint a joint committee of a few members who will then have the trial, at which there will be written charges presented to the judge. He will be given a full dress trial. The committee will then make a report, analyzing the evidence and making its recommendation of removal or non-removal. If they recommend removal, then the charge goes before the Senate like any committee report, and the accused has one more chance. Just as we lawyers have to go before a judge and argue against the master's report, the accused has one more chance to address the joint session. He doesn't waste their time with a long trial. He simply addresses the joint session to show why he thinks that report should not be adopted, and then the joint session votes.

SILVA: Is the amendment before the committee or has it just been presented? There's no motion for adoption of the amendment. I don't see what they are discussing on.

TAVARES: I move that the amendment be adopted.

SILVA: No.

DELEGATE: I think there was a motion and a second.

PORTEUS: I second the motion.

SAKAKIHARA: For the purpose of discussion I'll second it.

CHAIRMAN: The Chair recognizes that a motion was made to amend this Section 4 by adding to it the section to be numbered, for convenience, 4A. Therefore, it was not felt necessary to move the adoption of that separately.

GILLILAND: I'm not satisfied with the delegate from the fourth district's explanation. Why should we have one division of the legislature, the Senate, confirm a man and require two divisions, the House and the Senate, to throw him out. I don't think it's fair.

ANTHONY: I move we take a short recess to the call of the Chair.

CHAIRMAN: No objection? We'll have a five minute recess.

(RECESS)

ANTHONY: There have been a number of suggestions in regard to this Section. Accordingly I move that we defer consideration of it for the time being.

A. TRASK: Second that motion.

CHAIRMAN: You defer it until when, Delegate Anthony? Till the end of the section - - to be taken up after Section 10?

ANTHONY: Yes, that's correct. After we discuss Section 10.

CHAIRMAN: Yes. I might - - The Chair would like to announce that any business that remains unfinished on this at 12:00 will be taken up at a continued session at 7:30 tonight.

SILVA: That will be the will of the Convention, Mr. Chairman.

CHAIRMAN: It has been the consensus of the opinion here, the group, that they would like to continue on that. We'll take a vote at the proper time.

ANTHONY: I move the adoption of Section 5.

BRYAN: Point of order.

APOLIONA: I move at this time that Delegate Bryan be allowed to move for adoption of Section 5 and Delegate Dowson be allowed to second his motion.

DELEGATE: I second the motion.

BRYAN: Point of order.

CHAIRMAN: Will you state your point of order.

BRYAN: We have not voted on the deferment.

CHAIRMAN: I haven't put the - - He was out of order, the deferment has not yet been put. All those in favor of deferring will say "aye." Opposed. Deferred.

APOLIONA: At this time, I move that Delegate Bryan be allowed the honor of moving for adoption of Section 5 and Delegate - -

CHAIRMAN: You're unplugged. Delegate Bryan.

BRYAN: I move the adoption of Section 5 as written.

DOWSON: I second that motion.

CHAIRMAN: Moved and seconded by Delegate Dowson that Section 5 be adopted.

ROBERTS: Section 5 provides that when the supreme court shall certify to the governor that a member of the supreme court or the circuit court is so incapacitated as substantially to prevent him from performing his judicial duties, that the governor shall appoint a committee to investigate and the governor may recommend the retirement of the judge or justice from office.

The chairman of the committee, Judicial Committee, has prepared a very excellent paper which was read before the Social Science Club, which to me suggests that it would be quite difficult and certainly extremely embarrassing for a member of the supreme court to suggest to another member of the supreme court that he is no longer competent and able to perform his duties. And he cites, I think, two very effective situations, where Justice Harlan, when he was asked to so retire, said that his previous action in connection with the Grier case was one of the dirtiest day's work that he had ever performed.

Mr. Chairman, in a later section I plan to move a judicial council, not a council for the suggestion of a panel of names, but one dealing with administrative matters. I would like to reserve that if this Section 5 is adopted, that if a judicial council is set up, dealing with such administrative matters, that such judicial council shall certify when a circuit court or supreme court justice is incapacitated.

HEEN: Inasmuch as there is so much controversy as to how a justice or a judge may be removed from office or suspended from office, I move that we defer further action upon, or further consideration of Section 5.

DOI: I second the motion.

HEEN: Maybe then we can combine all of these things in one short section.

MAU: Second the motion.

CHAIRMAN: There has been a motion to defer this section until when? Until - -

DOI: Consideration of Section 4, I believe.

CHAIRMAN: Will you plug in, please?

HEEN: Until we get through with Section 10.

CHAIRMAN: Section 4 and 4A have already been deferred to that position. Would you like to take this up after Section 4 and 4A or before?

HEEN: All at the same time.

DOI: That's right.

HEEN: All at the same time, maybe, as I said, combined into one section to cover all situations. That includes, I suppose, the deferment of Section 4, or has that already been deferred?

CHAIRMAN: Section 4 and 4A have been deferred till the end of this section.

DOI: I second the motion.

CHAIRMAN: It's been moved and seconded that Section 5 be deferred. All those in favor say "aye." Opposed. Carried.

Section 6.

BRYAN: I move the adoption of Section 6 as written.

DOWSON: I second the motion.

CHAIRMAN: Same mover, same second.

ASHFORD: I would like to ask a question. "Shall not be - -" "The compensation shall not be diminished during term of office." In my own opinion that includes a case where the legislature has, after the inception of the term of office, has raised the pay. It can then not diminish that raise. I would like to ask the committee if they agree with that interpretation of "diminish."

ANTHONY: That interpretation is correct. This is taken directly from the Federal Constitution. In other words, whatever the salary is when the Constitution goes into effect, the legislature may not diminish it. And if the legislature thereafter increases it, again the legislature may not diminish the salary during the term of office.

ASHFORD: I'm opposed to that provision then for this reason, that we have seen raises made during times of extraordinary inflation. Then when we collapse, the judges should take their cuts from that raise that has been made after the inception of their term, just as everybody else in government should.

CHAIRMAN: Does the delegate wish to propose an amendment on this section?

ASHFORD: I will move to amend that section by inserting after the word "diminish," "shall not be diminished from that which existed at the inception of a term."

CHAIRMAN: Is there a second to that?

KIDO: Second.

CHAIRMAN: It's been seconded by Mr. Kido.

TAVARES: I do not believe that that is a sound amendment. If there is to be one, it seems to me that the amendment should read, "that it shall not be diminished unless as a proportionate part of a fair scheme of cutting all salaries." It ought to be worded in that way, there shouldn't be a picking out of one particular group. I think it should stay as it is, but if they want to add a qualification, have a provision that if all salaries are cut generally, they may be cut at the same time. Just as when taxes are paid today under the most recent rulings, that is not considered a diminution because everybody has the same cut taken out of their salary proportionately.

ANTHONY: I'm opposed to the amendment, and the reason I'm opposed to it is that this will strike right at the heart of the judicial branch. It will permit the legislature to pass a decent salary, then if a judge sits on the bench, and he does something which the legislature doesn't like, they could reduce the salary of the judge of the second circuit, and at the same time they could leave the salaries of the judges of other circuits where they are. I think it would be an inroad on the independence of the judiciary. It is a radical departure from the provision of the Federal Constitution, and I'm opposed to the amendment.

TAVARES: Mr. Chairman, one - -

CHAIRMAN: Delegate Mau hasn't spoken on this yet.

MAU: I am in agreement with the chairman of the Judiciary. If we are to keep the three branches of government separate and independent, then we've got to protect the judicial branch of the government. If this amendment passes, the danger is too great that that independence will be knocked out in our democratic form of government, and I'm opposed to that for that reason.

TAVARES: One more factual thought, and that is, I doubt very much whether for a long time to come all the combined salaries of our judges will equal $200,000. Now we have a 40 million dollar a year budget. Those salaries come to less than one-half of one per cent. We're arguing over absolutely infinitesimal microbes here.

MIZUHA: As one who had stood steadfast in the committee for the retirement of our judges at a full pay, I wish to move to table the amendment.

ASHFORD: In response to some of the arguments made by the gentleman from the fourth, I would like to say that there is no reason on earth why the judiciary should be excepted from every other branch of government in suffering the results of a depression.

CHAIRMAN: Was there a second to the motion?

HEEN: The remark made by the last speaker is not germane to the amendment that she has offered. That is a different proposition altogether. But I do agree with her remark though, that if there is to be a diminution, I mean a provision that the salaries shall not be diminished, that there should be an exception there that the same may be diminished when all other salaries are diminished. I recall that in 1932, the legislature was called into special session to effect - - to enact a piece of legislation which reduced all compensation of government employees by ten per cent.

CHAIRMAN: Delegate Arashiro had seconded the motion to table. There's a motion to table the amendment.

RICHARDS: May I - - a point of information. Does this mean in its present wording that if there were applied to the judicial department the same type of cost of living bonus that is now in effect throughout the rest of the territory, that if, at the time a judge takes office that bonus is in effect, that that bonus cannot be removed?

DELEGATE: Right.

RICHARDS: And we are suggesting here appointing the judges for 12 years? I think that is out of line.

CHAIRMAN: The question is to table the amendment. All those in favor of tabling the oral amendment as proposed by Delegate Ashford to say "aye." Opposed. The noes have it. The motion is not tabled.

LEE: As one who has supported this proposal, there is something - - I disagree with some of my colleagues in the majority as to the merits of the arguments made by Miss Ashford. I wonder whether Miss Ashford had considered this possibility of eliminating the words "which shall not be diminished during their continuance in office," leaving it to the legislature to determine the matter. It's a point of information on my part as to whether or not that was her intention.

CHAIRMAN: Can Delegate Ashford answer the question, please?

ASHFORD: I would like to have that rephrased. I don't get the meat of it.

LEE: Well, the last part of that sentence reads, "which shall not be diminished during their continuance in office." That is the bone of contention, as I recall.

ASHFORD: Yes.

LEE: Now if that phrase were eliminated completely, would that not accomplish the purpose that you seek to have, or is it something else?

ASHFORD: Yes, that would accomplish the purpose, but I think there is a great deal to be said for the fact that compensation of a judge should not be diminished over that which existed at the inception of his term. And I would accept such an amendment as was offered by the delegate from the fourth, to read somewhat such as this, "unless by general law, all compensation of public officers were diminished, and to that extent."

TAVARES: I move - -

CHAIRMAN: Delegate Bryan had the floor, requested the floor.

BRYAN: I would very gladly yield. Miss Ashford covered what I wanted to say.

TAVARES: In view of the necessity of rephrasing that provision, I move to defer action until after consideration of Sections 4, 4A, and 5, so that we may have an opportunity to reword the proposed amendment.

A. TRASK: I second it.

CHAIRMAN: It's been moved and seconded we defer action on Section 6 and the amendment in Section 6 until the end of the proposal. All those in favor say "aye." Opposed. Carried.

Section 7.

BRYAN: I move the adoption of Section 7 as written.

DOWSON: I second the motion to adopt.

CHAIRMAN: It's been moved and seconded, the adoption of Section 7. Anyone wish to speak?

ASHFORD: I would like to ask some questions. I would like to ask the chairman of the committee the question of whether or not the provision of the New Jersey Constitution, that "justices and judges shall not while in office engage in the practice of law or other gainful pursuit" has been considered by the committee.

ANTHONY: That practice that has obtained in the State of New Jersey and was outlawed in the New Jersey Constitution is unknown to our practice here. Judges of courts of record do not engage in any practice of law. They can't under our present system. If they want to go into real estate business on the side, that's up to them, or play the stock market. This provision prevents them from holding any other office of profit under the State or under the United States.

ASHFORD: A further question. Is it the contention of the chairman of the committee that the practicing of law is an office of profit, or how is it excluded?

ANTHONY: It is not an office within the definition of this section. "Office" means an office under the State, or under the United States. They would not -- an attorney is a member of the court but he doesn't hold office, within the meaning of this section.

ASHFORD: Then under this section, is it not true that a judge could practice law?

ANTHONY: The answer is no.

TAVARES: May I answer that further. We have a statute which is still in effect and will be continued in effect by the Constitution I am sure, if my recollection serves me right, which prohibits circuit judges and supreme court judges from practicing law while they are in office. That's a legislative matter which has been taken care of and can and will continue in effect.

ASHFORD: I disagree entirely. I think this is wholly a constitutional matter, that judges should be forbidden by the Constitution to practice law. If it is necessary to pass a statute to that effect, then it is imperative that it be written into the Constitution.

TAVARES: If that is correct, then we'll have to write every disqualification provision into the Constitution also. It has been traditional that the legislature has power to prescribe provisions for disqualification of judges from pecuniary interest and otherwise. And I think that that is just as proper a matter to be left to the legislature as these other provisions for disqualification.

CHAIRMAN: What is your pleasure on Section 7?

SILVA: Put it in the Constitution.

LAI: In this section, do I understand that a judge or justice can accept a position on a board or commission without pay?

CHAIRMAN: Would the chairman of the Judiciary answer him?

ANTHONY: That is correct. Without pay.

LAI: If that is so, I am opposed to that for two reasons. One is that when the judge or justice serves on the board or commission, his time and effort would be divided. And I know for a fact that some of these commissions and boards spend lot of time, and they have lot of problems, and I don't think a judge or justice should serve on the board or commission. And the second reason is that we are here to write a Constitution to create a strong state government, and this state government has three branches of -- three departments, and I don't think a member of one department should pry into the business of the other. And I know the commission and boards are mostly of the executive department. I feel strongly against that for that two reasons.

CHAIRMAN: Any other discussion on this section?

DELEGATE: Question.

WOOLAWAY: By this last sentence, prohibiting the judge to run for an elective office, I take it we won't have the services of Judge Wirtz in future constitutional conventions? Is that so?

TAVARES: I think that is probably correct.

I'd like to call the attention of the members to Section 9574 of our Revised Laws which will be continued in effect by our Constitution. It says, "No justice of the supreme court nor any circuit judge shall exercise the profession or employment of counsel or attorney at law or be engaged in the practice of law." Now I can't imagine any legislature ever repealing that section.

ASHFORD: If it is not necessary to write these things into the Constitution, why do we have this section at all?

CHAIRMAN: Would any one on the committee care to answer that?

ANTHONY: The reason the section is drafted is to prevent a judge from holding two jobs, drawing two salaries from the State, or one salary, a judicial salary from the State, and another salary from either the United States or the State of Hawaii. Perfectly proper provision.

CHAIRMAN: What is your pleasure on this section? You ready for the question? All those in favor will say "aye." Opposed. Ayes have it.

Section 8.

BRYAN: I move the adoption of Section 8.

DOWSON: I second the motion to adopt Section 8 of Proposal No. 7.

CHAIRMAN: Any discussion?

GILLILAND: May I have an explanation of this second sentence under Section 8, "With the approval of the supreme court he shall appoint an administrative director to serve at his pleasure."

ANTHONY: The purpose of that sentence is to make the judicial department an efficient department of government. It puts the chief justice as the head of a unified court system. It gives him an administrative director who will attend to the administrative duties, the business of all of the courts. It is expressly made appointed by the court and serves at the pleasure of the chief justice for the simple reason that the court should have command of its administrative officer, and if he's no good he ought to be able to remove him.

ROBERTS: I indicated before that I planned to put a proposal before the committee, in the form of an amendment, providing for administrative machinery. I believe that that section could well be discussed when Section 10 is taken up. I move to defer that section to be treated together with Section 10 and Section 4.

SAKAKIHARA: I second that motion.

CHAIRMAN: It's been moved and seconded that this section be deferred, to be taken up with the other sections that have been deferred—most of the proposal.

ROBERTS: I might say that I'm in full accord with the proposal suggested by the chairman for administrative machinery and for such a person to assist in the operation. I'm in full accord with the principle of careful administration and careful review of the work of the judiciary.

CHAIRMAN: The question is for deferment. All those in favor - -

ANTHONY: I'd like to speak on the deferment, if I may. Am I out of order speaking, Mr. Chairman, against deferment?

CHAIRMAN: The Chair recognizes - -

ANTHONY: It seems to me even those who desire to have a judicial council still should be prepared to act on this. In other words, if we do have a judicial council, the duties of the director would be fitted into the council. As I gather the way we're moving here, we're passing over a lot of things that we are in agreement upon. If we are later going to have a judicial council, then we can reconsider this and put this back in any section on judicial council. So I am against deferring this at this time.

H. RICE: I'd like to say that I think that this is absolutely necessary, this section, because from my experience with the judge of the second circuit and the judge of the fifth circuit, they waste a lot of time going into the matter of the civil service classification of their employees and if they had an administrator up here and the chief justice could let him take care of such matters for them, they would save a lot of expensive time of the judges in caring for just such matters. I move that we table the motion to defer.

MIZUHA: Second the motion.

CHAIRMAN: Is there a second? There's a motion to table the motion to defer. All those in favor of tabling the motion to defer say "aye." Opposed. The motion to defer is lost.

OHRT: I want to say I'm very much in favor of that section because I'm hoping that this Convention will give the governor the same privilege of having an administrative assistant.

ROBERTS: I indicated before that I'm in support of that section, and if it's understood that it could be worked into the section later on the judicial council, I will support the motion.

CHAIRMAN: What is your pleasure?

H. RICE: I move that we adopt Section 8.

CHAIRMAN: It's already been moved.

DELEGATE: Question.

CHAIRMAN: All those in favor of the adoption of Section 8 will say "aye." Opposed. Carried unanimously.

Section 9.

BRYAN: I'd like to move the adoption of Section 9.

DOWSON: May I second that motion?

CHAIRMAN: It has been moved and seconded that we adopt Section 9. All those in favor say "aye." Opposed. Carried unanimously.

Section 10.

BRYAN: I move the adoption of Section 10.

DOWSON: I second the motion.

CHAIRMAN: It's been moved and seconded that we adopt Section 10.

ROBERTS: Section 10 goes to the same problem of procedure, and I'd like, if it's agreeable with the delegates, to move that the Committee of the Whole rise, and report progress, and then beg leave to sit tonight at 7:30 to continue with this discussion.

CHAIRMAN: Is there a second?

MIZUHA: I second that motion.

CHAIRMAN: It's been moved and seconded that the Committee rise, report progress, beg leave to sit again at 7:30 this evening. All those in favor will say "aye." Opposed. Carried.

DELEGATES: Roll call.

CHAIRMAN: All those demanding a roll call raise their hand.

BRYAN: May I suggest a show of hands?

CHAIRMAN: It's been suggested, a show of hands. Would that be sufficient?

WOOLAWAY: Point of information.

CHAIRMAN: Point of information? State your point of information.

WOOLAWAY: Is there any reason why we can't meet at 1:30 this afternoon?

CHAIRMAN: There are committee meetings all afternoon that have been set up.

BRYAN: I don't see how we can go ahead with these committee meetings and allow these committees to get their work done if we go ahead this afternoon and interrupt, and that's why I favor this 7:30 meeting tonight.

SILVA: Have the committee meetings at night.

PORTEUS: There seems to be some issues - - question as to the number of committee meetings. The Committee on Executive Powers and Functions has asked to hold a meeting at 1:30; the Committee on Agriculture, Conservation and Public Lands also wishes a meeting at 1:30; the Committee on Legislative Powers and Functions wishes to meet at 3; and the Committee on Industry and Labor also wishes to meet at 3 o'clock this afternoon.

KING: I hope the members will agree to a night session tonight, and I feel that we've got to have a night session almost every night hereafter, perhaps not Saturday, but next week. The agenda is not going ahead as fast as it should and this particular proposal is one of the major proposals that should be cleared up. Next week, we'll have Legislative Functions perhaps before us; we'll have Executive Powers; we'll have Local Government; and we'll have to be sitting both forenoons and evenings in order to complete our work. So I hope that the motion to recess until 7:30 will carry.

HEEN: I note that both the Committee on Industry and Labor and the Committee on Legislative Powers and Functions are sitting at 3 o'clock, at the same time.

CHAIRMAN: If you'll suspend a moment, when we reconvene in regular session will be the time to take that up. We are still in the Committee of the Whole, and it would be the time to take up the committee assignments at that time.

SILVA: You just report progress.

HAYES: I was going to say that the Hawaiian Homes Committee was going to -- intended to meet tonight.

CHAIRMAN: That would be the same point. It would be true of that, that all committee announcements should be kept until we reconvene.

ASHFORD: Any of us who have worked here or tried to work here at night are very conscious of the extremely bad lighting. Would it not be possible, if we are going to meet tonight, to have spare bulbs or something put in?

NIELSEN: I move that we report progress and recess from the Committee of the Whole.

DELEGATE: Second the motion.

CHAIRMAN: The motion is already before us to rise and report progress and beg leave to sit again.

LEE: Suggestion. Would it not be in order to have committee meetings at night so that the Convention could meet during the day? That's to combat this lighting situation as well as to be able to accomplish more work in committees during the evening. I know in my experience here in my night meetings we were able to accomplish more during the committee than in the daytime.

CHAIRMAN: The Chair rules that the motion was to rise and report progress, and beg leave to sit at 7:30.

ANTHONY: I move to amend that motion, that we move to rise, and beg leave to sit again -- report progress and beg leave to sit again.

FUKUSHIMA: I second that motion.

CHAIRMAN: It's been moved to amend the original motion. It would save time if -- Delegate Roberts, would you accept the amendment?

ROBERTS: I'll accept it.

CHAIRMAN: The motion now is to rise, report progress and beg leave to sit again. All those in favor say "aye." Opposed. Carried unanimously.

Afternoon Session

CHAIRMAN: Committee of the Whole please come to order. Will you be at ease, please. We will continue with Committee Proposal No. 7. We were on Section 10. What is your pleasure?

BRYAN: Is that before the house?

CHAIRMAN: Section 10 is before the Convention.

LAI: The ten sections here in Proposal No. 7 cover the functions and personnel of the judicial department very well. But I think we forgot the biggest thing. How do we get the money to run this department? There is no provision here calling for appropriation of a budget to run the department. Can somebody tell me that?

CHAIRMAN: Can the Committee on Judiciary answer that please?

ANTHONY: That's entirely a legislative function. It's up to the legislature to appropriate funds for this department just like every other department of government.

LAI: You mean they don't have to submit --

CHAIRMAN: Will the delegate please address the questions to the Chair.

LAI: You mean that the judicial department doesn't have to submit a budget?

ANTHONY: The executive will submit a budget which will include a budget for all branches of government, including the judiciary.

CHAIRMAN: Are there any other questions on Section 10? Any further discussion?

ROBERTS: I'd like to offer an amendment to Section 10. In the last line -- next to the last line, after the words "and appeals" insert the words, "which upon publication shall have the force and effect of law." Delete the word -- add the words "upon publication." The purpose of this amendment is to make provision for the publication of the rules of procedure adopted by the supreme court and promulgated by it.

CHAIRMAN: Is there a second to that?

YAMAMOTO: I second the motion.

CHAIRMAN: The amendment's been moved and seconded.

ANTHONY: The amendment, in my judgment, is entirely unnecessary. No court in the land would ever presume to promulgate rules of practice and procedure without the fullest sort of publicity. As a matter of fact, what they do is draft a set of rules and send it down to the bar, and the bar are the people that are concerned with the rules of practice and procedure. There is a complete discussion of what the rules should contain, and after the rules have been approved by the bar, the supreme court promulgates them. They will always give ample notice and I see no reason to incorporate useless language in the Constitution for publication.

CHAIRMAN: You ready for the question? The question is on the amendment, which inserts the words "upon publication" after "which" in next to the last line of Section 10. You ready for the question?

ASHFORD: Doesn't "promulgate" mean the same thing? I mean, doesn't that include the essence of publication?

ROBERTS: If the answer of the chairman of the committee states that the word "promulgation" shall include publication, I will withdraw.

ANTHONY: Of course, it includes that. Every lawyer here knows that.

ROBERTS: Well, I'm not a lawyer, Mr. Chairman, that's why I asked for the clarification.

CHAIRMAN: Does the Chair understand, Delegate Roberts, that you have withdrawn the motion?

ROBERTS: I have withdrawn the motion on the statement by the Chair, which I assume will be part of the committee report, that the word "promulgation" includes the publication of those rules and regulations, so that the laymen know the implication and meaning of that word.

DELEGATES: Question.

CHAIRMAN: The question now is on the main motion, the adoption of Section 10. All those in favor say "aye." Opposed. Carried.

BRYAN: I rise to a point of information. In deferring several of these sections, we deferred them after Section 10. However, this morning we skipped over Section 3. Is the proper order of business now to go to Section 3, then to 4, 5, or do we still skip Section 3?

CHAIRMAN: I believe the Chair stated this morning that Section 3 would not be taken up until all of the other sections had been disposed of.

BRYAN: In that event, I rise to a point of personal privilege. I wish to move the adoption of Section 4.

DOWSON: May I also rise to a point of personal privilege to second that motion.

CHAIRMAN: The Chair will rule that those are, neither one, a point of personal privilege, if you move the adoption of Section 4.

ASHFORD: I have discussed with the "Supreme Court" the proposed substitution for Sections 4 and 4A, which I had mimeographed and, I think, is now on the desks of all the delegates. To substitute for Section 4, the following language, 4 and 4A, "The justices of the supreme court and the judges of the circuit courts shall be subject to removal from office upon the concurrence of two-thirds of the membership of each house of the legislature sitting in joint session, for such causes and in such manner as may be provided by law." I move the amendment.

CHAIRMAN: May the Chair ask if that amendment has been circulated?

ANTHONY: They are in the process of circulating it at the moment.

MIZUHA: I second the motion.

CHAIRMAN: May I have a copy of that, please.

BRYAN: I would like to ask a question. As the delegate from Molokai read this, she used the word "will" in the last line, and I see the printed copy says "shall." Was that an intended deviation?

CHAIRMAN: "May." My copy reads "may."

ASHFORD: Some of them were written one way and some the other, apparently. Mine reads "may," and that was the intent. I've had a little discussion on whether it should be "may" or "shall," and that is one thing which I think the seven other attorneys on the Committee on Style might decide, Your Honor.

CHAIRMAN: May the Chair ask, as to your amendment, was it "may" or "shall"?

ASHFORD: Mine was "may," but I have no pride of opinion about that, and I'm perfectly willing to leave that to the seven other attorneys.

CHAIRMAN: Well, it has to be recorded as either being one or the other.

ASHFORD: It's "may."

CHAIRMAN: "May," and was the second the same?

WIRTZ: Point of information. Is this proposed amendment to substitute for both Sections 4 and 4A?

ASHFORD: 4A was not adopted. It was just offered; and so I therefore put on the amendment, "Substitute for Section 4." I think it would render the proposed Section 4A unnecessary.

WIRTZ: Well, I think we ought to have that clear, if it will take the place of the impeachment.

CHAIRMAN: If the movant of Section 4A will withdraw that motion, it would clear the way for this.

TAVARES: I will withdraw my motion for the purpose of -- well, I'll withdraw my motion.

BRYAN: I think the point to clear up is, my motion for the passage of Section 4 would be Section 4 as written by the committee. That would clear that.

CHAIRMAN: Well, the Chair would state that in considering Section 4, you would consider Section 4 and 4A because 4A was an amendment to this Section 4, and they were being considered together. So when you move to consider action on that section, it automatically brought up the two of them. Now then, Section 4A has been withdrawn; the only section before us is Section 4 and this is an amendment to Section 4.

A. TRASK: I would like to ask the movant here, the lady delegate from Molokai, her reason for this substitute amendment to Section 4.

ASHFORD: I think the provision for impeachment is non-essential. It almost never takes place, it is the most crushing insult that can ever be offered any officer, and the provisions of Section 4 for impeachment and the usual provisions for impeachment are so strict that it is practically impossible to prove the charges, even if you make them. Now, this section provides for removal, it safeguards the judicial office by requiring the concurrence of two-thirds of the membership of each house sitting in joint session, and it also safeguards them by the requirement of the passage of legislation by the legislature in a time of peace and quiet when there are no charges lying on the table.

ANTHONY: I'd like to speak to the proposed amendment. It is quite true that impeachment is a cumbersome, and therefore a little used device. This will -- this proposed amendment will go far to make it a workable device, rather than a cumbersome device, and it will not restrict the causes of removal to treason, bribery, and high crimes and misdemeanors. In other words, it will be an enlargement. And speaking for myself alone, and not for members of the committee, I would have no objection to the acceptance of this amendment.

SHIMAMURA: I understood the chairman of the Judiciary Committee to say this morning, rather the Legislative Committee, Judge Heen, to say this morning that there was a provision in the legislative section concerning impeachment and that it was to be brought by not the two-thirds majority of the full house, of the membership, but two-thirds of those present. Am I mistaken about that?

HEEN: That is correct, and if the proposed action is to be taken at this time, deleting impeachment as a process of removal of judges, then that particular proposal before the Legislative Committee will have to be amended in order to conform with what the Convention decides upon finally in this matter.

DOI: To further protect the rights of the one subject to being removed, and to further set up more definite methods by which one could be removed—and I say at this time that should we leave it entirely to the legislature we will find probably that they will not pass laws until the occasion arises, and that might be a little too late, and that has been shown, I understand, by history. And therefore I would like to move for the adoption -- move to amend the substituted proposal. The amendment would read thus—I think a form is already on your desk, with minor corrections—"A justice of the supreme court or a judge of a circuit court shall also be subject to removal from office for unfitness to continue in office, by concurrent resolution adopted by two-thirds of the membership of each house of the legislature, upon written charges made by a judicial council, after notice and an opportunity to be heard before a joint committee of both houses, and an opportunity to address a joint session of both houses in his defense."

CHAIRMAN: Is that offered -- Delegate Doi, is that offered as an amendment to Delegate Ashford's amendment?

DOI: Yes.

ROBERTS: I'll second that.

ASHFORD: I haven't got that, Mr. Chairman. May we have the language again?

CHAIRMAN: Would Delegate Doi please read the --

TAVARES: I think I can clarify this. That amendment is my old Section 4A with some changes, and if they take the old 4A and follow Mr. Doi, I think they'll be able to get most of it.

DOI: Shall I read it slowly again? "A justice of the supreme court or a judge of a circuit court shall also be subject to removal from office for unfitness to continue in office, by concurrent resolution adopted by two-thirds of the membership of each house of the legislature, upon written charges made by a judicial council after notice and an opportunity to be heard before a joint committee of both houses, and an opportunity to address a joint session of both houses in his defense."

ANTHONY: I'd like to speak in opposition to the amendment. In the first place, that presupposes the existence of a judicial council. This Convention has not agreed upon a judicial council.

Moreover, it sets up rather cumbersome mechanics, which to my way of thinking is much less desirable than the simple amendment proposed by the delegate from Molokai. In other words, we can simply have, if the amendment suggested by the delegate from Molokai is adopted, a provision whereby judges shall be subject to removal from office upon concurrence of two-thirds of the membership—and incidentally I think it should be membership present, not the total membership, because the action of the combined houses should not be defeated by an absence of any particular member—sitting in joint session. This other provision gets into the realm of legislation which I think is unnecessary, and the proposed amendment provides for just that sort of thing if the legislature desires that kind of action.

MIZUHA: I'd like to speak in opposition to the amendment also. A judicial council presupposes having probably a majority of lawyers sitting on the judicial council, and they would be getting into the hair of a judge who decides against them all the time.

WIRTZ: I'd like to echo the sentiments of the delegate from Kauai. As a judge sitting on the bench, I would be much concerned about the membership of the judicial council which, as he states, presupposes at least an equal representation on the judicial council and they would be the ones active in pressing any charges. It puts the judge in an unfortunate position, in my opinion, so I'm voting against the amendment.

ROBERTS: I'd like to speak in favor of the motion to amend. As I read the amendment the purpose is --

CHAIRMAN: The motion is in favor of the amendment, to amend the amendment.

ROBERTS: I'll accept the Chair's statement of the issue.

As I read the purpose of this section, it is to protect the judges and not to get in their hair. It seems to me that the substitute for Section 4 previously submitted does not actually provide for any protection. It merely states that the legislature may provide by law. The legislature may never provide by law. They may provide when the person is actually up for charges, at which time the issue may be so difficult and warm that the legislation may possibly reflect that attitude. It seems to me that the draft proposed by the delegate from the fourth in Section 4A more nearly accomplishes the protection both for a proper hearing and an opportunity to speak in his defense. It seems to me that this section goes to protect the judges rather than to remove such protection.

CHAIRMAN: I'll recognize Delegate Trask. He has not talked on this subject yet.

A. TRASK: I rise to speak against the offered amendment, Section 4. I'm inclined to think that the general impeachment feature of letting the justices and the circuit court judges be removed from office by legislative action is outmoded and archaic. It seems to me that we proceeded here in the Convention in the Frank Silva case on the principle that the members of the body should determine the fitness of their own members. Now the judiciary is a distinctive branch of the government. It seems we have come a long way since the impeachment days, and this substitute section of the lady delegate from Molokai is really, in fact, a streamlined impeachment process nevertheless.

It seems to me that we should venture the thought that the judiciary, being as independent as we would want it to be, strong as we would want it to be, it would seem to me likewise to follow that its members would be most acutely concerned about the fitness or unfitness of its members. And inasmuch as the Section 9 provides, I believe, that the chief justice shall, of course, appoint judges and so forth, and the associate justice may, by rule of court, select their own chief justice, that we should go along with the principle already established, because I don't see any particular merit in delay if a judge is unfit.

Why delay the process, awaiting the legislature to meet when you have probably many, many members, and being that we are separated by water, most of our counties, many of the members would not be concerned, one way or another. And they may be too influenced by friends who are advocating the cause one way or another of the person under scrutiny or under charge for unfitness.

So it does seem to me and I venture the suggestion that we should have a simple amendment to this, which is -- someone has circulated around which I think should be amended, but as submitted, here—I think it's on the desk of all of us—"Any judge accused of treason, bribery, or high crimes and misdemeanors may be suspended by a majority of the supreme court." Now that should be amended with the word "treason," of course, stricken, and maybe the words "or removed" after the word "suspended."

RICHARDS: May I say something to the delegate here from the fifth district.

A. TRASK: I yield to the --

CHAIRMAN: Does the delegate yield?

A. TRASK: I do.

RICHARDS: There is an amendment of that amendment that is at present being worked out in the printing department and will be on the table shortly.

A. TRASK: Well, in view of that, Your Honor -- I mean, Mr. Chairman.

CHAIRMAN: Thank you.

A. TRASK: I would like to move for a recess until the call of the Chair until this thing is looked at, that particular suggested amendment. Or let's defer action on this matter pending receipt of that printed amendment.

ASHFORD: If it is proper at this time, I'd like to say that I would accept the suggestion that the word "present" should be inserted in the amendment that I offered.

WIRTZ: I'd like once again to address my remarks against the proposed amendment to the amendment that has been offered by the delegate from Molokai, by pointing out that in the original Section 4 and the amendment offered by the delegate from Molokai, there is sufficient latitude allowed the legislature to take care of the situation that was brought up by my good friend, the delegate from the fifth district, to take care of situations that arise between sessions of the legislature, whereas the proposed amendment referring to a judicial council is restrictive in that it provides only one method and that still requires the meeting of a legislature to consider the matter. That is in addition to what I've already had to say on the subject.

CHAIRMAN: The Chair would like to state that there are two amendments to Section 4 before us at the present time, the first amendment was offered by Delegate Ashford, the second amendment by Delegate Doi. What is your pleasure now?

ANTHONY: I believe -- I don't believe it's been recorded, but Delegate Ashford accepted a suggestion that after the word "legislature" in her proposed amendment to Section 4 --

CHAIRMAN: That's next to the last line?

ANTHONY: Next to the last line, the word "present" be inserted. I think there should be an acceptance of that amendment before we vote on this.

CHAIRMAN: I think that it should be in the third line, Delegate Anthony, after "membership."

ANTHONY: I think the Chair is correct.

CHAIRMAN: Is that correct, Delegate Ashford? Is that acceptable to the second?

CASTRO: May we have the whole amendment as offered by Delegate Ashford reread?

CHAIRMAN: Well, the amendment before the house, as has just been pointed out, is Delegate Doi's amendment to Delegate Ashford's amendment to the section. Which part of this would you like read?

CASTRO: I would like to have Delegate Ashford's amendment, original amendment read, so that I may get the correct wording of it in order to understand the changes of Delegate Doi's amendment.

CHAIRMAN: The section as amended by Delegate Ashford reads as follows: "The justices of the supreme court and the judges of the circuit courts shall be subject to removal from office upon the concurrence of two-thirds of the membership present of each house of the legislature sitting in joint session, for such causes and in such manner as may be provided by law."

PORTEUS: I don't like to refer to points of order, but I do have an objection to the word "present." I would like an occasion where I could get at that word, and prevent it from being included. The result of that amendment is this, that you can leave to a small minority of the Senate and the House the privilege of determining whether or not a judge is to be removed from office, by use of the word "present." Otherwise, what is the meaning?

CHAIRMAN: I believe that in order to keep this in the proper sequence we will have to proceed with Delegate Doi's amendment first, and then take up that if it's still in order to do so.

DOI: I would like to further add to my amendment this sentence. "Any judicial officer so charged shall not exercise his office until acquitted." The reason for that addition is to take care of the point raised by Delegate Arthur Trask this morning, and that is, there might be a long elapse of time between the time the offense is committed and the time the legislature might meet. And as to that particular problem, I again point to history and say that there have been times in the past where the legislature has failed to provide for the detailed method of removing an officer. And this would take care of this -- that particular situation automatically.

CHAIRMAN: Before -- Delegate Roberts, you seconded Delegate Doi's original motion. Do you accept that addition?

ROBERTS: May I have him read it again? I think I do; I want to get the full language.

DOI: The addition was at the end of the proposed section, a new sentence to read, "Any judicial officer so impeached," -- no, "so charged," rather, "shall not exercise his office until acquitted."

ROBERTS: I'll accept that.

RICHARDS: There is being circulated at present a proposed amendment in -- by adding a second sentence that uses approximately the same wording that the delegate just spoke about. It reads, "Any justice of the supreme court or any judge of a circuit court held to answer for any high crime or misdemeanor may be suspended by the supreme court until he has been acquitted."

CHAIRMAN: The Chair feels that there have been so many amendments to this that it would be well if we recessed long enough to --

DELEGATE: No.

CHAIRMAN: -- gather them all together so that we would know which ones we are talking about.

HEEN: There was no motion to adopt the last amendment.

CHAIRMAN: That is right.

HEEN: That was suggested. That was just simply presented so as to be -- enable the delegates to be thinking about what they might have to do next. If the discussion on Delegate Doi's motion to amend has been completed, I would move to table the motion that was made by Delegate Doi and seconded by Delegate Roberts, and I so move.

SMITH: I'll second it.

CHAIRMAN: It's been moved and seconded that the motion to amend as put by Delegate Doi, seconded by Delegate Roberts, be tabled. That would also include the added sentence that had been added, in making up that motion.

ROBERTS: Point of information. I'd like to ask the Chair whether or not the motion to table carries with it all of the pending amendments and the original motion?

CHAIRMAN: No, it is only on the one amendment that we are voting now, that is the last amendment that was made by Delegate Doi, seconded by yourself.

ROBERTS: I'd like to point out that the general procedure with regard to tabling a motion tables the substance and all that goes along with it.

DELEGATE: Point of order.

ROBERTS: Point of order.

CHAIRMAN: Delegate Roberts has the floor.

ANTHONY: The delegate is out of order.

ROBERTS: I raised the question of a point of order. May I speak to it?

CHAIRMAN: Please proceed.

ROBERTS: We have been going along on the supposition in our general proceedings that the way to get rid of a proposal is to move to table. It seems to me that there are proper procedures whereby the delegates of this Convention can state their position for or against a specific proposal, and that is to vote on the language and on the merits. It seems to me that the use of the procedure to table does not permit the Convention to express its opinion on the question. The general purpose of a motion to table is to put the question aside until such time as the pending materials are properly handled. It's something which comes up which has no immediate relevance or bearing on the question. It seems to me that there has been too much procedure with regard to tabling of amendments. As I read my rules of procedure, a motion to table carries with it everything that deals with that particular motion and so it seems to me that if the motion is to table, the motion goes to table all of the section.

FUKUSHIMA: Mr. Chairman.

HEEN: Now, Mr. Chairman --

CHAIRMAN: You're addressing this Chair on a point of order?

FUKUSHIMA: Point of order, yes.

HEEN: No, it's not on the point of order, but upon the argument made by the last speaker.

CROSSLEY: I recognize Delegate Fukushima on the point of order. Will you state your point of order?

FUKUSHIMA: I believe what Dr. Roberts said is true. A motion to amend is a subsidiary motion. A motion to table is also a subsidiary motion. If you will read Cushing, which we follow here, a subsidiary motion cannot be attached to a subsidiary motion unless it falls within an exception. And a motion to table an amendment is not an exception, and I believe Dr. Roberts is right.

HEEN: I'd like to have them point out that rule.

CHAIRMAN: Would either of the gentleman who raised the point of order care to point out the rule?

LEE: I just heard a good suggestion you made for a short recess. I wonder if it might be in order to move for a recess to clear these matters.

DELEGATE: Second the motion.

CHAIRMAN: If there's no objection, we'll have a five minute recess.

(RECESS)

HEEN: I will now withdraw my motion to table the motion that was made by Delegate Doi and seconded by Delegate Roberts. And I now move the previous question.

WIRTZ: I second that.

CHAIRMAN: It's been moved -- the previous question been moved and seconded. All those in favor say "aye." Opposed. Carried.

The previous question is the adoption of the amendment as proposed by Delegate Doi and seconded by Delegate Roberts. All those in favor say "aye." Opposed. The amendment is lost.

We now have before us the one amendment as proposed by Delegate Ashford.

RICHARDS: I would like to move at this time that that amendment be further amended by adding the sentence, "Any justice of the supreme court or any judge of a circuit court held to answer for any high crime or misdemeanor may be suspended by the supreme court until he has been acquitted."

CHAIRMAN: Is there a second to that? Hearing no second, what is your pleasure on the --

TAVARES: I'll second it for purposes of allowing discussion.

RICHARDS: This I feel, in conjunction with the amendment already before the -- on the floor, will take care of the interim situation that I was exercised about earlier in this meeting. In other words, it will leave up to the supreme court the opportunity of suspending any judge in between meetings of these sessions of the legislature.

WIRTZ: I'd like to point out that in the amendment that has been offered by the delegate from Molokai which is now before us, there is the general clause, "for such causes and in such manner as may be provided by law." The question of suspension, in my opinion, could be provided by law, and that would take care of the situation that the delegate from the fifth district has in mind.

TAVARES: If I were sure of that, I would be very happy to leave that amendment out, but I am not satisfied that that would necessarily be implied. The proposal, or the amendment, only talks of removal, it says nothing about suspension. And if the word "suspension" is included in "removal," then it seems to me the suspension would have to be done in the same manner, and that would mean you would just go round

and round. You would still have to wait for the next session to have the suspension.

BRYAN: I'd like to ask the delegate from the fifth that proposed the last amendment if he should not specify, or at least the record should not show, "suspended by a majority of the supreme court" or "unanimous decision."

CHAIRMAN: Would Delegate Richards care to answer that?

RICHARDS: In answer to the question of the delegate from the fifth district, I discussed this with our local "Supreme Court" who stated that the mention of the supreme court automatically meant a majority of the supreme court, so that three members of the supreme court would be able to suspend one of their own members.

WIRTZ: There is one other thing I'd like to point out about this amendment, this second amendment that is offered, and that is that suspension is limited to high crime or misdemeanor, whereas your removal is "for such causes and in such manner as may be prescribed by law." Now is it the intention of the delegate from the fifth district that the question of suspension should be limited only to high crimes or misdemeanors?

CHAIRMAN: Would the -- Delegate Richards, would you answer that, please?

RICHARDS: I am again mentally handicapped when it comes to dealing with legal language. But I understand as a mere layman that a misdemeanor covers practically everything that is not a high crime.

SAKAKIHARA: Will the delegate from the fifth district yield, delegate who offered the amendment?

CHAIRMAN: Proceed.

SAKAKIHARA: In the event of an insurrection and the machinery of these courts has failed, and it involves the supreme court, which might betray the public, then who is to remove the supreme court? The justices of the supreme court?

CHAIRMAN: Are you asking the question of --

SAKAKIHARA: I am asking the question of the introducer of the amendment.

CHAIRMAN: Delegate Richards.

RICHARDS: I did not get the question.

CHAIRMAN: Perhaps Delegate Tavares heard it and could answer it?

TAVARES: I think I could answer that with another question. If the whole legislature revolts, who is going to remove the legislature?

SAKAKIHARA: That is not the question, Mr. Chairman, not parallel to the question. In the case --

CHAIRMAN: Delegate Sakakihara, would you please state the question again?

SAKAKIHARA: In the event of an insurrection, and if the justices of the court, supreme court in this case, should betray the people, who is to remove the supreme court? The five justices or three justices?

TAVARES: If there is an insurrection and the supreme court members join the insurrection, they will be put down by the militia and the United States Army and Navy.

CHAIRMAN: Thank you.

KELLERMAN: May I ask the gentleman from the fifth district if he would explain what is meant by the words "held to answer." To just what proceeding does he refer, the "held to answer"?

CHAIRMAN: Can the Delegate Richards answer that?

RICHARDS: I understood, also, from members of the "Supreme Court," that "held to answer" would be charged in one shape or another, possibly indicted, or formerly or legally charged.

HEEN: That language was copied from Section 9 of the Bill of Rights. "No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury," which is a good section of the Bill of Rights.

CHAIRMAN: What is your pleasure with this amendment? Ready for the question? The question is on the adoption of the amendment to the amendment. All those in favor --

LEE: How does it read? Will you read the --

CHAIRMAN: -- of the amendment to the amendment, and the one under question at the present time is as follows: "Any justice of the supreme court or any judge of a circuit court held to answer for any high crime or misdemeanor may be suspended by the supreme court until he has been acquitted." I might state that this is an amendment to the amendment proposed. All those in favor say "aye." Opposed. The amendment is lost.

We are now back to the Delegate Ashford's amendment to Section 4.

ROBERTS: As a matter of future procedure, I would suggest that since we have microphones, which do not give the proper indication of the feeling of the Convention, that a show of hands be substituted for the microphones.

RICHARDS: Second the motion.

CHAIRMAN: I believe the Chair would like to state that despite the volume produced by the microphones he was able to see the open mouths easily.

TAVARES: I would like to know whether the motion now includes the word "present" after the word "membership."

CHAIRMAN: The motion as it now stands includes the word "present."

TAVARES: Then I move to strike that word. I think it's utterly dangerous to subject the removal --

PORTEUS: Second the motion.

CHAIRMAN: It's been moved and seconded to strike the word "present" from that amendment. Any discussion?

A. TRASK: The word "present" --

ANTHONY: Point of order. I never heard of a motion to strike in a parliamentary body.

CHAIRMAN: That's probably --

ANTHONY: I've heard of it in civil cases and equity cases.

TAVARES: All right, I'll move to amend the amendment by deleting the word "present."

CHAIRMAN: All right, that's what the Chair understood.

A. TRASK: Question, please, of Mr. Tavares. The word "present" --

PORTEUS: Point of order. That motion has not been seconded. If I may be recognized, I'll second the motion.

CHAIRMAN: I recognize Delegate Porteus for the second.

PORTEUS: Thank you, Mr. Chairman, I now second the motion.

TRASK: Is the word "present" after the word "two-thirds"?

TAVARES: No, "the membership present." This means, the word "present" means that you can wait until - -

CHAIRMAN: The Chair will be glad to recognize the delegate.

TAVARES: Mr. Chairman, I'm sorry.

That word "present" means that you can wait till half of the house or almost half goes out on a holiday, pull a sneak meeting, and bring the question up unknown and vote somebody out of office with two-thirds of those present. I think it's utterly dangerous. I think everybody ought to be forced to be present and if they are not there, they ought to send the sergeant at arms after them. Everybody ought to be made to do his duty on this kind of a dirty job.

ANTHONY: I don't agree with the last speaker. The purpose of inserting the word "present" is not to have any half a dozen people meet in a covert session and act on the removal of a judge. Obviously, they have got to have a quorum of both houses. But it is a very salutary provision which will prevent a dissatisfied minority absenting themselves from a session of the legislature, thereby reducing the number of those present. And if you've got to have two-thirds of all members, then you would have to have possibly a majority or a unanimous vote of all present.

I call attention of this Convention to the fact that this is the very language used in the Federal Constitution, and that's why it was put in there. "Those present," "two-thirds of those present" is the language of the Federal Constitution. It should not be two-thirds of the membership, otherwise a dissatisfied minority could absent themselves and thereby defeat the - -

PORTEUS: I'm afraid that I disagree with my colleague from the fourth district most emphatically. A dissatisfied minority cannot absent themselves and prevent action. I think the vote ought to be two-thirds of the membership. I understand that's what it's supposed to be. I think in a matter as serious as this, it should take two-thirds of the membership. If a minority wishes to absent itself, it does not interfere with the power of those that remain to compel their attendance. It does prevent, however, in a legislature, people from absenting themselves and thus trying to avoid taking a position on a question, and leaving it to a bare majority of one of the houses to determine what should be done. And of the bare majority present it only takes, under the scheme outlined, a two-thirds vote.

Now I believe that it would be much better to omit the word "present," to require a two-thirds vote of the full house and leave it to the others present to compel the attendance of the members, as may be done in connection with other legislation.

BRYAN: I am in support of the previous speaker. I believe that anyone who would stay away from the meeting would be no different than just voting "no" on the question. That's all it amounts to. As a practical matter, I don't think it makes any difference. Therefore, I believe the language with the word "present" removed would be proper. If they are going to stay away, it means that if they came they would vote "no," that's all.

A. TRASK: I agree altogether with Delegate Tavares, because I see no merit in the fact that the language in the Federal Constitution is used at all, because the net result has been that that machinery for impeachment is so cumbersome it's only been used a few times in our entire history, just because of that situation. And I think the amendment by Delegate Tavares is very good.

SILVA: The Senate in itself, our Senate takes two-thirds to remove each member. We have the qualification of our own membership and it takes two-thirds of the total membership to remove a senator, and in the House of Representatives the same thing, and I feel that this is much more important, and I think that two-thirds of both houses, of the entire membership of both houses should be used for the removal of a judge. And I just want to state my position.

SHIMAMURA: I was just about to call the members' attention to the provision of our Federal Constitution. "And no person shall be convicted without the concurrence of two-thirds of the members present."

ANTHONY: If the Convention wants to facilitate the process of removal, as evidently Delegate Trask would like to do, the way to do it is not to have two-thirds of the membership of the house, but two-thirds of those present, and therefore, in line with his suggestion that we get rid of the cumbersome procedure of impeachment, I think we ought to adhere to the language of the Federal Constitution, namely two-thirds of those present. You would first have to have a quorum, then you would have to have two-thirds of both houses.

SILVA: Move the previous question.

KING: Will you just suspend a moment? Two-thirds of a half or two-thirds of a quorum, would be two-sixths or one-third. In other words, there is a possibility that a judge could be removed on a vote of one-third of the membership of the two houses. At first I thought the word "present" was desirable. I'm now convinced by the arguments of both Delegate Porteus and Delegate Tavares that it ought to be two-thirds of the full membership.

SILVA: Previous question.

CHAIRMAN: Ready for the question? The motion is to delete the word "present." All those in favor say "aye." Opposed. Ayes have it. "Present" is deleted.

MIZUHA: I'd like to ask the movant of the original amendment whether or not she meant two-thirds of each house separately or in joint session. I want that clear, although it indicates of each house, but I want it clear.

CHAIRMAN: Delegate Ashford, will you answer the question, please?

ASHFORD: The language was changed from "two-thirds of both houses" to "two-thirds of each house" so as to make it perfectly clear, and give the other islands a chance to protect themselves.

CHAIRMAN: The motion before us now is to amend Section 4 by the substitution of a new Section 4, which you all have before you. Ready for the question?

A. TRASK: I'd like to address myself to the original thought that I had a moment ago, namely to amend the substitute for Section 4 offered by the lady delegate from Molokai and to adopt the language in the amended sentence submitted by Delegate Monte Richards.

CHAIRMAN: That sentence was submitted and lost.

A. TRASK: Was defeated. That's correct. Well, I'm offering this particular amendment to substitute for the sub-

stitute for Section 4 as offered, namely, reading as follows – and if you'd follow the amendment offered by Mr. Richards, why it would read as follows – and this is to take the place of the entire Section 4 and 4A – namely as follows: "Any justice of the supreme court or any judge of the circuit court, held to answer for any high crime or misdemeanor may be removed or suspended by the supreme court." Now I feel that this method would hold - -

CHAIRMAN: Would the delegate read that again a little slower so that our clerks will be sure and get the motion inasmuch as it has not been circulated. Thank you.

A. TRASK: "The supreme court or any judge of a circuit court held to answer for any high crime or misdemeanor may be removed or suspended by the supreme court."

CHAIRMAN: And that is in place of the amended Section 4?

A. TRASK: That is correct, as offered by the lady delegate from Molokai, and I so move.

J. TRASK: Second the motion.

A. TRASK: To correlate my argument here – I'm a little shocked by the reaction near me – I realize that the lady delegate this morning said she objected highly to the expression "high crime or misdemeanors," but I'd like to say in anticipation of the objection that Section 5 in the proposal, Committee Proposal No. 7, I have suggested an amendment to that. After the word "incapacitated" in the middle of the third line of Section 5, to have the words "or unfit" which would be grounds for negligence and so forth, for a justice to be removed.

So addressing myself directly to what may be considered a novel section to the question of removal or suspension of justices or judges, I feel that a strong judiciary should be strong enough to clean out itself when the occasion arises. I have - - I cannot go along with Delegate Sakakihara who talks only about rebellion in one branch of the government and leaves the other two branches spotless. I feel that the governor having the power of appointment and the judiciary thereby being composed, it, probably more than any other branch of the government, is acutely aware not only of the legal aspects of proper judicial conduct but the high ethics that are required of judicial conduct.

The court makes its own rules and regulations. It regulates itself. It is so tenacious with respect to its own conduct that there comes clashes now and then, as was brought to the attention of the Convention some time ago, I believe either in the committee or in the convention hall, where it was suggested that if the legislature by a law sought to say that anyone that was born on October 4 would be given a license to practice, such a law would be obviously unconstitutional because it would attack the very individual character and dignity and all the attibutes that are given and attributed to the judiciary, and its independence and its power to make its own inherent rules. There are many inherent powers in the judiciary, in the self-determination with respect to this business of justice.

So it seems to me, even though the suggestion may be adventuresome here, I do think that this business of letting this matter rest in the hands of the legislature when only one part of the legislature has power to advise and consent to the appointment of any judge or justice, that we should leave this matter altogether with the court. The first and immediate reaction is this: if any person is answerable for any high crime or misdemeanor, the public reaction would be such that they would want immediate action. The courts would be put under a cloud, and immediately the court itself and the justices would feel compelled, even though they would probably vacillate. The question always of public opinion rules both the legislature certainly which would bring up this question of presentment for a charge and will go on its two-thirds membership to oust or seek the removal of a judge. Certainly the courts, when one judge is amiss or any other situation, the entire judicial system is under question.

So it seems to me that consistent with every attribute of independence that we are seeking to make the three branches have, we should consider seriously this amendment to have the court itself be the judge, as we are here, of the fitness of our own members.

BRYAN: I think that my colleague from the fifth has given a very good argument why his amendment is not required. He proposes putting - - among other things he proposes putting the word "unfit" into the third line of Section 5. That would take care of his particular problem with respect to Section 4, and Section 4 as proposed by the delegate from Molokai would be in order.

CHAIRMAN: Do you offer that as an amendment?

HEEN: I move the previous question.

SMITH: Second the motion.

CHAIRMAN: The previous question has been moved. All those in favor say "aye." Opposed.

The Chair is a little in doubt and wants to be fair. The previous question would be a vote on whether or not we shall take up immediately and without further debate the amendment that has just been made. All those in favor of the previous question say "aye." Opposed. Ayes have it.

Question now is the amendment made by Delegates Trask and Trask for the adoption of the amendment as a substitute for the amendment for Section 4. All those in favor say "aye.' Opposed. The noes have it. The amendment is lost.

All those in favor of the amendment offered by Delegate Ashford which now remains unchanged - -

KAM: I would like to ask one of the three judges of our "Supreme Court" in this Convention a question. What, in this proposed amendment by Delegate Ashford, "for such causes," what are the causes for impeachment?

CHAIRMAN: Delegate Anthony, would you care to answer that?

ANTHONY: That would be left as a matter of legislation, for determination of the legislature. In other words, it would be included - -

SILVA: I rise to a point of order, Mr. Chairman. Is that an admittance that you are a member of the "Supreme Court" of this Convention?

CHAIRMAN: The question is out of order. Will you proceed, Mr. Anthony. Are you satisfied, Delegate Kam? The Chair will put the question.

KAM: Is it the same as the original Section 4, "treason, bribery or other high crimes and misdemeanors"?

CHAIRMAN: The motion for adoption now is on the amendment to Section 4 which was offered by Delegate Ashford.

ANTHONY: In further response to - - May I speak in answer to the question? This is a broadening of those causes for which an impeachment would lie. In other words, it goes beyond high crimes and misdemeanors. That's the purpose of the movant.

CHAIRMAN: Ready for the question? All those in favor of the amendment will say "aye." Opposed. Ayes have it. Section 4 has been adopted as amended.

DELEGATE: Is that the ruling of the Chair or do we have to act on Section 4 as amended?

CHAIRMAN: The amendment was offered as a substitution for Section 4. The Chair would rule that that passed Section 4 as amended.
Section 5.

HOLROYDE: I have the unique privilege of moving the adoption of Section 5.

CHAIRMAN: It's the consideration. It has been deferred.

A. TRASK: May I have also the unexpected pleasure of seconding the motion for the adoption of Section 5.

CHAIRMAN: It's been moved and seconded that we reconsider Section 5 which was deferred to the end of the calendar. Any discussion? All in favor say "aye." Opposed. We will discuss Section 5.

ROBERTS: I raised the question this morning on Section 5 on whether or not the members of the supreme court are the individuals who are to determine and suggest to the governor the appointment of a commission to inquire into the ability or inability of another judge of the supreme court or the cirucit court to sit in office. I indicated this morning that I would move the adoption of a proposal in the form of an amendment either to this section or Section 10, for the creation of a judicial council. I recognize that it is difficult to move an amendment substituting the word "judicial council" for the "supreme court" in Section 5 without first getting before the Convention the question as to whether or not a judicial council should be included in the Constitution. If it is agreeable, we might defer this Section 5 and take it up at the same time as Section 10.

BRYAN: Point of order.

CHAIRMAN: State your point of order, please.

BRYAN: I believe we have already voted on Section 5 and passed it, just a moment ago. If not, I'd like to know what we were voting on.

CHAIRMAN: We voted on Section 4.

BRYAN: Following that, my colleague from the fifth district, from Kahuku made a motion - -

ROBERTS: That is correct. We have passed Section 10.

BRYAN: It was seconded and then we voted on something.

CHAIRMAN: We voted on reconsideration, on taking Section 5 up at the present time. It had been deferred and moved to take up Section 5 at this time.

TRASK: I move to amend Section 5 - -

CHAIRMAN: I'm sorry. Delegate Roberts has the floor. I yielded only for a point of order. Delegate Roberts.

ROBERTS: I'd like at this time to move that the words "supreme court" be deleted from Section 5, and Section 5 be amended to add the words "judicial council," so that the section would read: "Whenever the judicial council shall certify to the governor." The language thereafter would remain the same.

ARASHIRO: I second that motion.

BRYAN: In order - - point of order.

CHAIRMAN: Delegate Roberts, have you finished?

ROBERTS: I'll yield to a point of order.

BRYAN: I believe it's necessary to move passage of this.

ROBERTS: That has already been done. I can't - -

CHAIRMAN: The motion to adopt Section 5 was made earlier this morning, and it was deferred until this afternoon. Delegate Roberts.

ROBERTS: Is it in order to speak to the question of the - -

CHAIRMAN: It's in order to speak to the question of your amendment and to the section. Do you wish to speak at this time?

ROBERTS: Just a moment. I think there was a question raised as to what the amendment is. The amendment is to delete the words "supreme court" and to substitute the words "judicial council."

HEEN: Mr. Chairman.

CHAIRMAN: Does Delegate Roberts yield?

ROBERTS: I yield for a question.

HEEN: There is no provision in the article as it stands now for the establishment of a judicial council. Perhaps this suggestion might appeal to Delegate Roberts. Have that part of Section 5 read this way: "Whenever a commission or agency established by law shall certify to the governor," and so forth. In other words, that will then permit the legislature to, say, establish a judicial council to take care of this situation.

ROBERTS: That would be agreeable to me, Senator, if you would add the words "or in accordance with such other agency as established by the Constitution" so that would permit me - - I indicated that I intended to move the inclusion of a section dealing with a judicial council in the Constitution.

KING: Mr. Chairman.

CHAIRMAN: Do you yield for a question?

ROBERTS: I yield.

KING: It is my understanding that you propose to introduce another amendment that would establish a judicial council. It seems to me we would best defer Section 5 and go down to that amendment, vote it up or down, then come back to Section 5. Would it be agreeable to defer action on Section 5 at this time and proceed to the subject matter where your amendment would come in?

ROBERTS: That will be agreeable.

KING: Would you not prefer to move then that action be deferred on Section 5 at this time?

H. RICE: I think what is in dispute is a judicial council, and we could go down there and make a new section, Section 11, and establish a judicial council and then see how the delegates feel on a judicial council. Is that all right? That seems to meet with approval, and I would suggest then that we take up the matter - -

CHAIRMAN: That we defer Section 5?

H. RICE: Defer Section 5 and have Section 11. We take up now a new section, Section 11, the establishment of a judicial council.

CHAIRMAN: Is there a second to that?

ROBERTS: I'll second that.

CHAIRMAN: It's been moved and seconded we defer action on Section 5, and consider a new section to be known as Section 11 dealing with a judicial council. All in favor say "aye." Opposed. Ayes have it.

ROBERTS: I have an amendment which I'd like to place on the desk and have distributed to the delegates.

CHAIRMAN: Will the messengers distribute them and please give the clerks and the Chair a copy immediately?

ROBERTS: Would it be in order to move for a short recess so the delegates have an opportunity to read the proposal.

CHAIRMAN: There'll be a five minute recess, hearing no objection.

(RECESS)

CHAIRMAN: The Chair will recognize Delegate Rice. Delegate Harold Rice, do you have the amended section or - -

H. RICE: The amendment given to me was an amendment to Section 7. I think, although it isn't in order, it should be a new section, Section 11, as I understand it.

CHAIRMAN: Well, we defer - - the motion to defer the other one was made and the motion to take up a new section to be known as Section 11. Does someone have a proposal to make on Section 11?

ROBERTS: I'd like to move that the new Section 11 be accepted by the Committee of the Whole.

> Section 11. There shall be a judicial council consisting of the chief justice, who shall be its chairman, and eight additional members, of whom two shall be judges of courts having appellate jurisdiction who shall be appointed by the chief justice, for terms of four years; two shall be practicing attorneys; and four laymen citizens of the state, who shall be appointed by the governor for overlapping terms of three years.
>
> It shall be the duty of the council, and it shall have the power, in addition to other duties and powers which may be conferred upon it by law, to make a continuous study of the administration of justice in this state, and of the organization, procedure, practice, rules and methods of administration and operation of each and all of the courts of the state, to receive and consider, and in its discretion, investigate criticisms and suggestions pertaining to the administration of justice in the state; to collect and publish statistical and other information concerning the work of the courts of the State; and to make or alter the rules relating to pleading, practice, or procedure in all the courts of the State, including rules prescribing the duties of all administrative personnel and agents of the courts.
>
> Rules of pleading, practice or procedure shall be effective only when published as provided by law, and the legislature may repeal, alter or supplement any rule by a law limited to that specific purpose.

CHAIRMAN: What is Section 11?

ROBERTS: Section 11 comprises a proposal creating the establishment of a judicial council which shall consist of nine members to be appointed in part by the chief justice of the supreme court and in part by the governor, to consist of judges of the supreme court, practicing attorneys, and lay citizens. The purpose of the judicial council would be to make continuous studies of the administration of justice in the new State, and the organization, procedure, practice, rules and methods of administration, and operation of each and all the courts of the State.

The proposal is basically in conformity with other councils established by some 33 states. The practice and procedure of those councils has indicated a valid and proper use and has resulted, at least on the basis of information available, in the better practice of the judiciary in eliminating certain abuses that have arisen, and providing the lay people of the community a better understanding and appreciation of the functions of the law. It is sometimes assumed that the mere statement of rules of procedures and practices, because they have been laid down by the judiciary, are therefore understood and accepted by the public. It has been found as a matter of practice that the better understood the lay people are in connection with the practices and procedures of the court and their function, the better the administration of justice and the greater the regard for the courts.

The committee that has reported out to us has indicated that they want a strong court, that they want the best qualified people to perform the job. It seems to me that the formation of a judicial council would go toward that end.

I'd like to point out in the support of the section dealing with the appointment of lay individuals as part of this judicial council, a statement made by the president of the American Bar Association on this question. He stated, and I'm quoting,

> I asked an informed individual which kind of group gets the best results. His answer was, "Those councils which have laymen on them. Where either lawyers or judges serve alone they seem to lack energy for sustained attack. Where judges and lawyers serve together each group seems to have a diffidence about imposing its views upon the other, which stultifies action. Where, however, laymen are included, their presence seems to act as an 'ice-breaker' and to stir activity among the professional members of the council. Laymen's criticisms are sharper

I might state that I am perfectly willing to modify so far as the proportions are concerned, as between the members of the bar, the judges and laymen. As long as there are some representatives of the lay citizens on that group, I have no objection to an amendment to make such provision.

CHAIRMAN: Do you move the adoption of this?

ROBERTS: I plan to move the adoption of this.

CASTRO: I second the motion to adopt the proposed section.

ROBERTS: If it is agreeable with the committee, I'd like to suggest that we amend the proposal before you to eliminate the last paragraph, and in the sentence immediately preceding, which is in the second paragraph, after the semicolon, and which now reads, "and to make or alter the rules," to read "and to recommend the making or altering of the rules." The purpose of that amendment would be to indicate that the council acts in an advisory capacity and does not in itself promulgate such rules. So the sentence would read, "and to recommend the making or altering of the rules relating to pleading," etc. I move the - -

HEEN: Mr. Chairman.

ROBERTS: - - appropriate amendments.

CASTRO: I second the motion to amend.

HEEN: Mr. Chairman.

CHAIRMAN: The Chair would like to put the motion to make this amendment. Delegate Heen.

HEEN: In order to expedite matters I call for the previous question on that last motion.

CHAIRMAN: On the altering of the amendment before us?

HEEN: That's correct. To delete those -- the last paragraph and last clause after the semicolon --

WOOLAWAY: I second that motion.

HEEN: -- in the paragraph before last.

CHAIRMAN: The motion for the previous question has been put and seconded. That would be on the -- if that carries, we would then vote on deleting the last paragraph of this Section 11 and making the other changes that have been suggested.

HEEN: Deleting the last paragraph, but also the last clause after the semicolon of the second paragraph.

CHAIRMAN: All those in favor of the previous question say "aye." Opposed. The previous question has been called for. I'll now put the amendment to the new Section 11.

ROBERTS: Is the purpose to forestall any discussion to this question?

CHAIRMAN: Any discussion is now forestalled. The question is on the acceptance of the amendment.

ROBERTS: Well, the amendment, as I gather, is the amendment as we proposed it. I thought I heard the statement to delete the entire section after the semicolon. It's all right.

CHAIRMAN: All those in favor of the amendment to Section 11 -- No, all those in favor of the amendment -- Yes, all those in favor of the amendment would say "aye." All those opposed. Amendment carried.

ANTHONY: As I understand it, that motion was carried and now we are open for debate on the proposal of Delegate Roberts as has been amended by the last motion. Is that correct?

CHAIRMAN: That is correct.

ANTHONY: I would like to speak in opposition to the amendment offered by Delegate Roberts.

CHAIRMAN: That is to the entire Section 11 as now amended.

ANTHONY: To the entire section. This proposal, this amendment offered by Delegate Roberts is statutory, pure and simple. In every state in the union, with but one exception, namely California, judicial councils that have been erected—and there are some 35 in number—have been by legislation. Now there is nothing to prevent the legislature of the State of Hawaii from creating a judicial council. The debate which will ultimately come before this Convention, I assume, will be whether or not there should be a judicial council having to do with the selection and tenure of judges, quite a different thing than we have before us. This seems to me to incorporate a great mass of statutory material, entirely unnecessary in a Constitution, which should be a simple frame of government, and therefore I object, I am opposed to the adoption of this amendment.

HEEN: I also rise in opposition to the amendment that has been proposed. The first state to establish a judicial council was Ohio in 1923. Then in 1924 Massachusetts followed with a similar statute, meaning thereby that Ohio created a judicial council by statute. By 1948, 33 states in the Union has created judicial councils and in addition there were agencies performing similar duties in other -- three other states. California is the only state which authorizes a judicial council by constitutional provision.

CHAIRMAN: Any further discussion?

KELLERMAN: I think we deferred considering Section 5 in order to consider Section 11 --

CHAIRMAN: Correct.

KELLERMAN: -- to create judicial council. I wonder if I might ask the movant of Section 11, if he would consider accepting, in lieu of the creation of a judicial council by Section 11, the recommendation of the Committee of the Whole that the judicial council be established by legislation, and supplement that or augment that by amending Section 5 to read, "Whenever the judicial council as established by law shall certify to the governor."

In other words, we shall be referring to the judicial council in the Constitution indicating that it is to be established by law, and then setting forth in as much detail as desired by this committee the entire Section 11, possibly, as recommendation to the legislature to be included. Would he consider that favorably in lieu of creating the judicial council in detail, as this seems to be pretty much a legislative matter?

CHAIRMAN: Delegate Roberts, you have been asked a question. Would you care to answer?

ROBERTS: My main purpose in putting this section before the committee is to bring forth the presentation of a problem dealing with the total question of the judiciary and law enforcement. It seems to me that the broader the base you have for understanding the action of the courts, the greater the possibility of support of courts and their actions. To those, and this goes for the majority of the people who are not lawyers, the more information that you get to them as to the administration and function of justice, the greater the possibility that the judiciary will be supported and understood.

The reason for suggesting its inclusion in the Constitution is to give cognizance to the fact that some 33 states have adopted it since 1920. The reason why they have not been included in their constitutions, I think, is in part indicative of the fact that there have been no constitutional conventions in those states, and when constitutional conventions had been held, those actions in those groups are -- have already been in effect and are functioning. Therefore, there isn't any need to incorporate those sections in the Constitution. We do not have a judicial council and, therefore, my own preference would be for its inclusion in the Constitution.

If, however, it is the feeling of this delegation, this body—and I would like to urge other members of the Convention to express their opinions on this—if it is their feeling that this matter is best left to the legislature and they would prefer a general statement to the effect that the legislature shall establish such a judicial council, then, of course, I would wholeheartedly support such a position.

I might point out to some of the delegates that this judicial council has nothing to do with their discussion and debate in the Judiciary Committee, which concerned itself primarily with a judicial council for the purpose of selecting and nominating judges. The purpose of this council is merely for the purpose of studying the administration of justice in the new State and the making of recommendations for its better use in the State. I think that we ought to divide our previous thinking of a judicial council which was concerned with the problem of making recommendation of slates of nominees [from] this council which is concerned primarily with the study and the administration of justice in the State.

ANTHONY: The Judiciary Committee has struggled to keep in two simple pages, an entire branch of government. It has been our earnest effort to keep out a lot of statutory material. This is statutory, pure and simple, and I think it would be very unwise to set the precedence in the judicial branch of government that we are going to incorporate? [rest of speech not on tape.]

KAUHANE: The producer of this proposal has made a very careful study of the judicial proceedings relative to a setting up of a judicial council in California. I think if it works well for California, it is only proper that we should give it some consideration. I'd like to ask the chairman of the Judiciary Committee whether this proposal as submitted is a step forward or backward in our judicial setup.

ANTHONY: So far as the Constitution is concerned, it's a distinct step backward. We have already got a supreme court chief justice who is the administrative head; we have an administrative director. If that need be implemented by further legislation, there is ample legislative power to do it. What we will be doing here will be cluttering up the Constitution with matters obviously legislative in their character.

KAUHANE: I'd like to ask the chairman again. The statement that he has made, is that a statement of his own opinion? Because of the wide differences of opinions among some members of this Constitutional Convention - -

CHAIRMAN: I believe you asked his opinion in the first instance.

ANTHONY: I would say that my opinion is borne out by other state constitutions.

MIZUHA: The delegate from the fourth district did mention that there weren't any new constitutional conventions in the various states in the Union to give those states the authority to write it within their state constitutions. But I would like to point out to the members of this Convention that within the last seven years, there were three major states of the Union that held constitutional conventions—Georgia, I believe, in '43 or '44, Missouri in '45, and New Jersey in '47. And in those three revisions of the state constitutions, although they had some system of judicial council, it was not written into the state constitution.

CHAIRMAN: Any further discussion? Ready for the - -

NIELSEN: So far as making this brief section in our Constitution, I don't think we should consider that seriously. In the Florida Constitution which was written in 1949, they have 11 pages to cover judiciary. They even say what the justices, the circuit court justices, shall get in the way of salary. They state what the constables' duty shall be, and on and on and on. So I think that we should put this in here verbatim as the amendment stands.

SMITH: In answering Mr. Nielsen, I believe maybe Florida - - persons who wrote up that constitution didn't trust the legislature. They had to write out something really long, most likely they didn't trust them. This is an administrative - - legislative matter, I fully believe.

ROBERTS: May I answer the - -

CHAIRMAN: Delegate Silva.

SILVA: I personally believe that this is a legislative matter in its entirety. The only thing that is necessary in the Constitution is that there shall be a legislative - - I mean a judicial council because the amount of the - - the membership may be expanded or contracted from time to time and the legislature can do that. If we were to put the eight additional members, and two of whom shall be judges, then it will stand. There may come a time that the legislature may feel that we should have a greater representation of laymen with the judicial council, and we couldn't do anything about it if it's fixed in the Constitution, but if it was left to the legislature, then the legislature can easily see fit that there shall be a greater proportion of laymen within the council or a smaller council or a larger council from time to time. Therefore, I think that the only thing that is pertinent is that there shall be a judicial council.

LOPER: I rise to a point of information in the form of a question to the chairman of the Judiciary Committee. It is claimed that this matter is statutory and that under the State of Hawaii there would be nothing in the Constitution to prevent such a judicial council from being organized. My question is, is there anything in the Organic Act at the present time which prevents the organization of such a council, and if there is a recognized need for it, why haven't we had it?

ANTHONY: There is nothing in the Organic Act that prevents it any more than there is anything in the Organic Act that either authorizes or prevents the creation of the Board of Education. But the legislature in its wisdom has created certain agencies. The legislature in its wisdom has not passed on this question of whether or not there should be a judicial council.

CHAIRMAN: I don't think that the last speaker was entirely correct in stating that there was no place in the - - It says there shall be a Department of Education, I believe.

ROBERTS: I'd like to correct the statement made by the delegate, I think, from the first district with regard to the establishment of judicial councils. I have before me the official report prepared for the use of the delegates, and on page 215 there is a tabulation on the formation of judicial councils, the year in which they were founded and by whom authorized. The State of Georgia provided by statute for the formation of such a council in the year 1945. The State of Missouri in the year 1941 provided for an executive committee of the Missouri Judicial Conference Forum. The State of New Jersey in 1930 adopted such action by a statute, and the State of New York in 1934. All of those states mentioned by the speaker before have provision for a judicial council.

MIZUHA: My point was that it wasn't written into their state constitution, and I believe I'm right. I may be wrong that it wasn't - - it is there but I have to see the state constitutions first, but according to this tabulation, it says it's provided for by statute.

LEE: I believe that the - - with the other speakers who have spoken before me that this is a statutory matter. I also believe that the - - as set up in this proposal as I read it, for this judicial council to deal with a continuous study of the administration of justice. It's a continuous thing dealing with the organization, procedure, practice, rules and methods, and the membership is - - may be shifted as the amount of laymen as versus the amount of lawyers and the amount of judges. Those matters could be well thrashed out and debated after the system of the judiciary is set forth in the Constitution as contained in the majority report.

CHAIRMAN: Any further discussion?

A. TRASK: I am opposed to this amendment for this one reason. I think it would certainly create nothing else but another hierarchy of the Hawaii Bar Association, and I'm

a member of the Hawaii Bar Association. I say it because here we have predominance of a chief justice, four lawyers and four laymen, and as the laymen are silent here in these discussions, I think they will be as silent in the judicial council. So all you are going to have is an Olympian -- Olympian Bar Association, and I'm against it.

WOOLAWAY: In order to silence the attorneys, I move the previous question.

FUKUSHIMA: I second that motion.

CHAIRMAN: The previous question has been moved and seconded. All those in favor of the previous question say "aye." Opposed. Previous question is carried.

The question before the house is the adoption of Section 11 as amended. All those in favor will say "aye." Opposed. The noes have it. The section does not carry.

MIZUHA: Inasmuch as time is running out, and there are many delegates who have other business this afternoon, I move for the adoption of Section 3.

CHAIRMAN: That is out of order. I'm sorry. We have still before us Sections 5 and 6, unless you want to reconsider our actions.

HEEN: We are, I think, considering Section 5, and I have an amendment to offer, I think which will appeal to the delegates and that is to delete the words, "the supreme court" in the first line and inserting in lieu thereof the words, "a commission or agency established by law." So that that first clause there will read, "When a commission or agency established by law shall certify to the governor that it appears any justice" and so on.

TAVARES: I second the motion.

HEEN: It seems to appeal to someone here, so therefore I make that in the form of a motion.

CHAIRMAN: Apparently the second had already thought you had. Delegate Heen, are you through?

HEEN: Through.

CHAIRMAN: Delegate Roberts.

ROBERTS: I wonder whether the mover of the motion would be agreeable to substitute the words "commission" and put in its place the term "judicial council" which would achieve the same purpose but would indicate the nature of the commission to be set up for this purpose.

HEEN: I think that the use of a broad term would be preferable. They can create a judicial council. Maybe they will call it something else in order to take care of the situation.

TAVARES: I second that motion now.

CHAIRMAN: Thank you.

ASHFORD: May I ask a question?

CHAIRMAN: Pardon me, just a moment. I'd say that, Delegate Roberts, that the movant did not accept your substitution of words.

ROBERTS: In that case, Mr. Chairman, I move to amend the amendment to substitute the words "judicial council" for the word "commission."

KAUHANE: I second that motion.

CHAIRMAN: The question before us now is an amendment to the amendment substituting the word "judicial council" for the word "commission." Any discussion? Ready for the question? All those in favor say "aye." Opposed. I think we should have a hand vote. All those in favor of the amendment will raise their hand, please. Opposed. The motion is lost. The vote was 29 to 26.

ASHFORD: May I ask a question of the movant of the -- of Judge Heen. What commission or agency? Any commission or agency?

HEEN: Any commission or agency established by law.

ASHFORD: Are there not many commissions?

CHAIRMAN: Will you please address the questions to the Chair? Thank you.

ASHFORD: Mr. Chairman, will you be kind enough to ask the senator and delegate if there are not many commissions and agencies established by law which would be wholly inappropriate for this purpose?

CHAIRMAN: Would the delegate care to answer?

HEEN: Of course, this one will be a special commission or agency established by law for this purpose.

CHAIRMAN: And how -- I believe the question was how is it so designated?

HEEN: As may be provided by law.

CHAIRMAN: Delegate Porteus, did you wish to speak?

PORTEUS: I do.

CHAIRMAN: You are recognized.

PORTEUS: I wonder whether we might get at that problem by use of the words, "authorized by law."

CHAIRMAN: Do you wish to continue?

PORTEUS: It seems to me that there is a point that has been made by the delegate from Molokai. I don't think this wording is artistic wording by any means to carry this at the moment. And it seems to me that we ought to have a further amendment to this subject, possibly we can go on to -- I move that the language utilized be, "When a commission or agency, designated by law, shall certify to the" -- I don't think that does the trick either. I move that this section be deferred.

RICHARDS: I move that we take a five minute recess so the attorneys can get together again.

CHAIRMAN: No objection, we'll take a five minute recess.

ANTHONY: Just a second, Mr. Chairman. I don't think we -- there was no second to that, was there?

DELEGATE: Second the motion.

CHAIRMAN: Five minute recess.

HEEN: Mr. Chairman, there was a motion to defer, and I seconded that motion.

CHAIRMAN: The Chair is sorry it didn't recognize the second. And there was a motion to recess, which is in order, and we are in recess.

(RECESS)

ANTHONY: I move we defer action on Section 5 until after we have discussed Section 3.

CHAIRMAN: Is there a second? All those in favor say "aye." Opposed. Carried.

WIRTZ: I'd like to move at this time we reconsider the established order that we had before, and that we now consider Section 3.

MIZUHA: I second the motion.

CHAIRMAN: It's been moved and seconded we take up Section 3. All in favor say "aye." Opposed. Section 3 is now before the Committee of the Whole.

MIZUHA: I move for the adoption of Section 3.

HOLROYDE: I'll second that motion.

CHAIRMAN: It's been moved and seconded Section 3 be adopted. Any discussion?

FONG: Mr. Chairman.

FUKUSHIMA: Mr. Chairman.

CHAIRMAN: Delegate Fong.

FONG: I'll yield to Mr. Fukushima first.

CHAIRMAN: Well, you can't do it first, but if you do yield to Mr. Fukushima, why Delegate Fukushima has the floor.

FUKUSHIMA: I'd like to speak in opposition to Section 3 of Committee Proposal No. 7. I have here an amendment to offer, and the amendment is printed for circulation to the entire Convention.

The courts of the future State of Hawaii should be symbols of justice for all. That they may not be, will be entirely our own fault, the fault of the delegates assembled here to write into our Constitution the type of judiciary we are to have. There is no question as the debate has gone on this morning that we favor a judiciary article providing for long tenure, providing for adequate compensation, and providing for retirement benefits. In order that we may attract good lawyers for judgeships, we must necessarily provide for these things.

The only thing that we are not in agreement apparently at this time is the method of selecting these judges. The bare majority of eight of this committee, Judiciary Committee, sincerely and honestly feel that the appointive system is the best system of the judiciary. We likewise, a minority of seven, a very strong minority, feel in our considered judgment that the elective system is the best system under our form of government. I am one of the minority. I am for the election of all supreme court justices and all circuit court judges. Now, that's the tenor of my amendment which I have just submitted.

The arguments advanced for the appointment of judges can be refuted by the proponents of the elective system, and the arguments presented for the elective system can also be refuted by the proponents of the appointive system. When one says that the appointive system is the best system, it is merely an expression of opinion. And when I say here that the elective system is the best form of the judiciary, it is also an expression of opinion. We cannot pigeon-hole the appointive system as being the best and we cannot pigeon-hole the elective system as being the best. The question is not that easy. We must, therefore, in deliberating and in determining what sort of judiciary we should have combine both theoretical acuteness with practical good sense.

If anyone today should ask a man or a woman on the street, who are our supreme court justices, who are our circuit court judges, what would the answer be? The answer might well be, "I don't know" and they may even add, "and I don't care. I've never been in court and I never expect to be in court." Naturally, they don't expect to go to court. No one does, but this is certain. If dire trouble strikes, they, like thousands of others before them, will turn quickly and hopefully to the courts to save their homes, their businesses, and perhaps the future of their children. With their hearts in their mouths and everything they hold dear to them, they'll find themselves looking up at this stranger on the bench, the judge in whose integrity and ability to administer justice their fate now depends. As they study him, tormenting questions will of necessity flood to their mind. Who is this man? Why did they select him? How are these judges appointed anyhow? Had this man actually proved his legal ability, honesty, and impartial justice before being appointed or was he just somebody's friend? These are the questions one will of necessity ask if we have an appointive system.

If we had an elective system, this will automatically take care of itself. The candidates will appear before the public and state their qualifications, and state to the public what sort of man they are. They know who these judges will be and these questions will never be asked.

I, like all of you here, believe that a judge should not be selected on popular will. I am making this contention that they should be elected because I believe sincerely in the complete separation of the three branches of government. Under the proposal as submitted, we have an appointment by the executive. That certainly is not a separation of government. We also have further the confirmation by the legislature, that is one of the houses, the Senate. That again is certainly contrary to the principle of separation of government.

The proponents will have you believe that an elected judge will spend one half of his time in office eying the next election. Well, this can easily be remedied, gentlemen and ladies. All we have to do is to lengthen the tenure, and therefore, I have in my proposal, in my amendment, a tenure of eight years.

The appointive system is a system full of politics. This is only natural. Judges should be selected from lawyer candidates irrespective of the party they belong to. Can you think even for a moment that a Republican governor will have the audacity to select and appoint Democratic attorneys on the bench? Contrarywise, do you feel even for a moment that a Democratic governor will have the audacity to select and appoint Republican attorneys as judges under a Democratic regime? Let us not be too naive. It's just impossible.

Another point in reference to politics under the system as proposed. You will have confirmation by the Senate. Here we have a political football. It happens all the time when you get to the confirmation by the Senate, one individual who may be qualified can easily be bargained off for another because his political thinkings may be contrary to what the senators have in mind. He may be bargained off with just so much dirt and debris.

Let us for a moment leave our small pond here and remove ourselves to Washington. There, many years ago, a very able attorney was nominated as one of the associate justices of the Supreme Court but failed of confirmation simply because his political thinking was not in accord with the Senate and thereby the nation lost a very able jurist. Let's take the case of Associate Justice - - former Associate Justice Louis Brandeis. He had a whale of a time getting confirmation. It was just about impossible. He worked for his confirmation, an able man as he was.

If you should believe in the complete separation of the three branches of government, you believe in the independent judiciary, and if you believe in taking politics out of the judiciary, I cannot see how you can come to any other conclusion but vote for the elective system.

I'd like to read, in conclusion, from the January issue of "The Nation's Business," speaking of our Federal Court appointments, which has been upheld in the committee report. Here Harold J. Gallagher, President of the American Bar Association says bluntly, "Appointments to the district bench are far too political. Often the man's qualifications for the job are shockingly lost sight of. For one thing too many judges are appointed out of government service rather than from the ranks of qualified lawyers engaged in general practice. Let's hope in the future the appointing power will search more thoroughly. Many men of fine caliber and broad experience want the job, would make monetary sacrifices to accept it, yet seldom is a superior man appointed. Why? Because politicians use these appointments to award party henchmen for their services."

I'd like to move at this time for the adoption of the amendment.

CHAIRMAN: May the Chair inquire? We -- each of the delegates, I believe has had at least three amendments referred to him. Is yours the pink amendment?

FUKUSHIMA: I shall read the amendment. "The justices of the supreme court shall be elected by the electorate of this state, and the judges of the several circuits shall be elected by the electorate of the respective circuit, both in a non-partisan election. No person shall be eligible to such office who shall not have been admitted to practice law before the supreme court of this state for at least ten years. The justices of the supreme court and the judges of the circuit courts shall hold office for a term of eight years."

H. RICE: I think that the committee should rise and report progress and ask leave to sit again tomorrow morning at 9:30 and have these amendments before them at that time to study them. I understand the second hasn't been made, so it's perfectly in order that the committee rise and report progress and ask leave to sit again.

MIZUHA: I second the motion.

CHAIRMAN: It's been moved and seconded the committee rise --

KAUHANE: I rise to a point of order.

CHAIRMAN: What is the point of order, please?

KAUHANE: There is a motion made to adopt the amendment offered by Fukushima. There is a motion made to defer action until tomorrow.

H. RICE: It wasn't second -- -

KAUHANE: The second --

CHAIRMAN: The motion --

KAUHANE: The motion to --

CHAIRMAN: The first motion was not seconded.

KAUHANE: Yes, but the last --

CHAIRMAN: And the motion to rise was seconded and will be put without debate.

DOI: I think out of ethics and basic parliamentary rule --

CHAIRMAN: Are you speaking to a point of order?

DOI: -- the Chairman should give time for a second. Yes, I do rise to a point of order. I think that on the basis of ethics, the base of good parliamentary rule, the Chairman should give time to second the motion made by the movant. I stood up but Mr. Rice had already risen, so I did not interrupt him. But I think the Chair should give sufficient time for a second. In fact, I think it is incumbent on the Chair to call for a second.

CHAIRMAN: The question before the Convention at this time is to rise, report progress --

FONG: Mr. Chairman.

CHAIRMAN: -- ask leave to sit at --

FONG: Mr. Chairman.

CHAIRMAN: -- at 9:30 tomorrow morning.

FONG: I move that that motion be tabled.

KAUHANE: Second that motion.

CHAIRMAN: It's been moved and seconded that the motion be tabled. All those in favor say "aye." Opposed. We'll ask for a show of hands. All those in favor of tabling the motion.

KELLERMAN: What is the motion?

CHAIRMAN: Just one hand --

TAVARES: That's the point, Mr. Chairman. I don't know what the motion is.

KELLERMAN: What is the motion we're voting on, please?

CHAIRMAN: Just vote with one hand please, it would help the Chair to count. The motion was to table the motion to rise, report progress. The motion before us was to rise, report progress, and beg leave to sit tomorrow. There was a motion to table that motion. All those in favor of tabling that motion will raise your right hand.

[The motion to table was defeated. The motion to rise was thereupon put by the Chair and carried.]

JUNE 9, 1950 • Morning Session

CHAIRMAN: Committee of the Whole, please come to order. The Chair would like to state that when we rose yesterday that Delegate Fukushima had the floor. He was speaking on his motion which had been made and seconded to amend Section 3. The Chair would also like to state that while it does not feel that it is incumbent upon the Chair to recognize a second as such, it will endeavor to do so, but will recognize people as the Chair sees them.

Delegate Fukushima, had you concluded your case?

FUKUSHIMA: I had, and I believe the motion that I made to amend has been seconded.

CHAIRMAN: The record so states.

CASTRO: I would like to speak in opposition to the proposed amendment, and in doing so answer some of the statements made by its author, the delegate from the fifth district. There are several points which I believe are matters of not complete statement.

One, first of all, the charge that the appointive system in opposition to the system of electing judges opens the door to political maneuver. I think we would be unreal if we were to deny that the appointive system is free of politics in the baser sense of the word, but I cannot see that the elective system, having recently had my own baptism of fire, is free of politics in the popular sense of the word. In fact, the two systems both have their shortcomings in this regard. It occurs to me that the difference is in the amount of time that is spent and the money that is spent by the candidates, a great deal more time and money in the

case of the elective system than the appointive, and also money that has to put out by the State in running an election. I am very concerned over the amount of money that we spend in our new State. We are authorizing certain new procedures which we have not had to pay for in the past, and we have not yet found new revenues.

Another point that I'd like to bring to the attention of the delegates from the islands other than Oahu. If I were a delegate from an island other than Oahu I would fight very violently to see that the elective system amendment were defeated. This morning's paper indicates that the island of Oahu has 70 per cent of the population. It is the only island whose population has grown in the last decade, the population of the other islands have decreased. That is by census, not a matter of opinion. That means that the outer island areas would possibly be shut off from voting one of their favorite sons into the supreme court.

Now the argument against that of course is the one that we received yesterday informally that the delegates from the outer islands would like to elect their native sons to their local circuit benches. I think that that is an argument of pride and not of logic, and it breaks down by a very simple statement, and I don't say this unkindly, that the island of Oahu has the large reservoir of talent and it is perfectly possible in my mind, as a lay citizen, that in one of these more remote areas where a circuit bench position must be filled, it is possible that an applicant will not come forward from that particular local population. Are the people there to be made subject to inferior applicants when there is a reservoir of capable men in another area? This is what you would have in the elective system.

The delegate from the fifth district yesterday discussed the joy that a person before the bar would have in seeing a familiar face behind the bench. That familiar face argument is fallacious. I'd give you a half a dozen familiar faces for one that I'd never seen before if I knew that behind that face was a well-trained and capable mind. And it's the intelligence and ability of the judge and not your own personal acquaintance or familiarity that is most important.

The separation of departments has been pointed out by the delegates from the fifth district as a compelling argument in favor of the elective system, the indication being that judges who were appointed by the governor would be in some manner which was not explained attached to the executive. I present to the delegates that the separation comes not by reason of the appointive power, but by reason of the security of long tenure. That is an historical concept and I don't believe that there is any argument on that point.

The very capable paper of our delegate from the fourth district, Mr. Anthony, points out a somewhat humorous incident in the career of the late Justice Holmes where shortly after his appointment to the Supreme Court by President Roosevelt he partook in a vigorous dissent in the Northern Securities case much to the consternation of the executive who appointed him, who was making his stand in those days as a trust buster.

Now this next point I feel we have to look at. It's touchy and I hesitate to bring it up, but it was pointed out to me last afternoon in this hall informally that one of the reasons that some of the delegates would like to see the elective system is that they fear that the capable and well-trained lawyers of oriental ancestry would never attain to the benches, particularly of the superior court, if we were to rely upon the appointive system. That argument is lacking in logic. Let me point out a couple of items, a matter of observation.

In the first place the appointive system, if it has in the past in Hawaii chosen an overwhelming number of Caucasian to the bench, has done so possibly on the excuse that most of the appointments are Federal appointments, from Washington, D. C., where we know this racial ban does exist. And we know that it does not exist here. I feel that strongly, and I don't think it's double talk.

It is also an historical point that it has only been in the last decade or so that there have been a number of able and well-trained gentlemen of oriental ancestry who would be proper applicants for the bench, and we cannot take the long backlog of Caucasian appointments and place it against a situation where we actually have our first generation of well-trained lawyers who are proper applicants for the bench. Today there have been considered several, and I don't want to go into personalities and names, but you can review the facts. I know, ladies and gentlemen, that the charge that an appointive system would continue an overwhelming number of Caucasians for the reason that they are Caucasian or haole, is fallacious. There is no man who would attain the position of governor of this State who would dare, even if he had it in his heart, to turn down the proper man because of his racial descendency.

I think that it's unfair to place upon the populace the burden of choosing judges. As much as we occasionally take joy in sniping at our brothers, the attorneys here, and make little remarks about the "Supreme Court," this is true, that the profession of law is an esoteric one in which the standards can be judged only by those who themselves have knowledge and the average voter has no knowledge of what the basic concepts are.

In arguing against the elective system I am not necessarily arguing for the appointive system because it was I who threw in as a proposal, the Missouri Plan. That brings us this other point, that in all of the judicial reforms of the last decade throughout the United States, the vigorous attempts at reform have come from those states which are presently burdened down with the elective system. If you'll turn to page 201 of the Manual, the first full paragraph: "Within the past decade a new method of choosing judges has been vigorously advocated by those interested in legal reform. As a result, both California and Missouri have adopted a procedure for judicial selection which aims to combine features of both the appointive and the elective methods. In both states, this method developed from an elective system of selecting judges. In 1946 the adoption of this plan was considered in Oklahoma, Utah and Washington." If you turn to the table on page 219, you'll find that those three states are presently burdened with the elective system. "During the same period, the bar studied the plan in Michigan and Pennsylvania"—two more states that have the elective system of judicial selection—"and the Texas Civil Judicial Council recommended the plan in its overall constitutional revision." A committee of the Florida bar in 1948, another state that has the elective system, and Kansas, and they are all moving away from the elective system.

The question, finally, is not whether or not there is politics, or whether or not the devil in man will break down the institution, but it is what is the system that produces the better judge, or the best judges, and the elective system, generally acknowledged and proven by the attempts of the bar associations and the legislatures and the state constitutional conventions in the last 10 and 15 years, indicate that there is nothing but dissatisfaction with the elective system.

CHAIRMAN: The Chair would like to point out before recognizing anyone else that debate on this subject is limited to 15 minutes under the rules of the Convention, and the last speaker spoke just one minute under that, but I will

have to warn you at this time so that I don't have to interfere with your speeches.

MIZUHA: I'm going to be brief. I believe that debate on this subject should not go into backgrounds of personalities or anything else. We are all Americans here and we will decide the question as citizens of the future State of Hawaii and not the background we come from. I believe -- I am in favor of the appointive system because I believe it is a better system. It will give us better judges to sit on our courts, and I have faith in the leadership of the people in the future State of Hawaii, that they will select citizens of the State of Hawaii regardless of background, in the positions in our circuit courts and supreme court. I believe it is well at this time that we forget the question of ancestral background. That's all I got to say.

LARSEN: I agree fully with the last speaker, I would like to speak against the elective system. It seems to me the one thing that endangers our democracy are the political machines that are built in our big centers. These political machines, if they have to have every judge as part of that machine, I believe endangers this judicial system of ours that we want to keep so independent. I think the only argument we are making here is, have we a better chance of getting more justice with the appointive system or the elective system, and I believe the evidence points toward the appointive system as giving us a sounder justice.

KAWAKAMI: As a layman, may I say a few words in connection with our problem of selecting our judges. Under our system of government we have three branches. First, the legislative which is the policy-making body of our government; then, administration --

DELEGATE: Louder, louder please.

CHAIRMAN: If you'll hold the microphone directly in front of your mouth.

KAWAKAMI: -- then the executive. As the name implies, his duty is to administer these policies which have been set by the legislators. Naturally these two branches are elected by the people.

Now comes the judiciary, or the judges. Their duty is to interpret these policies so that the decision may be fair and just to the people at all times. Normally I'm a strong believer in electing our public officials, because I believe that is the fundamental basis of our democracy, but in everything else we have exceptions and appointive judges is one of those exceptions, I believe.

I believe the judges should be free, as far away as possible from direct influence of politics. They should be put away in the position so that they can render their decision on the merits or demerits of the case, so that the people would be given the maximum amount of justice.

On the battlefront, the privates are the first ones to receive fire, and in the courtroom battle there too, the private, I mean the private citizen, would be the first one to receive the fire. And I feel that the people should not be divided into two warring factions in choosing the judges. I believe the judges should act in the capacity of umpire and we should not mix up in that particular fight. When we face a court, we can face it with clear conscience that we had nothing to do in direct choosing of the judges.

For the past 160 years, the Federal government has had appointive systems, and if their system was radically wrong, I believe the people of the United States would have made changes. But, till today we have the same old system and it has been working out pretty good according to my feelings, and what's good for the Federal government, I believe is good enough for the State of Hawaii.

CHAIRMAN: Any other discussion on this? Are you ready for --

ANTHONY: This question that is for decision is one of the most important ones which will be resolved by this Convention, in my judgment. The question whether or not we are going to have popularly elected judges or going to have a strong judiciary based upon an executive appointment under a merit system goes to the very core of the judiciary article, and for that reason I have very strong feelings against the proposed amendment.

Now, what was said yesterday in that lengthy discussion by Mr. Fukushima? First place, he said that this is a matter of opinion. We will concede that it is a matter of opinion. Your committee has studied this question very -- with great care. We have sought the best opinions in the United States. We have not just relied on our own predilection on this matter. We have consulted the great authorities on the whole system of selection and tenure of judges, and the significant thing is that those authorities are against a system of popularly elected judges. Now the reason for it is clear, that you will not attract the best men to the bench if you are going to have them chosen by a popular election.

We have also consulted other phases of local opinion and there has been distributed among the delegates—and I would like to have it filed with the Clerk—a letter from the Hilo Bar Association voting ten to one in favor of an appointive system. If the messenger would pick this letter up and deliver it to the Clerk's desk, I would like to have it made part of the records.

CHAIRMAN: It will be so received.

WOOLAWAY: Mr. Chairman. I'd just like to make --

CHAIRMAN: Delegate Anthony still has the floor.

ANTHONY: In addition to this, the Bar Association of Hawaii has voted overwhelmingly in favor of an appointive system.

Now, are we going to abandon a tradition that we have had in this Territory for almost a hundred years? Are we going to fly in the face of the experience and the wisdom of the Federal system? Are we going to take a step backward in face of the strong movement of every state in the union away from popularly elected judges, and get our judicial system into the morass of politics? That is the question for decision.

I would like to address myself to one thing which I think causes some of the dissent here on the floor, and that is the question which some of the delegates have stated to me that they, during their campaign for office as delegates to this Constitutional Convention, told the voters that they were in favor of popularly elected judges, and that therefore they wished to keep the faith. May I point this out to those delegates who have made statements along that line. Those delegates and you gentlemen who made those statements to the electorate were elected to write a Constitution for the State of Hawaii. The people in electing you expected that you would attend to this Convention, do the necessary work, listen to the debate and then exercise your own informed judgment. They did never intend you to come to this Convention with a crystallized mind on any subject. They never intended any such thing like that, and so I say that there is no breech of faith. All you are doing is saying that in the light of a comprehensive survey of this thing, in light of the evidence that is brought before the floor of this Convention

the system of popularly elected judges is no good and we don't want it in Hawaii. Now if that is breaking faith with the people, in the light of all the evidences before the committee, I don't see how that can be urged.

Now one further thing, and I would like to impress this upon the Convention here. If you are going to have popularly elected judges, those judges are going to campaign. In other words, it would take them six months of wasting their judicial office to campaign for election. It would be costly. Judicial salaries being small as they are, the campaign money would have to be put up by somebody. Now I don't think we want our judges sitting on the bench who have any favors that they have accepted from any citizen. We want a strong and independent judiciary, and you don't get that if you are going to have them in a partisan campaign. Even though they may be friendly with the litigants that appear before the bar of justice, query whether or not that is what you want in your courts. I don't want a judge sitting on the bench that is friendly to me because I voted for him. I want a judge who will sit on the bench and render equal justice under the law, and this article will destroy that system, and I am against the proposed amendment.

CHAIRMAN: Delegate Arashiro rose prior -- at the same time as Delegate Anthony.

ARASHIRO: Thank you, Mr. Chairman.

CHAIRMAN: Proceed.

ARASHIRO: As I sit here this morning and listen to all the arguments, it reminds me of a little story. A minister came along and wrote on the blackboard, "I pray for all"; and a lawyer came along and wrote, "I plead for all"; and a a doctor came along and said, "I prescribe for all." Then came the politician to say, "I promise all." Then came the delegate to the Constitutional Convention who said, "I protect you all." Then came the layman who said, "I pay for all."

Now we are discussing a very complicated and confusing subject in reference to the structure of our government, and I'm just wondering to myself whether I should go for the elective, appointive, Missouri system, or other system that they are thinking. But to me, I want to submit a proposal which is the Hawaii method, the forty-ninth state method, a new method. But before submitting it, what we are trying to get is a judicial system that is a separate, a complete separate setup from the legislative and executive branch of our government, and we want to have an impartial judicial system.

Now the argument raised, the elective system has a tendency—of course I'm going to make my speech short so I will not elaborate on arguments that were brought up—they said the elective system had a tendency of leaning toward politics. The appointment system has a tendency of separating from politics, but may become subject to or obligated to the appointer, and by that they might not have, or the decisions might not be always made in favor of the man that is going to be affected by the decision. And right down the line, there have been different arguments that are sound and every argument that was brought needs careful consideration.

Now I've been thinking of a proposal where it is not an elective system, it is not a completely appointive system, but a system that we might say is a compromise method of all the matters that have been submitted, and that is where we have the chief justice of the State of Hawaii be elected indirectly. There was a suggestion about having the chief justice run for election at large, but that method also was convinced to me might have a tendency of creating a judicial political machine. But now this indirect method of electing the chief justice is a method which I want each delegate to the Convention to seriously consider with open mind.

This method is the joint committee of the legislature, with equal representation from each island to be represented in the committee, and this committee through a secret ballot will elect our chief justice, whose name will be submitted to the legislature 30 days prior to the election. After he is elected, he there and then will appoint his subordinates and other judges of the territory.

MAU: I don't believe that I could add any further argument or put in any more vigorous way than the sponsor of the amendment did yesterday afternoon. I want to congratulate him for his able presentation of the motion that he has made to amend. Several points have been raised this morning, and it is a repetition of the arguments in favor of the appointive system. One is that in the elective system, politics would be involved. If the delegates will recall that argument was ably answered yesterday afternoon. In the judicial system, you cannot remove it from politics no matter how you select your judges. There can be no question about that.

It was pointed out yesterday that if the executive or if you had a judicial council involved in the selection of judges—and the present Section 3 of this proposal calls for appointment by the executive and confirmation by the Senate of the State—can anybody have any doubts in their minds that the appointee might have to perform certain favors in behalf of the executive or those who had confirmed him in the Senate? That's human nature. If you say that that is less likely to be involved in favors, political favors, than that of the elective system, that perhaps might be true. But to say that because you have an elective system, it would ruin your judicial system, I think is a lot of poppycock. Three-fourths of the states have by some method or another the system of election of judges.

It is also true that the trend and great effort is being made by the various bar associations of each of the respective states who have the elective system, or which have the elective system, are trying to change that system to one of appointment in one or more ways. But the fact remains that today even though that trend has started for the last 12 or 15 years, up to today, 36 of the 48 states still operate under the elective system. And it has never been pointed out to me that under that elective system in each of the 36 states, they have not had honest judges, judges who sit there without prejudice, judges who were not fair and impartial. There has been no scandal of any kind which would be to such an extent that we could say that system should go out of the window.

I submit to you, Mr. Chairman, ladies and gentlemen of the committee -- of the Convention, that to retain the great principle that we are here gathered to put into this Constitution, the separation of the three branches of government, you must leave that ultimately in the hands of the people. The people elect your executive, the people elect your legislative branch, is it not well to say that the people can be trusted to elect their judges. I have no fear, and this last election in the Constitutional Convention brought that out. I call your attention to the delegates from the fourth district, the elder statesman, Delegate William Heen, who led the ticket in the fourth district; the able and distinguished lawyer, Delegate Anthony, for the first time running for public office received an enormous and tremendous vote for a first time. If either of those gentlemen should run for chief justice of the State of Hawaii, I would give them my wholehearted support and so would the people of the Territory of Hawaii. Can you say that the people will not elect able, high-calibered

judges? I am willing to trust the people. For after all, all the power of the government in each of the three branches of the government, those powers stem from the people. Are we afraid to trust the people to elect these judges? I am not.

Now, Mr. Chairman, I want it for the record that when I cast my vote on this, on this important question, I do so because of an honest opinion, not because of my racial descent. And I will do so on every important question, or any question that is raised here or in any public forum when I cast my vote, it is because in my candid and considered judgment that is the right thing to do, and for no other reason, racial or otherwise.

TAVARES: I will be brief. First of all, this debate reminds me of what I, in the course of my reading, learned Benjamin Franklin said when the question of appointment or election of judges came up before the Constitutional Convention. He said that he preferred the Scotch system which was appointive. He says, "You know, whenever there is a vacancy, all the lawyers get together and they pick out the lawyer that is the ablest and got the biggest practice, and get him appointed and then they divide his practice among the rest of them."

But all joking aside, I'd like to read to this Convention something that I think indicates that Hawaii has a noble tradition of appointive judges. We have heard a great deal here about preserving the old Hawaiian traditions, and I am for it. And I'd like to read to you what was said in the Senate of the United States when they gave this territory the distinction of being the first territory with a separate system of its own judges, the first territory, and even Alaska today has a system of where the Federal judge handles everything and all circuit judges do, too. But they paid us the compliment of giving us a separate system of appointive judges and one reason they did it was this.

Senator Collum, who was one of the commissioners that drew up our Organic Act and came down here to the territory, to the Hawaiian Islands to examine the situation, said this about our system. That was way back before 1900. He said, "So we found the supreme court there doing business with just as much dignity, with just as much sense of honor and duty and apparently with just as much intelligence as the supreme court of the State of Illinois or of Connecticut or of any other state. There was nothing in the establishment there in any way that the commission could see would justify us in uprooting the supreme court or the circuit courts of the islands and requiring the government of the United States to meddle with them. So it was the conclusion of the commission and of the committee that as far as that was concerned, we ought to leave that alone at present."

I say Hawaii has a noble tradition, and I say we should perpetuate it.

SMITH: Listening to both sides this morning and hearing a lot of good speeches, if you will go and read this Section 3 that, "Justices of the supreme court and the judges of the circuit court shall be appointed by the governor by and with the advice and consent of the Senate," that first sentence to me means a great deal. For one fact—we will be electing a governor by popular vote. He will have the responsibility of judging, with the consent of the Senate, who will be our judges. Sure, I grant you that there is politics there, but it's not politics that can be detrimental to the State. I at all times would trust the voters, but I also realize one thing, that when -- as being even elected here as a delegate, we are carrying a responsibility to the people who elected us and who didn't elect us, to really judge in the interests of all, which would be best. I think that it is a matter of either politics or policy, therefore I am strongly in favor of Section 3 as it stands.

LOPER: I hesitate to speak on this subject surrounded as I am by legal talent, but to remain silent is to run the risk of being misunderstood because I believe that those who are for the election of judges would justify it on the basis of democracy, and I am for democracy.

I would like to have some philosopher of government answer this kind of question. Is this analogy a fair one or is it over-simplified? The people in a democratic state vote for taxes, they vote for the men who make their laws, and they have the right to decide whether they do want to pay for a new road or a bridge, but they wouldn't begin to think of electing the engineer to design that bridge. They have the authority to appropriate money to control epidemics, but they wouldn't attempt to elect the doctors or the scientists to handle the scientific end of it. They appropriate money for the construction of airports, but they wouldn't elect the pilots for the planes that go and come. It would be absurd to think of having our legislators appointed. There we want people who are close to the people, who have the confidence of the people, who have the social judgment to speak for the people. My question then is this. Is the judicial function a specialized function in the sense of the engineer or the scientist who does a job for those who speak for the people?

When I first attempted to deal with this question in my own thinking, I was in favor of the Missouri Plan because it occurred to me that this was possibly something superior to either appointment or election. However, it has been pointed out—and I have no grounds for questioning this—that the Missouri Plan, the Missouri Compromise, came about in an effort to get away from the election of judges. It was necessary because it was the best that could be had in moving from election toward appointment. I would like to be corrected on that if I'm wrong.

To summarize my brief remarks, although I am for the appointment of judges, I think that it needs to be remembered that that in no sense curtails the democratic quality of our government.

A. TRASK: We all acknowledge that the proponents for this amendment, the two eloquent speakers, Fukushima and Chuck Mau, believe this sincerely. In my conversation with them many years back they believed in the principle of the elected judges. For myself, it's been one of the most difficult questions that I've had to consider, and only recently have I definitely made up my mind with respect to how I should vote, either for or against the election of judges. I am for the appointment of judges.

I think there is a complete answer to the question posed by both gentlemen, namely, do we or do we not trust the people. That question is almost unfair, but let us answer it. I say we do trust the people, and the people certainly trusted us when they elected us, and it is our obligation to give them not trust in return, but to give them service. It's the question of providing a framework of government which -- whereby the people may get the best possible service for all their taxes paid. And that's what I'm interested in, and I'm sure that's what the proponents for the election of judges are.

The question is insulation. The question is that we have a government of politics. To say that any branch of the government or any person is not affected by government is overlooking the realities of life. But the question with respect to the judiciary is to make it as far as is humanly possible, consistent with our traditions, in a manner whereby they may be removed and render the best service. Dr. Loper has suggested that idea when he said with respect to engineers,

doctors and other professional people. You want the service, you want the best possible service that's available. The governor will be an elected person, he will visit and campaign on all the islands of the territory, he will be certainly subjected as he is not now.

Certainly we who are close to the subject of how judges are appointed have risen in the Bar Association and have argued this thing long and vigorously. Just recently during the campaign, as a matter of fact, I accused the Bar Association of meddling in politics when a certain committee sent a certain situation back to Washington. But that is what is before us now. We are projecting a program for the future, and however it is, we are working out this matter, I think, successfully.

What question bothers me is this. What facts indeed have the proponents for this amendment brought forth that would have any of us in our minds point to the present system of appointive judges and say it looks bad, there is time for a change? There is no evidence, there is not a scintilla of evidence given here on this floor to persuasively move any reasonable mind that there is need for a change. However, we have criticized the present situation whereby an appointive governor has himself in fact for long been the principle person who has appointed these judges. We know it, we dislike it, but is it only his fault? Or is it the fault also of the Bar Association of Hawaii which as we know has been ruled by a certain group. But I will say for this Bar Association, to which I am a member, that we are coming out of this medieval status and under the able leadership of Nils Tavares, past president here, it is being democratized. So it is a question of growing up, and we are growing up, and there isn't too much that can be said.

As a practicing lawyer for the courts, I am interested first in, not my friendship for a judge. I would be afraid of close friendship with a judge. Indeed afraid, because if he would want to be kind to me as a friend, a better friend may come along the next time and then I'll be sold down the river. I am concerned about the best services that my clients can receive at the bar of justice, and familiarity with a face, as I see, means nothing. We are concerned about service, the best service possible, the most competent service possible, the best mind and heart beating together to render what we consider is justice.

My second point is this. Let us not forget that a person who is a judge is certainly a very human person; he is a cultured person, he is a person that is aware of our cultural history, of poetry, of the best thoughts that have been expressed in music, in song, and in literature. As such, he is a sensitive soul, and to think for a moment that a person qualified and competent—and his competence is built from study and not from going around from corner to corner, and from bar to occasional cocktail party making friends and influencing people—he is a person —and there is no reflection cast upon anyone, there is only one disqualified person here that I know of. We are concerned with the humanity of this judge, and to have a qualified person as sensitive as he would be because of his literary pursuits.

He would have on Oahu 71 precincts, and in each precinct he would have necessarily one worker, political worker. He would not under most circumstances have the money to expend for an intensive political campaign because a campaign for judge would be on Oahu similar to a campaign for the Senate, which I can assure you is a tremendous undertaking. Who is going to pay for his campaign other than people who are interested in the decisions to be rendered? And as a person who is most concerned about the humanity of a judge, I say that the pressure that this ordinary human being would be subjected to would be so great that he could not withstand the human pressure, being the sensitive human being as he is. So you have a tremendous confusion of emotional life going on which is not good for what we would want to be considered deliberation of the courts.

So even though there is a division in my own family—my influence is quite limited—I say to all of my colleagues who are fair-minded, and my brother is fair-minded, that I think the appointive system under every consideration is the best we have and I see no cause for change.

BRYAN: I would like to say that I am very much in accord with the sympathies and beliefs of the previous speaker. I'd like to say further that the little history that was pointed out by our friend from the fifth district, Delegate Mau, as to the states that have the appointive system and the ones that are trying to get away from it, I think that I'd be derelict in my duty if I did not vote in favor of the appointive system. To say that Hawaii should step backward and throw away at least 75 years of good and fine upright judiciary and wait for the rest of the 33 states to keep up with us, I think it's foolishness. I'm very much in favor of the appointive system.

APOLIONA: I submit to you, Mr. Chairman and the members of this honorable body, a point which I have, which I hold very important and has not been discussed on this floor. A candidate in any political campaign is elected or defeated on the stand which he takes on certain issues. A candidate for judgeship in his campaign cannot speak on issues. He cannot speak of his thinking, cannot speak of his opinion, because if he does, he will automatically disqualify himself from the bench because he will then associate himself with certain issues and thus become prejudiced. Then I say, what will a candidate for judge campaign on? On his record. And may I ask what record? A record of how many cases he has won or lost in court? Or the record of his becoming a modern Robin Hood?

I submit to you, Mr. Chairman and members of this honorable body, that I do trust the people, not willingly trust the people, but I trust the people. The people elected -- will elect its chief executive, and as long as that chief executive is in office, they should sustain the judgment of the chief executive. I am opposed to the amendment as introduced by my good friend from the fifth district, and I shall vote for an appointment system of judges.

In his remarks yesterday afternoon, the delegate from the fifth district said that the judicial should be free from politics. In any campaign, any election campaign, I have yet to see that an election is not politics. You can't help but make it into a political campaign.

So therefore, my brothers of this honorable body, and sisters, may I say, will you consider that the appointment system of judges is far superior and better than any other system that is known on this face of this world. Thank you very kindly.

SAKAKIHARA: I believe I'm about the first to have offered an elective system of our judiciary, although it's limited to the supreme court. It is a compromise measure from that offered by the gentleman from the fifth district, asking that all of the judges from the inferior courts to the circuit courts and the supreme court shall be elected by the voters of this territory. The composition of our State Constitution, and the Federal Constitution, definitely separates three branches of the government. On one hand the delegates, in voting for a State Constitution, say that we firmly believe in these three branches of the government and that of the two you shall submit to the electorate so that the people can

vote them into office. But in another breath when it comes to the judiciary branch of the government, they want the people to say that you are not competent, that you are not able to judge good men on judiciary positions, that you are incompetent, that you are not fit to judge your neighbors.

The question has been raised here that in a progressive state they have gotten away from the elective system to that of appointive systems. In 21 states of the Union, all judges are elected by popular vote; in 14 others, all but inferior court judges are elected. The remaining 13 have an appointive system. The proponents of the appointive system come before this Convention and say the minority group of 13 states over the 34 states have the proper system of selecting the judiciary. I beg to disagree with their line of argument, but if it is true that a system adopted by 13 states is so effective that they are immune from politics, undoubtedly the 34 states would follow the pattern and it would have become unanimous.

Under Section 3, the appointive power under the appointive system, as already has been pointed out, is vested in the executive and to confirm by the legislature. A governor in office is a human. In order to perpetuate himself into office, our governor will have political machines. Whenever the appointment is to be effected, it will no doubt make -- refer his recommendation to that particular area in order to sustain that political machine. Judges who are selected by the governor under this system will become subservient to the executive and the legislature because he has obtained that confirmation from the Senate.

I don't believe that the answer to the question before the Convention is the appointive system. We can still trust the American people. We are not dominated in a community overrun by a totalitarian form of government. You who have been elected and serving here as a delegate certainly weren't elected by a political machine. We all ran as non-party -- nonpartisan politics. The people were able to exercise intelligently to select this group of people to represent us, and I have an abiding faith in the judgment of the people of this territory, that they are capable of selecting from among their neighbors, from among their fellow citizens, upright, honest, fearless and capable lawyers to be a judge. I submit to you that that is an American way, and if it is not so, 34 states will not adopt that system.

Flowery speeches has been made here by the proponents of appointive system to the effect that the judiciary will be wrapped up in politics, that the judges -- competent men will not run for judges. I cannot subscribe to that principle. Who has a bigger responsibility than one man under the terms of our proposed State Constitution, than the governor who is to be elected by the people. He is vested with the power to reprieve, giving pardons to those who have been convicted, and yet you say to the people, we trust you insofar as the executive is concerned, we trust you to elect one man in whom the enforcement powers are vested; but when you come to the selection of five men, the judiciary, the highest office of the judiciary, the supreme court, we do not trust you. You are unfit, you are not capable of selecting five men to serve on the supreme court as your interpreters or translators of law. Why, certainly we trust you to select one man, the chief executive of the State of Hawaii.

I submit to you, Mr. Chairman and members of this Convention, that it is not consistent with the arguments that have been advanced here by the proponents of the appointive system. I submit that the elective system is a democratic process. It is more American than an appointive system by vesting the power to one man. And depending on the size of the Senate that by majority vote that they shall be confirmed, it may be by nine or ten men who will say who shall or who shall not be the supreme court, or circuit judges of the State of Hawaii. Therefore I submit that the elective system is the answer to the question.

CHAIRMAN: May the Chair ask, did I understand from you, Delegate Sakakihara, that you had another amendment?

SAKAKIHARA: I had a proposal here, No. 88, which was filed by the committee which would have required five men of the supreme court --

CHAIRMAN: It does not relate to this section?

SAKAKIHARA: It does relate in this question, Mr. Chairman. We are touching upon elective system here under the terms of the amendment offered by Delegate Fukushima, selection of -- election of all judges.

CHAIRMAN: Do you wish to submit that amendment now?

SAKAKIHARA: There will be another amendment to be offered later on after this present amendment now before the Convention.

WOOLAWAY: It is interesting to note that in 1940 the voters of Missouri voted against the elective system by a majority vote of 90,000. The politicians were amazed because they had been certain people would not relinquish the right to nominate the judges in the primary elections and would not approve of the proposed plan. The politicians were then confident that the people did not know what they had done, so through the legislature a constitutional amendment was proposed to repeal the plan. This put the issue back again to the voters. Apparently the people had known what they were doing because when they voted again, at the 1942 election, the plan was retained by more than 108,000 votes against the elective system. I favor the appointive system.

DOI: I want to first make clear that I am not in favor of the amendment proposed, but since there have been so many speakers expressing their views on the question of whether they are for or against the elective or the appointive system, I would like to make a few expressions about my own ideas.

Much has been said about the independence of the judiciary system. When we speak of independence of the judiciary system, we mean that the judiciary must be independent of the executive branch as well as the legislative branch, as well as from politics. If we examine the appointive system, we find that it is not independent of the executive branch and as proposed it is not independent of the legislative body. On those two points I submit the elective system is independent.

On the question of politics I want to start from this premise, that I believe there is as much politics in an appointive system as there is in an elective system. The only difference is in the kind of politics played. In the appointive system, there is participation by a few and then the appointee only looks to a few after he is appointed. Then also in the appointive system, the kind of politics played is on a higher plane. While on the other hand, we find that the kind of politics played in the elective system is the kind of politics that a democratic government would want to see played, and that is submission of ideas and election -- submission of ideas and officers to the will of the public at large.

It has been raised, by one of the delegates, this question, and an analogy has been drawn, that on questions of health we call in the doctor. The elective system admits in the question of deciding a judicial decision a lawyer must be

called in. The only question is how. And as to that, I want to submit that a doctor's profession, his work, is more of a technical nature. In case of a jurist, it is not only technical skill, but it is important that we find out and subscribe probably to the kind of social thinking, political thinking, economic thinking that that jurist might have.

In that regard, I want to say that most of the law business are not given to the lawyers by the common man. They seldom have litigation, or legal problems to offer as business to lawyers. Naturally, the predominance of subject matter dealt with by most lawyers have to do with matters which concern a special type of thinking, and I think I am not unfair if I submit at that point that these lawyers who work in that special field would quite often get to think more or less the way that their clients want them to think.

Therefore in the appointive system, where a lesser group than the majority does the selecting and where much is relied upon the opinion of the Bar Association, it is very likely that those few with this peculiar type of thinking might be selected, and that is not desirable. The jurist in interpreting the laws might decide only on one case, but that case lays down the law in many instances and it has very far reaching effects. It might not have been the common man that went to court, but that decision does effect the common man. For example, acts like A.A.A. Therefore, I think we must give some consideration to the expression of desires from the common man group.

CHAIRMAN: The Chair would like to point out that there have been 17 speakers on this section so far, covering an hour and 15 minutes without recess. Does anyone else wish to be heard? Are you ready to vote on the amendment?

I'll recognize Delegate Fukushima, if no one else wishes to speak; he has already spoken once. Delegate Fukushima.

FUKUSHIMA: As the movant of this proposed amendment, I'd like to make a few observations. I will not be long; I'd like to, but I will not.

Whether the learned chairman of the Judiciary Committee had reference to me when he stated that some of the candidates who ran for office stumped on the proposition that he favored an elective system; well, I was one of them, and I did not stump for the elective without first considering the advantages and disadvantages of both systems. I made a thorough study, I've read Haynes, which was constantly referred to in the committee, and I came to a considered judgment, in fact as far back as three years ago when I had a long discussion with our delegate from the fifth district, Arthur Trask.

I've come to this Convention still with an open mind, however, that if the proponents of the appointive system could show me that the appointive system was the better system I would have gladly changed my mind, irrespective of what I stood for when I ran for office as delegate. We've had six or seven committee meetings and I believe it was merely an expression of opinion of a few committee members that were present at the meeting.

The chairman speaks of "great authorities." I can't recall, sitting in the committee meeting, of ever listening to any expression of opinion by great authorities. The only one that I can remember is Dean Vanderbilt. The chairman of Judiciary Committee wrote to Dean Vanderbilt to get his expression of opinion, and that is about all we got. At the same time, a suggestion was made by Delegate Fong that the chairman or the committee write to other authorities in other states having the elective system, and we were told that this would be done, but it was never done. All we had was Dean Vanderbilt's letter. We talked about the same thing in the six meetings; there was nothing new. The first meeting was an exploratory meeting. We explored the thinking of all the committee members present and that was about all. At one time, if I remember correctly, I moved that we have a public hearing on this matter. That was seconded and carried, but I've never heard of that public hearing. I made that suggestion because I felt that there are many attorneys in this territory here that would have attended a public hearing to voice their views.

Now the Bar Association has voted, as the learned chairman says, overwhelmingly for the appointive system. I'd like to remind the delegates that the vote was 50 to 4, and I'd also like to remind that the entire bar of this territory is about 200 lawyers. That represents just one third of the entire bar. I could go on and on and discuss the failings of this committee, because I felt there was not an adequate expression except by the delegates. There was nothing else that was brought in. We had no speakers, except Mr. Cades, who was the chairman of the committee of the whole studying this proposition, and all he reported was the overwhelming vote of 50 to 4.

I'd like to close now, but I'd like to state this. It's very unfortunate, in fact it pains me that one of the delegates here mentioned that the proponents of this measure here, which includes me as I am the proposer, that the reason perhaps why this amendment was proposed was because the oriental attorneys did not have the opportunity to become judges under the appointive system. I'd like to point out that the results of the elections on Oahu will definitely show that the orientals will have less of a chance to become judges than if you were under the appointive system. If I felt that this amendment would give the orientals more chance than the appointive system, I'd be the first one to withdraw this amendment, but I leave it in here because I feel very definitely in the complete separation with the three branches of government which I explored in yesterday afternoon's session. With that I'd like to close.

KAUHANE: I believe that a serious statement or charge, if I may put it, has been placed here before this Convention. If it is true, what has been stated to us, then certainly the committee should recall this report and go back into a committee session and take care of the matter of the charges that have been made. Certainly we are willing to vote on a committee report that is fair and has been given equal treatment. The fact that the statement was made that the committee failed to bring in opinions or bring in facts concerning an election system within the judicial system and because of the failure of the committee, as charged, in calling for a public hearing so that other attorneys who are licensed in the Territory of Hawaii to practice law be given an opportunity to express their views for or against an elective system or an appointive system, I am somewhat confused now. I'm confused because of the fact that I believe the committee report has not submitted a fair and impartial opinion on the judicial system, as they are now advocating and requesting this committee -- this Convention to adopt.

Upon that premise, I now move that the committee report and proposal be recommitted back to the Judiciary Committee and that the Judiciary Committee be instructed by you or by the Convention to carry out or else to make good the charges that have been made here in open Convention.

CHAIRMAN: Is there a second to that?

YAMAMOTO: I second the motion.

CHAIRMAN: Will you state the motion again please so that everyone understands the motion? As the Chair understands the motion, the motion is to rise and report to the

Convention that you believe that the subject matter should be recommitted to the Committee on Judiciary.

KAUHANE: I move that the committee proposal and the committee report be recommitted to the Committee on Judiciary - -

CHAIRMAN: And how do you propose that be done?

KAUHANE: - - and that the Chair instruct the chairman of that committee to carry out, or in other words, to do away with the charge or to carry out the charges that have been made here upon their - - of their failure to bring to this Convention a complete report of the - -

CHAIRMAN: If the delegate would state the motion - -

KAUHANE: The Clerk has the motion. I ask you to tell the Clerk to read the motion.

CHAIRMAN: Will the Clerk read the motion, please?

CLERK: That the committee report and proposal be recommitted back to the Judiciary Committee, and that the Judiciary Committee be instructed to report to the Convention to carry out the laws - - to make the Act - - the charges that have been made for the information of - -

CHAIRMAN: I believe -- The Chair feels that the motion was not clearly stated, and if we could get it down to a few simple statements, we would know on what grounds we were voting.

KAUHANE: I move therefore, to make it very simple and understandable, that the committee proposal and the report be recommitted to the Committee on Judiciary.

CHAIRMAN: Does the second accept that?

YAMAMOTO: I accept that motion.

H. RICE: As a member of the Judiciary Committee, I resent Mr. Kauhane's remarks because I don't think he attended the Judiciary Committee. I sent the report of the chairman, which I think is one of the outstanding reports of this Convention, back to the lawyers on Maui and to my brother on Kauai and asked them if they had any comments to send those comments to me. As a member of the Judiciary Committee representing Maui I'd like to hear from the lawyers. They were satisfied with the report and they believed - - I think the decision of the Convention is what they'd like to hear now.

FUKUSHIMA: I don't believe that it is necessary that the committee proposal and the committee report be referred back to the Committee on Judiciary. I feel that adequate expressions have been made on the floor already. I for myself feel and know that the report of the learned chairman of this committee is an excellent report.

The reason why I made those statements is this: we could have filed a minority report but we did not, which is largely our fault. And in not filing our minority report, I felt that I could orally state the position of the minority speaking for myself before this Convention. There's no necessity of sending this report and proposal back; we've had enough discussion; we know where we stand. Even if it was sent back, the vote would still be the same. It will not change at all, so I move to table at this time the motion to recommit.

SILVA: Second the motion.

CHAIRMAN: The motion has been made and seconded to table the motion to recommit. All those - -

LEE: A point of order. I notice that you recognize the mover of the motion to table; then I rose and addressed the Chair properly, "Mr. Chairman," and somewhere on my right came a cannon shot of "Second the motion."

CHAIRMAN: I recognized the second.

LEE: Did you recognize the second? I didn't hear you call his name. I stand corrected.

CHAIRMAN: The motion is to table the motion to recommit. All those in favor say "aye." Opposed. [Carried.]

KAUHANE: I rise to a point of special privilege.

CHAIRMAN: Will you state the special privilege.

KAUHANE: The delegate from Maui - - I believe I would rather rely upon the statement that he made and have the Clerk read the statement made by the delegate from Maui with reference to my statement.

A.TRASK: Point of order.

KAUHANE: I feel, Mr. Chairman - -

A. TRASK: Point of order.

CHAIRMAN: A point of order has been raised. Will you state your point of order, Delegate Trask?

A. TRASK: I object to any special privilege being extended the speaker from the fifth district - - combination, whatever it is.

CHAIRMAN: What is the - -

KAUHANE: I rise to the point of order - - I mean question of personal privilege.

CHAIRMAN : Will you state the personal privilege.

KAUHANE: My integrity or my position has been somewhat challenged in the statement made by the delegate from Maui. Certainly I'm entitled to defend myself, even if the opinion of the member from the fifth district does not agree with me. The reason - -

MIZUHA: I cannot understand the speaker, Mr. Chairman

KAUHANE: I'm trying to say this, Mr. Chairman - -

CHAIRMAN: The Chair rules you're out of order. Will you please take your seat.

KAUHANE: Mr. Chairman, I still rise - -

ANTHONY: Mr. Chairman.

CHAIRMAN: Delegate Anthony.

ANTHONY: I would like to rise to a point of special privilege. The delegate from the fifth district has made some serious charges against the Committee on Judiciary, and they are unfounded and I want to assure the Convention of that right here and now. It is true that at the initial meeting of the Judiciary Committee I advised the committee that I had written to the foremost authority in the United States, Dean Arthur Vanderbilt, presently chief justice of the supreme court of New Jersey, asking him his views on the judiciary article, and a nice reply was received which was read to the committee. At that time, in a facetious gesture, either one member or two members of the committee said how about writing to those states where they have elective systems. And it was well understood by all that any member of the committee could write to anybody he wanted to.

Now, as to the matter of the public hearing. That was discussed and nobody ever pressed a public hearing for the simple reason that the real persons of interest in the judiciary article on the matter of appointment and selection of judges and tenure is the bar. The bar was furnished with

mimeographed copies of the proposal. Every member of the bar received in the mail the proposal that was the draft of the proposal upon which this committee worked. At least two meetings of the Bar Association were held and there was ample notice to every member of the bar. I don't know whether Delegate Fukushima was present or not, but all lawyers who were interested in that problem were there, and a full and complete debate was had in the Bar Association.

Thereafter we had a meeting of the Judiciary Committee, and the chairman of the special committee of the bar appeared and reported the views of the Bar Association. Now there was nothing to prevent Mr. Fukushima or anybody else who could have produced any authorities, and they were unanimous in favor of the appointive system, to do that before the committee. The authority was produced, the leading authorities in this country, and every member of the committee knows that and as I say, the very fact that they were unable to state in writing any reason for an elective, popularly elective system of the judiciary is ample proof to my mind why this thing should be voted down.

MAU: Mr. Chairman.

CHAIRMAN: The Chair would like to rule that in its opinion there was no intent, and certainly the Chair did not hear any castigation on Delegate Kauhane by Delegate Rice, and therefore ruled that the personal privilege was out of order. Delegate Mau.

MAU: I speak now to a point of personal privilege. I'm a member of the Judiciary Committee. I had stated in the committee meetings, and I state so now, that this report by the able chairman of the Judiciary Committee is one of the most excellent reports yet filed with this Convention. I want to state to the Convention that no point was ever raised or discussed which gave rise to a subsequent motion made by the delegate to the fifth district, and the sooner we forget that, the better it is. Of course it was unfortunate that one of the earlier speakers this morning, one of the delegates from the fourth district, raised the point as an illustration, I believe. But if it had not been done, the feelings would not have run so high. I submit to the Convention that we forget that and go on with our business.

CHAIRMAN: The motion before the house is the adoption of the amendment. Are you ready for the question?

KAUHANE: I'd like to be given the opportunity to express my views on the subject matter whether the chief justice should be elected or appointed.

CHAIRMAN: That is proper.

KAUHANE: Mr. Chairman, and members - -

MAU: Point of order.

CHAIRMAN: Will you state the point of order, please.

MAU: I thought there was a motion to table and it was seconded. I know that foreclosed me from debating.

CHAIRMAN: I believe that is correct. There was a motion to - -

MAU: May I finish that for you. There was a motion to table the motion to recommit.

CHAIRMAN: That's right, and that carried. That motion was put and carried. Therefore the Chair is correct in stating that the only motion before the house at the present time is the amendment, and as I understand it, Delegate Kauhane is speaking to that point.

KING: I rise to make it a point of order. As I understood the delegate from the fifth district, Delegate Kauhane, he wished to discuss the election of the chief justice. That's not the pending amendment, which is the election of all judges. Is that correct?

CHAIRMAN: Well, he was speaking to the amendment. We haven't limited it to whether they were talking on the chief justice or all of them.

FUKUSHIMA: I also have a point of order, Mr. Chairman.

CHAIRMAN: Will you state your point of order please, Mr. Fukushima.

FUKUSHIMA: Prior to my making my closing argument, if you can call it such, the Chair put the question whether anyone here would care to speak further on the subject matter, and hearing none, the Chair recognized me as a proponent of the amendment to close the debate.

CHAIRMAN: That is correct.

KAUHANE: I rise to a point of order. It is certainly approved by any parliamentary procedure - -

CHAIRMAN: The Chair has recognized that you have a right to speak and so rules.

KAUHANE: Well if the Convention is taking an arbitrary stand as to my expression of views, I'd like to state this. That certainly the Chair is right in recognizing Fukushima to make the closing statement in support of his amendment. That is a practice that has been recognized throughout in parliamentary - -

CHAIRMAN: May the Chair ask if you wish to speak to the amendment. The other subject has been fully covered.

KAUHANE: Mr. Chairman.

CHAIRMAN: Proceed.

KAUHANE: When I came to this Constitutional Convention, I came here with an open mind to decide whether or not the judicial system should be an elective one or an appointive one. —Mr. Chairman, I ask that you tell my friend who sits in the back of me trying to interfere with my speech to keep quiet. —So much so when this matter was discussed before this Convention and when I ran for the office of delegate I made no promises to support either an elective or appointive system.

Now I am convinced more so in the expression of ideas that was made before the Convention that I believe the elective system is the proper system for the protection of the small man who has to go to court. We have been told that the elective system is a corrupt system, politics plays a great part in that type of system. Politics plays a great part as far as pressure is concerned on both the elective and appointive systems. We see that in an appointive system within our government, namely in the Police Department, when before the enactment of the law repealing the election of sheriff, that there were less corruption within the Police Department as was exhibited during an appointive system, which corruption was publicized in the daily newspapers. So much so that the people are now clamoring for a change from a system which they thought would make the necessary corrections in an elective system by an appointive system. They now have appeared before the legislature in a formal petition by legislation requesting that that legislature revert back to an election system for the Police Department.

We have heard arguments pro and con as to the system that we should decide upon. If we believe that an elective

system is the most democratic system throughout our election system, then I say that the judges should run for office. The fact that politics or campaigns cost money is immaterial in this matter, immaterial because those who run for public office to run the affairs of the government have to bear the cost of election. We bear the cost of election because we feel that we can contribute towards forming or attempt to form a good sound and fair governmental system. The election of judges should be on those basis that your judicial system shall be on a sound and fair and impartial basis. Men who run for office, they certainly present themselves, they present their qualification and integrity for the office they run, or they seek for. Certainly, we will have capable men running for the office of judge as much as we will have capable men submitting themselves for appointment.

Let us take the case that has been raised here on the question of races, and because on that question they feel that we should totally disregard the racial question. We know and we have seen that in all the appointments, acknowledging the fact to be that certain groups -- certain race groups should be recognized. Have we given that certain group the recognition as we attempt to say in our Bill of Rights that such recognition shall be given? We find that there is a need for such representation. We find that that need can only be accomplished if and when we adopt an elective system; an elective system so that they will be on comparable basis in presenting themselves to the voters of this Territory whether or not they are qualified and are men of integrity to seek the office as judges. Certainly the people, who after all makes up your government, should be given that freedom of selection,the freedom to exercise its conscience in selecting the men who run its judicial system as well as selecting the men who run the affairs of its government.

As a layman, I feel that is the only fair means of an elimination process and the selection of capable and qualified men to run the affairs of our government, be it in the judicial system, the legislative branch, in both the Territory and county branches. I therefore am heartily in favor of an elective system in the judicial setup.

SMITH: Mr. Chairman.

CHAIRMAN: Delegate Smith, you have already spoken on this subject. Delegate James Trask has not yet spoken on the subject, therefore I will recognize --

J. TRASK: I move for the previous question.

A. TRASK: Point of order please. Just one question before --

CHAIRMAN: Point of order. Will you state your point of order.

A. TRASK: I'd like to ask a very important piece of information of the chairman of the committee. Was any --

CHAIRMAN: Will Brother Trask yield for a question?

J. TRASK: I do.

A. TRASK: Was any -- did the Judiciary Committee receive any petition from any source whatsoever opposing the appointive system?

CHAIRMAN: Will you answer the question, please, Delegate Anthony.

ANTHONY: The answer is "no."

CHAIRMAN: I'll recognize Delegate Trask, James Trask.

J. TRASK: I redo my motion.

A. TRASK: I second that.

CHAIRMAN: The previous question has been called for.

SILVA: How about giving a couple of laymen just one little say.

CHAIRMAN: Pardon?

SILVA: If he will remove his motion, I'm just a little layman and I'd like to say just about two sentences in showing my thinking on the election and the --

J. TRASK: I withdraw my motion.

CHAIRMAN: The gentleman has yielded.

SILVA: Two sentences, that's all. Speaking as a layman, if I was to be tried before a judge, and knowing politics like I do, I'd rather have him appointed. Thank you.

H. RICE: I'm not going to talk on the question. I ask that we take an "aye" and "no" vote.

CHAIRMAN: We're voting now on the previous question. Do you want an "aye"? The motion before the assembly is the previous question. All those in favor say "aye." Opposed. Carried unanimously.

Motion now is on the amendment.

ANTHONY: Roll call.

CHAIRMAN: All those desiring roll call will please raise your hand. Sufficient number; there will be roll call.

APOLIONA: Will you state the motion and the position to the delegates.

CHAIRMAN: The motion that is before us now is an amendment to Section 3, proposed by Delegate Fukushima, reads as follows: Section 3 to be amended as follows:

> The justices of the supreme court shall be elected by the electorate of this State and the judges of the several circuits shall be elected by the electorate of the respective circuit both in a nonpartisan election. No person shall be eligible to such office who shall not have been admitted to practice law before the supreme court of this State for at least ten years. The justices of the supreme court and the judges of the circuit courts shall hold office for a term of eight years.

NIELSEN: That means then that we vote "aye" if we want the elective system?

CHAIRMAN: You vote "aye" if you want this amendment. You vote "no" if you do not wish the amendment. The Clerk will please call the roll.

APOLIONA: Mr. Chairman, will you clarify that again. An "aye" vote is for the amendment or "aye" vote is to table the amendment?

CHAIRMAN: No, the "aye" vote would be to accept the amendment. Therefore, if you want the amendment, you would vote "aye"; if you do not want the amendment, you would vote "no."

CLERK: Mr. Chairman, might I suggest that they use the mike so that we can hear when they vote.

CHAIRMAN: It's requested that when you cast your vote, you use your mike so that the Clerk can hear the vote. Will the Clerk please call the roll.

Ayes, 11. Noes, 50 (Anthony, Apoliona, Arashiro, Ashford, Bryan, Castro, Cockett, Corbett, Doi, Dowson, Fong, Gilliland, Hayes, Heen, Holroyde, Kage, Kawahara, Kawakami, Kellerman, King, Kometani, Lai, Larsen, Lee, Loper,

Lyman, Mizuha, Noda, Ohrt, Okino, Phillips, Porteus, C. Rice, H. Rice, Richards, Roberts, Sakakihara, Serizawa, Shimamura, Silva, Smith, St. Sure, Tavares, A. Trask, White, Wirtz, Wist, Woolaway, Yamauchi, Crossley). Not voting, 2 (Kanemaru, Sakai).

CHAIRMAN: The amendment has failed.

ANTHONY: I move the previous question on the vote on Section 3 as reported on by the committee.

APOLIONA: I second it.

FONG: I have an amendment.

CHAIRMAN: I have the motion to -- for the previous question was asked on the original motion. I recognized the second. We'll have to take a vote on the previous question unless the gentleman yields.

ANTHONY: I'll withdraw if there is an amendment to be offered. I withdraw, Mr. Chairman.

APOLIONA: Likewise.

CHAIRMAN: It's been withdrawn. You are recognized, Delegate Fong.

FONG: Here is the amendment. Will you read that, Miss Clerk?

CLERK:

Section 3. The chief justice shall be elected by the qualified voters of the state on a nonpartisan designation at a regular election in an odd-numbered year in which a governor is not elected. He shall hold office for a term of eight years beginning on the first day of January next following his election.

The associate justices of the Supreme Court and the judges of the circuit court shall be appointed by the chief justice by and with the consent of the Senate. No nomination to such office shall be sent to the Senate until after ten days' public notice by the governor. No person shall be eligible to such office who shall not have been admitted to practice law before the supreme court of this State for at least ten years.

The justices of the supreme court and the judges of the circuit courts shall hold office for initial terms of six years and upon reappointment shall hold office for a term of twelve years.

FONG: I move for the adoption of the amendment.

J. TRASK: I second the motion.

CHAIRMAN: It's been moved and seconded that this amendment be adopted in Section 3.

C. RICE: Now that the amendment is in, I move the committee rise, report progress and ask leave to sit again at 1:30.

CHAIRMAN: Do I hear a second to that motion?

H. RICE: Second.

CHAIRMAN: All those in favor please say "aye." Opposed. So ordered.

Afternoon Session

CHAIRMAN: The Committee of the Whole please come to order. When we rose to report progress at 12:00, we had before us a new amendment which had been introduced by Delegate Fong and seconded by Delegate James Trask. This is an amendment to Section 3, Committee Proposal No. 7. Delegate Fong.

FONG: This amendment reads as follows:

Section 3. The chief justice shall be elected by the qualified voters of the state on a nonpartisan designation at a regular election in an odd-numbered year in which a governor is not elected. He shall hold office for a term of eight years beginning on the first day of January next following his election.

The associate justices of the supreme court and the judges of the circuit court shall be appointed by the chief justice by and with the consent of the Senate. No nomination to such office shall be sent to the Senate until after ten days' public notice by the governor. No person shall be eligible to such office who shall not have been admitted to practice law before the supreme court of this state for at least ten years.

The justices of the supreme court and the judges of the circuit courts shall hold office for initial terms of six years and upon reappointment shall hold office for a term of twelve years.

This section differs from Section 3 of the proposal which was submitted by the committee to this extent, that instead of having the governor appoint the associate justices and the chief justices, this proposal intends to make the chief justice run for office, and after the chief justice is elected to office, then the chief justice shall select his associate justices and he shall select the circuit court judges, and these will be in turn confirmed by the Senate. I am merely substituting here the chief justice for the governor.

The reason for having the chief justice run for office is due to the fact that traditionally we have had separation of powers. At the present time -- this proposal, may I say, is a half-way measure. It is a proposal in which we keep the circuit court judges away from the people who they are going to pass judgment upon. The circuit court judges will not be elected by the people, and I believe that they should not be elected by the people , because they will have to pass judgment on the people and they are too close to the people. The only man to be elected here is the chief justice and he's far removed from the people.

At the present time, we have three branches of government. The governor is appointed by the President of the United States, he's confirmed by the Senate of the United States, he is separate and distinct from the judiciary, and he is separate and distinct from the legislature. The judges of our courts are appointed by the President of the United States, and they are confirmed by the Senate of the United States; therefore, they are distinct and separate from the executive branch as well as the legislative branch. The legislature is elected by the people. The work of the legislature is reviewable by the Congress of the United States and by the President of the United States. Therefore, at the present time, we have a complete separation of powers, that is, a complete -- a separate judiciary, a separate executive branch, and a separate judicial branch.

Let us see what we are trying to do when we say: "When we become a State, we will have the governor appoint the judges and let the Senate of the state legislature confirm the appointments." Section 3, as proposed by the committee says this, that the governor will appoint the justices of the supreme court and the judges of the supreme court, and a Senate of the state legislature will confirm the appointments. We will be destroying the present complete separation of powers of the three branches of our government. We are saying to our judiciary, "You are subservient to the governor,

the executive branch of our government. Being under the thumb of the governor, we want to shove you down further, and instead of only being subservient to the governor, we tell you that you are subservient to the legislature." It is the intention of those who voted or who will vote -- who voted for the majority report to have Section 3 as it stands, to subserve the third branch of our government to the whims and machinations of politicians, that is, men who will be elected to the Senate, men who are elected by partisan politics.

You will note that this amendment eliminates partisan politics. It eliminates the fact that a man has to run on the Republican ticket or on a Democratic ticket or on a nonpartisan ticket. He runs in an odd year, aside from the year when the governor is not running, and he is running on a nonpartisan ticket.

And I'd like to say, ladies and gentlemen, and I say it with a great deal of emphasis, that you are reducing that third branch of our government, which has the dignity of being a branch of government, to a commission; you are reducing it to the level of the Liquor Commission; you are reducing it to the level of the Utilities Commission. The reason is the governor appoints members of the Liquor Commission, the governor appoints members of the Utility Commission, and the members of the Utilities Commission and the Liquor Commission are confirmed by the Senate. Now when you say that the governor will appoint the chief justice and appoint the associate justices and appoint the judges of the supreme [sic] court, you are saying that the governor of the Territory will do the same thing here as he is doing with the members of the Liquor Commission and members of the Utilities Commission who must be confirmed by the Senate. The commissions, the Welfare Department, the Police Commission, the Utilities Commission, are mere functionaries of the executive department. They are just the extension of the executive powers.

Now in saying that the governor will have the power to appoint the judges of your supreme court and the judges of your circuit court and to have them confirmed by the Senate, you are in other words saying that we are extending the executive functions to the judiciary.

After subserving your judicial branch of government to the legislative and the executive powers, you do not even give it the dignity of some of the other elective offices of this city. The judiciary, if elected by -- if appointed by the governor and confirmed by the Senate, does not even have the dignity of the city and county attorney's office, of the county attorney's office of the County of Maui, the County of Kauai, or the County of Hawaii, which officers are elected by the people and are independent of the other branches of government. You are not giving to your judiciary that independence which that branch of government deserves. In the City and County of Honolulu, we elect the sheriff. The sheriff exercises his powers free and independent of the board of supervisors. In the City and County of Honolulu, we elect the clerk, and he is free and independent of the board of supervisors. In the City and County of Honolulu, we elect the auditor, and we elect the City and County treasurer, and in the outside islands, we elect the city and county -- the county attorneys who are all independent of the executive. Are we going to reduce this third branch of our government below the dignity of a city and county attorney's office, below the dignity of a sheriff's office, below the dignity of a clerk's office? I am not willing to reduce it to that subservient position.

Now, let us see what is the philosophy back of the appointive idea. What is the impelling reason that make delegates vote for the appointive system when 36 of the 48 states elect their judges? Let me quote the words of the distinguished member of our delegation here, Delegate Garner Anthony, in replying to the question as to why -- what is the argument against an appointive judiciary. This is read from Delegate Anthony's paper to the Social Science Club on "The Judiciary," by J. Garner Anthony.

"What are the criticisms against an appointive system? The stock argument against an appointive judiciary is that it deprives the people of the right to choose judges. The answer, however, is that in selecting a person for the bench, the judgment of the electorate is not apt to be good."

Let me rephrase it and strip it, strip that of all of its verbiage. It comes down to this: we do not trust the people, we do not trust the voters, we have no faith in the people, we have no confidence in the voters. Isn't that the basic philosophy back of all of those who vote for the appointive system? Isn't this the philosophy? The people are fools, they are apt to vote for fools, they usually exercise very bad judgment, and fools get into office. Isn't that the basic philosophy? As a corollary to that philosophical thought: we who are the chosen few, we who belong in the upper strata of society, we who call ourselves intelligentsia, we know how to vote. You on the other side of the street do not know how to vote.

CHAIRMAN: If the speaker will suspend a moment, I'd like to remind him he has just a little over one minute left.

FONG: May I ask the indulgence of the delegates here to give me a little more time?

SAKAKIHARA: I move that we suspend the rules.

ANTHONY: I think that the speaker should have unanimous consent to express his views.

DOI: I second the motion.

CHAIRMAN: It's been moved and seconded that the speaker have unanimous consent to express his views. All those in favor say "aye." Any opposed?

FONG: Thank you.

In the corollary to that philosophical thought that if the vote was given to us alone, that probably we'll have an elective system, but it's just too bad that that vote is insured to the other man also. If only I and mine can exercise that inherent right to vote, then it's all right for us to vote; but as long as there are many on the other side and probably, probably, they are all voters, I think we should not give them the right to vote. If I and my class, whether it be the social group, the economic group, the acquired-learning group, exercise the right of ballot and no one else, then it is all right for us to elect the judges, but as long as it's going to be given to the other person, I don't think that we will give it to him.

I have talked to a few of you about this appointive system and elective system. Some of you who have stated that you have gone on the stump and advocated the appointive system, and to those of you who have stated that to me, I'd like to say I would like to use the same argument advanced by Delegate Garner Anthony this morning, that you are here to listen to the arguments made pro and con and then to vote accordingly. Some of you told me that you have been approached by members who have advocated the appointive system and you have promised them that you will vote for the appointive system. Are you willing to go back to your electorate and tell them and look them straight in the eye and say, "John, I would have voted for the election of judges if the other man hadn't seen me first and I had promised him." Regardless of what kind of argument you may give him, even if Delegate Anthony

were to phrase it for you, you will not be able to convince him that you voted against the election of judges because you thought that he was not able to exercise his judgment.

Can you go back to your electorate and look him straight in the eye and say, "John, I would have voted for the election of judges if I believed you knew how to vote, but knowing that you don't know how to vote, that you are a fool when you vote, that you don't exercise good judgment and discretion when you vote, I have in your interest taken away that inherent right from you to vote." Are you willing to go back to your electorate and tell them that?

Are you willing to tell John, "John, in the Bill of Rights we start off and say that all men are by nature free and equal, and have certain inalienable rights. John, that is all poppycock. That is all rot. We don't mean what we say. We only want to put it down so it sounds good, so that the men in Congress after they read it probably will give us statehood. We don't mean that all men have inherent rights and that they are by nature free and equal in their inherent rights."

I'd like to say that I am casting my vote here because I believe in the people. I believe that they know how to vote. Delegate Anthony said yesterday, "We will be going backwards if we elect our judges." I would say if we appoint our judges, we will be going backwards. We might as well fold up shop today just because if we elect our officials we are going backwards. Our governor is appointed. If we become a state, we must elect our governor, and he will be the head of a billion dollar corporation, and he will be the head of 500,000 people. Are we going backwards if we vote for the chief executive?

I would like to say that the idea advanced that we are going backwards is quite reactionary. Usually on a political stump, the Republicans are being accused of being reactionary, that they are throwing stumbling blocks in the way of the inherent right of the people to stop the right -- to stop the people from exercising what is inherently theirs. We all abhor the welfare state. We feel that we shouldn't go into socialism, but this is not the way to stop it. We don't erect stumbling blocks along the road to stop this welfare state, this hand-out state. We do it by education, by co-operation, by electing little men to office, men who are willing to grant the inherent rights to those that have been guaranteed those rights, and men who believe in free enterprise, who believe in initiative. That is the only way we can sell them the idea that a welfare state is not the best state for them.

Delegate Anthony stated yesterday that if you had an appendix operation you would not have a popular election over it. I say to you, if you had an appendix operation, you would go to a doctor, a doctor who has passed the medical examinations, who has come from a credited school, who has gone into internship, who has gone into the Queen's hospital where they have supervised him, and after supervising him, they tell him that he has the right to operate. And I say to you that if you went to a doctor who had a degree that your appendectomy will be all right.

So it is with the lawyers. To become a judge, he must first become a lawyer; to become a lawyer, he must first go through 19 years of schooling, he must go to an accredited class A law school before he is allowed to take the bar examination. After you finish 19 years of schooling, and after you finish the bar examination, then you would practice ten years according to this amendment before you will be eligible to the bench. Isn't that sufficient safeguard for the judiciary?

Now let us look at the courts. There has been a lot of talk about corrupting the judiciary, about bias of the judiciary, about a judiciary leaning towards one litigant as against the other. Our courtwork is divided in the main into criminal law, cases in common law including land court matters, cases in equity, cases in probate, cases in divorce, cases in guardianship and adoption. The judge of the criminal court is bound by the decision of the jury, a jury composed of 12 laymen, a jury selected from the resident voters of the city. He is bound by law, after the jury comes into court and finds a man guilty, to give him a fine, give him probation, and if it's a felony, he has to give him the limit. Now what discretion, what bias can a judge show in a case like this? In common law cases and in most of the controversial points in land court, you can get a trial by jury of laymen. In probate, in the great bulk of cases in divorces, in guardianship and adoption, the trial is ex-parte, that is, there is no opposing counsel, there is nobody on the other side, you present your case to the court.

The only place that I can see where there can be some showing of bias is in the equity court where the judge sits there as judge and jury, and that can be easily changed by the legislature passing a bill to provide for jury trials in equity cases.

You leave the judgment of whether a man is guilty of murder, whether he is guilty of rape—and those cases carry capital punishment—to the decision of 12 laymen. Whether he is guilty or not, the layman goes out and finds him as to whether he is guilty or not. The judge has nothing to say in the matter. If the jury goes out and finds him guilty of murder, they judge murder in the first degree, any judge will not give him a fine, any judge will not give him probation, they'll send him to the gallows. So what is all this talk about the judge being biased?

I would like to state that my amendment is not as abhorrent as some of you would like to make it seem. Some of you abhor the idea that we elect our judges. You seem to like the word "appoint," "appoint the judges." Now there are all kinds of ways of appointing your judges and there are all kinds ways of electing your judges. The proposal here which I have presented is a proposal in which you only -- you elect the chief justice, he will in turn appoint the associate justices to be confirmed by members of the Senate. You will note that I have not differed very much from the report of the majority here. I have just substituted the chief justice for the governor.

The idea came to me when I was reading the Model State Constitution. The Model State Constitution was first written in 1921, and those that have participated in the writing of the Model State Constitution are men of great judicial learning, and this is what the Model State Constitution says. The Model State Constitution is revised from time to time and the last revision was in 1948. Section 602 of the Model State Constitution reads as follows: "Selection of judges, justices, and judges. The chief justice shall be elected by the qualified voters of the state at a regular election in an odd-numbered year, in which a governor is not elected. He shall hold office for a term of eight years, beginning on the first day of December, next following his election." My amendment almost in total reflects the thought of this Model State Constitution.

The Model State Constitution, however, goes further in which it provides for the selection of the other appointees according to the judicial council system. I have not taken that up because the majority report seems to give a lot of credit to the confirmation power of the Senate.

In allowing the people to vote for the chief justice, we are giving to them what is inherently theirs. We are telling the people, "This is your kuleana. You have a right to exercise your opinion as to who the members of your judiciary will be."

The governor, if he appoints the members of the judiciary, will be given the power over the judiciary as well as power over all the other appointees. In making the chief justice run for office, we will make one man and one man alone responsible to the people. He will be responsible for the good administration of justice. If the administration of justice is bad under an appointive system by the governor, we may not want to throw the governor out because he may be a good executive in all the other functions of government. If, under an election system, if the administration of justice is bad, we can go after the chief justice.

I have in this amendment preserved the security of tenure, only one man runs for office, and he runs for eight years. He appoints his associates to run for six years according to the report of the majority committee.

Now another statement has been made by Mr. Anthony that lawyers loathe to run for office. Running for office is very distasteful to lawyers. As I look around here, and as I talk to the laymen on the street, many of them feel that we got too many lawyers running for office, and I doubt if we will deter the lawyers running for office if we only have one man running for office.

I say to you, delegates, that you should give back to the people what rightfully belongs to them; and if you do, you can go back to them and look John Citizen square in the eye and say, "I trust you, I have faith in you, I have confidence in you, and I know you will give us a good judiciary."

Thank you.

FUKUSHIMA: Perhaps if I yielded yesterday to Delegate Fong, the result this morning may have been different after the eloquent speech which he has just made for the elective system. At this point, perhaps it may be proper that I should move for a reconsideration of the vote taken this morning, but I will not because I have been in my propounding -- advocating the elective system, I was defeated overwhelmingly. I have no fear in going back to my electorate and saying to the people, "John, I did a good job for you as far as the judiciary was concerned."

I'd like to be consistent, however, this afternoon in casting my vote when the vote is taken. As I read Proposal No. 3, the amendment thereto, "The chief justice shall be elected by the qualified voters of the state on a nonpartisan designation at a regular election," I'm for that thing and for all election as I've pointed out earlier this morning and late yesterday afternoon, but this amendment goes one step further. It provides for the appointment of the associate justices and the circuit judges by the chief justice. Certainly I believe in the complete separation of the three branches of government, but this proposal does not show that. You have the legislature coming into the picture again by a confirmation of the Senate, which is certainly not a complete separation of the three branches of government.

That's only one of the yields of this amendment. If we read further, between the lines, what does it indicate? Your chief justice who selects the associate justice will somehow prevail his judicial thinking among the associate justices which he will select. Coming down to the circuit judges, the same thing will hold true again, and we must always bear in mind the circuit judges are those that try the facts in many cases when the jury is not called in, and his decision, if appealed, will go to the supreme court, of which the chief justice is the appointee of the circuit judge -- appointer of the circuit judge. That certainly weakens the judiciary.

All I'm advocating here is for a strong judiciary, and in my opinion, I still feel that the elective system is the best, but in the considered opinion of all of the delegates here, some 50 delegates, they feel that the appointive system will give a strong judiciary. Now in complying with that thought, I am now speaking definitely in opposition to this amendment, because this is a worse proposal than the one that I introduced yesterday.

Thank you.

CHAIRMAN: Before I recognize Delegate Heen—I will recognize you, Delegate Heen, as the next speaker—I'd like to point out that a number of the delegates before I took the Chair asked me to please state that they had plane reservations to catch this afternoon, later on this afternoon, inasmuch as this will be a long week-end for some of them and reservations are very difficult to get. So if that will be kept in mind a little later on, it will be appreciated by those. I'm not saying that anyone is going to cut off debate or anything like that, but they wish -- made their wishes known earlier.

MAU: On this point that you raised. May I ask --

CHAIRMAN: What is the point, Delegate Mau?

MAU: You were saying, Mr. Chairman, that some of the delegates have to catch a plane.

CHAIRMAN: That's correct.

MAU: Well, I'm wondering when we are going to get this work for the Convention done. It's a terrifically long week-end, I know that --

CHAIRMAN: Well, I simply stated it as a matter of information; that's all that I stated, as a matter of information and consideration and that is all. We have not taken any action on it, and so, Delegate Heen, if you'll continue, please.

HEEN: The proponent of this amendment is not consistent in his argument. When I go back to my constituents and I face John Voter, I say to him, "I had great faith and confidence in you to elect us a chief justice, but when it came to the associate justices and the judges of the circuit court, I didn't trust you, because you don't know how to vote for an associate justice or a judge of a circuit court. Therefore I didn't give you that right, and I placed that right in the hands of the chief justice." Where does the consistency come in on this line of argument? So, gentlemen, I believe that we still have -- should have an appointive system as provided for in Section 3.

ASHFORD: I was one of the few delegates who did not speak this morning. I would like to say that in my opinion there is a great deal to be said for an elective judiciary, and it has been admirably said, but I think there is absolutely nothing to be said for the election of a chief justice who shall appoint the other members of the bench. Is anyone so naive as to believe that the man running for chief justice will not promise every single appointment when he runs?

RICHARDS: I was really surprised and shocked at the implications of my worthy colleague from the fifth district in his remarks that a procedure established by the Constitution of the United States in its appointment of its chief jus -- its Supreme Court was a matter of class legislation. We have already adopted the Constitution of the United States as part of this Constitution, and that implication I feel is abhorrent.

Regarding some of the other remarks of the proponent, when a body is empowered, as has been already accepted by this Convention temporarily passing Section 10 of this proposal or article, where they may set up their own rules without appeal to anybody, and the chief justice may appoint the associate justices who set up those rules, where do we have

anything except a very dictatorial court? I still feel that the procedure established in the Constitution of the United States of having the elected President appoint the Supreme Court and having it confirmed by the Senate is definitely proper.

ANTHONY: First, I should like to address myself to the doctrine of the separation of powers. That has been misstated this afternoon and was misstated this morning. The doctrine of the separation of powers is simply this: that we under the American system have three co-ordinate branches of government, co-equal in their respective spheres. Now the application of that doctrine comes after a judge ascends the bench, and after a judge ascends the bench, he is not responsive or responsible to the executive or anybody else. He is responsive and responsible only to his own conscience to do justice according to law. In other words, once you get a judge on the bench, then the doctrine of separation of powers operates.

Now, Mr. Fong has made the statement, which has the superficiality of validity, that if the people elect the judges, they will select good judges, and that comes down to this. In the old Dialogues of Plato, the question was raised, why not any man being a judge, any good man, whether he is learned in the law or not? The answer to that is simply this, that a person does not become a good judge simply because he is a good man any more than a person will become a good judge simply because he is a popular candidate. He has got to possess the qualifications of the judiciary before he is able to render truly the office to which he has been appointed.

I would like to read from one of the authorities, which apparently Mr. Fukushima was absent when it was read in committee, and that is by -- in the latest work on this subject, *Minimum Standards of Judicial Administration.* "The system of direct election of judges is an unhappy legacy from the popular revolt of a century ago often called the Jacksonian Revolution. Judges were subjected to another and more fatal line of reasoning. If all men are equal, all lawyers, being men, are equal; so, one lawyer was as much entitled to be a judge as another if the public so willed."

Now the vice of the whole thing is that you will never get qualified men to run for office. That is the vice of the whole thing, and this proposal is even more iniquitous than the one that was voted down this morning, in my judgment, because this would make a political machine in the chief justice, a political machine which would have much more ramifications than the direct election, popular election of judges.

The statement has also been made that this system is an improvement on that which was voted down this morning, and the implication is that it's predicated on the English system. The delegates, if they have examined the recommendations of the Statehood Commission, will see that I, as one of the members of that sub-committee of the Statehood Commission, recommended a consideration of the English system. But let me assure you, ladies and gentlemen of the Convention, that the English system does not provide for the election of anybody. The Lord Chancellor in England is appointed by the cabinet, and the Lord Chancellor in turn appoints the remainder of the judges during good behavior, so this is not the English system at all.

Now when the statement is made that this is grounds for political machinations between the executive and the Senate, I would like to read from another historic document, and I'm reading from the *Federalist Papers,* number 77. "And as there would be a necessity for submitting each nomination to the judgment of an entire branch of the legislature, the circumstances attending an appointment, from the mode of conducting it, would naturally become matters of notoriety; and the public would be at no loss to determine what part had been performed by the different actors. The blame of a bad nomination would fall upon the President singly and absolutely. The censure of rejecting a good one would lie entirely at the door of the Senate; aggravated by the consideration of their having counteracted the good intentions of the Executive. If an ill appointment should be made, the Executive for nominating, and the Senate for approving, would participate, though in different degree, in the opprobrium and the disgrace."

I say, ladies and gentlemen of the Convention, that the system that has been proposed by this amendment is a worse system than that which was voted down this morning. I believe this proposed amendment should be voted down by the Convention.

FUKUSHIMA: I rise to a point of personal privilege.

CHAIRMAN: State the point of personal privilege, please.

FUKUSHIMA: I'd like to correct the delegate from the fourth district. I was physically present at least at all of the meetings that he had, and I also believe that I was mentally present, and no such article was read.

ANTHONY: Mr. Chairman, if the delegate who last spoke will examine the minutes, he will find out that the very book that I've read from was before the committee and read to -- in the committee meeting.

SMITH: I wish I had the ability of some individuals -- that some individuals have of being so eloquent in their speech I have noticed one thing that predominated in this morning's session and is predominating this afternoon's session is the same approach, same attack that is being carried on, and that is, do you, each delegate, are you willing to go back to John the voter and look him square in the eye, and ask him if what he thinks, because I did not vote for an elective -- electing judges, that you could possible look him straight in the eye.

Now it is amazing that individuals can take this approach and use it as a battle or an argument. I took the opportunity in going back and asking my different voters, not only on the appointment of judges and election of judges but initiative and referendum and recall, and you'd be surprised that if some of you will go and ask the average person, you will find that they say, "Look, we're not so dumb. We voted to get you in. We are not the only persons voting, and there are a lot of others who can't vote. You are supposed to represent everybody as a whole, and if your opinion, whether you think right now it should be elective or whether it should be appointive, changes for the good of the whole, not on a policy of politics or personal reasons, but a policy of running a good government, that is entirely up to you."

Now I would like to state that in answering John, if I were thinking of myself and not thinking of politics, would I have voted for elective judges and why didn't I? I would say, "But you know that in all votes of the people, there are many, many more who aren't able to vote, and considering the people as a whole, it is impossible for me not to consider the government of, for, and by the people as a whole. If the opponents of our democracy could get into our judiciary system, they would be at the very base of our democracy. Through electing judges, they have that much more opportunity."

Now the confirmation power of the Senate has pretty well been proven throughout the years. We have not been tested as far as being governed by an elected governor, but we have been -- pretty well been -- by tradition, the appointive system in Hawaii has proven out pretty well. I can't help but feel that there are some good points to electing judges

that have been brought up, but I dare not go ahead and throw away something which we haven't really given a fair trial in the minds of the people, because I know that it is harder, very, very -- pardon me, it's very easy to take away, but it's very, very hard to give back.

PHILLIPS: I might say that I believe, ever since I gave the judiciary any thought at all, that I've been for the appointment of judges. I feel very much, as I know that a great many of us do, that the election of judges with their long periods of training and the great group of people who are not familiar with the technicalities involved in the judiciary would by their very nature not be as capable of selecting a judge that would serve the people in the same manner that they would be capable of selecting a legislature -- a legislator or an executive.

Just now there has come to my desk for my signature, a committee report from the Miscellaneous Matters which reads in part, and I feel confident that this will get into our Constitution in regards to the distribution of powers. "Section 1. It is traditional and basic that the three branches of government have separate powers." Well I'm sure that everybody -- I won't bore you with going on because it would be pretty much the same type thing that we've done before, but it boils down to this, that we will have in another part of our Constitution that very basic doctrine which as it states is traditional. Since it's traditional, I cannot understand why the judges themselves and the jurors will come and ask that their particular profession will be tampered with, will be handled by an individual who himself is the chief of a political machine and permits him to appoint them to the bench.

The judiciary is the third major branch of government, and to my knowledge, the chief executive is to carry out the word and letter of the law as laid down by the legislature. Now, in doing so, he is required to delegate down through appointment of certain administrative offices. His power of appointment, I believe should be confined to those administrative offices, and not -- should not necessarily be carried over into this great branch of government. He should not be permitted to disturb and violate as I can -- as it seems plain to me, this traditional doctrine of the separation of powers. As I already said, it does prove and it does show that the chief executive is the chief of a political machine, therefore he is the essence of politics. Whether they let the electorate handle it or not, it wouldn't make much difference, because he is more powerful than all the electorate to select on the basis of politics rather than on the basis of the ability and merit of the judiciary.

I might say that due to this, and many others, I would like to -- I would not go along, though, with the delegate from the fifth district to the extent that he would permit the chief executive, after having been elected, he would permit the chief executive to -- I mean the chief justice to appoint and have the power of appointment. Therefore, I would like and wonder if he would consider an amendment to his motion that would read in the second paragraph, the third line which says -- from—the word is split there—"justice," and then inserted in there -- I will read the whole second paragraph. "The associate justices of the supreme court and the judges of the circuit court shall be appointed by the chief justice," and then I would have inserted in there, "from a list of three nominees submitted from a"—and then I put this in because of no better place to put it right now, but that could be worked out later—"a judicial commission composed of laymen and judges," and if necessary "and with the consent of the Senate," and then continue on.

I believe that this would solve the possibility of the chief justice himself having -- getting tangled up with any kind of politics. I believe that there is sufficient evidence available to prove that this system would work much better than to leave this in the hands of one man, that it should go down -- first, for the associate justices, should submit the three names, and among them he would then select one of those.

If it pleases the Convention, I would like to make that motion.

CHAIRMAN: Is there a second to that motion?

TAVARES: I have many pages of notes, but I will not read them all, but I think there are some statements that have been made here about our courts that cannot go unchallenged. If any attorney who has the low idea of the importance and powers and duties of our courts that was given by the first speaker, certainly has no idea of what a judiciary should be. In the first place, any judge, as we all know, even the layman knows it, has a right to make rulings on evidence, which can mean the difference between reversal and affirmation in the supreme court. He has the right to set aside a verdict, a very tremendous, vital right. He has the right in equity cases to make decisions affecting any amount of properties. He has the right to rule on questions of law of the deepest significance, and remember, the jury must accept from the judge what the law is. Now if that is a perfunctory function, I'd like to know what we go to law school for.

Now, the first speaker mentioned the Model Constitution. Let me read from this great authority that he relies upon. In the first place, he has so changed the child of the Model Constitution that I don't think it would recognize its parents. On page 24, we find this statement by the proponents of the Model Constitution. "Having the chief justice, elected by the people, appoint the other judges after nomination by a judicial council"—which he hasn't put in, and which this assembly has voted down—"and having them subject to popular recall"—which we haven't adopted—"makes the judicial department as independent as can be of the other branches"—and this is the crucial payoff—"at the same time that it rejects the extremely questionable system of direct election of all judges." "Extremely questionable system of direct election of all judges."

Now, this reminds me of the story entitled, "Go easy on Uncle Ben." There was a man who got wealthy, we'll call him Jones, Bill Jones, and he wanted to work out a family tree, and so he hired one of these professional researchers, but he said, "Now, go easy on Uncle Ben," because you see, Uncle Ben had been electrocuted for murder. So when it came back, this is what it said, after telling about all the nice things of all the other members of the family, it said, "Uncle Ben occupied the chair on electricity in one of our large state institutions."

Now, the point of this is this, no matter how you dress it up, it's still murder. If election of all the judges is bad, very bad, I don't see how the election of one judge can be any better.

ROBERTS: I haven't spoken to the question today. I'd like to make one or two general observations, and then I'd like to indicate how I intend voting. I'd like to suggest that perhaps it might be a good idea that we get around to voting on the question. I'm not moving the previous question, Mr. Silva.

I think that there is a desire on the part of the entire Convention to get a strong judiciary, to get good, sound, strong, and independent judges. I think the question raised basically is how do you go about getting it? I agree with one of the speakers this morning that you cannot, either under the elective system or under the appointive system, completely remove the concept of politics. There's going to be politics

in both systems. I think the basic question is how little can you get, and then how long a tenure can you give to the judges so that they can be independent and at the same time have some basic regard and understanding of the needs of the people when these cases come before them.

I do not believe that any judge examines and rules on a case in the abstract. He rules on specific facts, on circumstances, on the basis of the law. But there is a substantial amount of latitude in the decision of a judge which reflects his own thinking and his own environment, and it seems to me that that has a very definite bearing on the soundness and on the independence of the judges.

I have examined a lot of literature dealing with the subject, and there seems to be some agreement that neither system offers the best answer, that perhaps a combination of these systems gives us a little better approach to the problem. I, therefore, if I had a choice, would support a proposal similar to the Missouri Plan which combines, it seems to me, the best features of both systems. However, I am not being given the choice to vote on such a proposal. It was removed by the committee. It seems to me, therefore, that I have to get the next best choice. It seems to me on that basis, I would vote for the appointment of judges. If I am given the opportunity subsequently to amend, I will do so, Mr. Chairman.

DELEGATE: Question.

CHAIRMAN: Are you ready for the question? The question is on the amendment.

HEEN: I move the previous question.

WOOLAWAY: I'll second it.

CHAIRMAN: Then the previous question's been moved and seconded. All those in favor say "aye." Opposed. Carried.

The question is on the amendment proposed by Delegate Fong.

DELEGATE: Roll call.

CHAIRMAN: All those who would like roll call, please raise their hand. Sufficient number. All those voting in the affirmative would be voting for the amendment. Those voting in the negative will be voting against the amendment. The Clerk will please call the roll.

Ayes, 20. Noes, 37 (Anthony, Apoliona, Ashford, Bryan, Castro, Cockett, Corbett, Dowson, Fukushima, Hayes, Heen, Holroyde, Kage, Kawakami, Kellerman, Kometani, Larsen, Lee, Loper, Mizuha, Okino, Phillips, Porteus, C. Rice, H. Rice, Richards, Roberts, Serizawa, Silva, Smith, St. Sure, Tavares, White, Wirtz, Wist, Woolaway, Crossley). Not voting, 6. (Arashiro, Gilliland, Kanemaru, Sakai, A. Trask, King).

CHAIRMAN: The motion is lost.

ANTHONY: At this time I move the adoption of Section 3.

CHAIRMAN: The adoption of Section 3 has already been made. It's the section before it - -

ANTHONY: I then move the previous question.

APOLIONA: I second the motion for the previous question.

CHAIRMAN: The previous question has been called for on a vote on Section 3 without amendment. All those in favor - -

SAKAKIHARA: I intended to offer an amendment to this section. Will the previous question shut me off?

CHAIRMAN: That would be correct. You would be unable to - - we'd have to vote on the motion. If you have an amendment to offer - -

SAKAKIHARA: Will the seconder withdraw his second? I have an amendment being printed.

APOLIONA: I withdraw my second.

CHAIRMAN: The second has been withdrawn, therefore, if you have an amendment to make to Section 3, would you offer it.

SAKAKIHARA: May I ask five minutes recess.

CHAIRMAN: May the Chair ask if the amendment has been put on the Clerk's desk yet?

SAKAKIHARA: No. It's being typed out. I sent it to the Clerk's office to be typed. I want to have it in proper shape. I ask for five minutes recess, subject to the call of the Chair.

MIZUHA: I move that the committee rise and report progress, and beg leave to sit again on Tuesday morning at 9:30.

ASHFORD: I second the motion.

CHAIRMAN: It's been moved and seconded that the committee rise, report progress, beg leave to sit again Tuesday at 9:00.

DELEGATE: I move to table the motion made by delegate from Kauai.

APOLIONA: I second the motion.

SILVA: Before that's put through, I think that some discourtesy has been shown the second of the previous question. He removed his second for the - - just for courtesy of Mr. Sakakihara. And all these other motions are not pertinent to the subject. It's not fair to the seconder of that motion.

CHAIRMAN: The question is, shall we table the motion to rise and report progress.

ANTHONY: In order to clear the parliamentary situation, I would suggest that the mover of the motion to table withdraw his motion to permit the delegate from Hilo to prepare his amendment.

MAU: Mr. Chairman, I don't think that would clear it up. If Delegate Mizuha from Kauai would withdraw his motion, I think then it would clear it.

MIZUHA: I shall be glad to withdraw my motion. I did not intend to kill the amendment offered by the delegate from Hawaii. However, I asked - - I think I did inform the chairman on behalf of myself and another fellow delegate from Kauai that we shall be leaving at 3:00, but would like to particpiate in the voting on Section 3, and inasmuch as we have given unanimous consent to a speaker on this floor to continue extension of debate here, and we have been rather generous with absent delegates while they did go to Washington, I believe on an important question like this, on the question of voting for the judicial - - on the type of the judiciary we shall have, that courtesy should be extended when asked by some delegates.

CHAIRMAN: Inasmuch as Delegate Mizuha has withdrawn the previous motion, the motion to table is no longer before us. There'll be a - - we now have the amendment before us. Therefore there is no need of a recess. The Chair would like to ask Delegate Sakakihara if, in offering this amendment, he intends to take considerable time.

SAKAKIHARA: I move that we agree to the amendment to Section 3.

PHILLIPS: I second the motion.

CHAIRMAN: It's been moved and seconded the amendment to Section 3 be adopted.

SAKAKIHARA: The amendment reads as follows:

The chief justice and four associate justices shall be elected by the qualified voters of this state on a nonpartisan designation at a regular election in any odd-numbered year in which a governor is not elected. They shall hold office for a term of eight years, beginning on the first day of January following their election. No person shall be eligible to such office who shall not have been admitted to practice law before the supreme court of this state for at least ten years.

Judges of the circuit courts shall be appointed by the chief justice of the supreme court with the concurrence of two of the justices thereof, for terms of six years and until their successors are appointed and qualified. They shall have resided in this state for not less than three years immediately preceding their appointment, be qualified to vote and be licensed to practice law in all of the courts of this state. They shall be subject to removal for cause by the chief justice with the concurrence of two justices.

CHAIRMAN: It would seem to the Chair that this incorporates the two amendments that have been defeated. It incorporates in one section the first amendment that was offered, and in the second section, the second amendment.

SAKAKIHARA: If the Chair will recall, during my statement this morning, I proposed to offer an amendment, and this is the amendment I had in mind this morning to present to this Committee of the Whole at this afternoon session.

HEEN: I move that the committee rise, report progress, and ask leave to sit again.

CHAIRMAN: The specified time that Delegate Mizuha had requested was 9:00 Tuesday morning. Is that agreeable to you, Delegate Heen?

HEEN: All right, I'll withdraw my motion.

CHAIRMAN: Well, no, your motion will have to stand. The other motion was withdrawn. The only thing is that he had specified a time. I asked if you would please specify a time. Withdraw the motion altogether?

SAKAKIHARA: Would the motion made by Delegate Mizuha, would it now be in order?

CHAIRMAN: No, he has withdrawn that motion.

SAKAKIHARA: That will not preclude me or any delegate to make a similar motion, does it?

CHAIRMAN: Any delegate may make a similar motion.

SAKAKIHARA: In that case I make a motion at this time that the Committee of the Whole rise and report progress and beg leave to sit at 9:00 Tuesday morning.

CHAIRMAN: Is there a second?

MIZUHA: I second the motion.

CHAIRMAN: All those in favor please say "aye." Opposed. So carried.

JUNE 13, 1950 • Morning Session

CHAIRMAN: Committee of the Whole, please come to order.

When we rose on Friday to report progress and beg leave to sit again, we had before us an amendment to Section 3, Committee Proposal No. 7, introduced by Delegate Sakakihara. The Chair stated at that time that he felt the amendment might not be in order inasmuch as the first section dealt with an amendment previously voted down that had been introduced by Delegate Fukushima, and the second section is one covered at least in part by Delegate Fong. However, there is a slight variation and it's the feeling of the Chair that perhaps the amendment itself should be debated and the wishes of the Convention followed.

ANTHONY: I think that's a correct ruling of the Chair. The statement is from the Judiciary Committee, Mr. Chairman.

CHAIRMAN: Thank you for the vote of confidence. The Chair will recognize Delegate Sakakihara if he wishes to speak on his motion.

SAKAKIHARA: I submitted the amendment to Section 3 of Committee Proposal No. 7 feeling very strongly as I do, believing in the separation of our government into three branches. I'm opposed to making the judiciary subservient to the executive department and the legislative branch of our government. Under the terms of Section 3 of Committee Proposal No. 7, you will precisely do that, vesting the power of appointment of the judiciary to the governor of the Territory and that appointment is subject to the confirmation of the Senate of the State of Hawaii.

The judiciary is a body which is separate, distinct and apart from the executive and legislative branch of the government, and as a branch of the government should be solely independent and made answerable to the people of the State of Hawaii, not to be made answerable to the executive branch of the government or to the legislative branch of the government. I submitted the amendment so that the people of the State of Hawaii may by their ballot exercise their franchise and say who shall head the judiciary branch of our government.

You allow under Section 3 the appointments, and under the terms of our supposed Bill of Rights and the report of the Committee on Executive Powers and Functions that the governor of the Territory of Hawaii shall be elected by the people of this state, and one of the recommendations to be filed by the Committee on Legislative Powers and Functions that the people of this state - - qualified voters of the State of Hawaii, shall elect the legislature. But when it comes to the judiciary branch of our government, by the precise language contained in Section 3 of Proposal No. 7, you say to the people of the State of Hawaii, "You are incompetent, you are not fit to select your judiciary branch of the government."

Under the terms of the amendment the qualified voters of this state will say at the polls by their respective ballots who shall be the chief justice of the supreme court, who shall be the four associate judtices of the supreme court. And in order to divorce politics – if any politics is to be connected as pointed out by the chairman of the Judiciary Committee – the courts which come in direct contact with the public will be appointed by the chief justice with the concurrence of two associate justices of the supreme court under the terms of the amendment, thereby divorcing the judiciary from the executive and the legislative branch of our government.

My amendment differs from that one offered by the delegate from the fifth district, the honorable Speaker Fong. His amendment would have required the election of a chief justice, who will name his judges with the confirmation of the Senate. I am divorcing entirely the judiciary from the executive and the legislative branch of the government.

I am sure the people of the State of Hawaii will be competent, will be very careful, in the selection of their branch of government, whether it be the judiciary, the executive or the legislative, and it has been proven by some 34 states in the Union that such is the case. They still elect their judges. I'm sure the people of the State of Hawaii will be men and women who do understand their neighbors, who do understand their people, who do understand the judges and the character of the lawyers who will offer themselves as chief justice or associate justices of the supreme court of this State.

I'm sure it is not necessary for these candidates running for chief justice or associate justices to campaign on partisan politics. They could carry on a dignified campaign offering themselves to the offices of the supreme court because they are men and women who would have been tried in the eyes of the public, their standing in the community, their record as lawyers speaks for itself. The finest example is the intelligence and the ability of the people of the fourth district who have demonstrated in the February and March elections for delegate to this Constitutional Convention. They went out and selected the best available candidates, men of integrity, men who have been tried as competent lawyers and judges, as delegates to the Constitutional Convention from the fourth district.

I submit, Mr. Chairman and members of the Committee of the Whole, that it is the American way and the democratic way to allow the people, free-thinking American people, to go to the polls and exercise their franchise to the fullest extent and by their ballots express as to who shall be elected as chief justice and associate justices of the supreme court of the State of Hawaii, to entrust the interpretation of the laws of the State of Hawaii, to construe the Constitution of the State of Hawaii and of the United States of America. I'm sure these people will by their ballots say to the candidates aspiring for these offices that you are the men and women in whom we repose our confidence and entrust the destinies of our supreme court.

I respectfully submit that the amendment is a good one. It limits the term of office to eight years for the supreme court justices, long enough so that the supreme court justices will not play politics. They are far removed from the public, only cases of appeal nature will go to the supreme court. The term of office for the circuit court justices are made long, six year terms. They will be removed from politics because they will be made answerable to the supreme court of the State of Hawaii in their conduct, in their integrity, and enlightened public opinion will not allow them to serve as judges of the circuit courts without bringing the matter before the attention of the appointing officer, the chief justice of the supreme court.

I submit that the amendment deserves the serious consideration of this committee. I say to you with all sincerity that if the people of the State of Hawaii could be entrusted with election of the governor of the State of Hawaii, who is vested with extra-ordinary power, far more than those vested presently to governors of various states of the Union, then I can say truthfully to every voter of this territory that the people could be trusted in the exercise of their ballots and election of the supreme court justices of the State of Hawaii, and I ask you delegates to support the amendment.

A. TRASK: Will the delegate yield to a question?

CHAIRMAN: The question was, will the delegate yield to a question? Will Delegate Sakakihara answer a question?

SAKAKIHARA: I'll be glad to, Mr. Chairman.

A. TRASK: The chief justice and the four associate justices will naturally be obliged to campaign over the islands of the group. Now, how much do you estimate it would cost the chief justice and the four associate justices to campaign for an election?

SAKAKIHARA: I believe that the campaign expenses could be kept to a minimum, compared to that of the campaign expenses heretofore involved by the delegate to Congress—I'm serious about it, it's not a laughing matter—because the campaign will be carried on at a high level. I'm sure that the campaign for the office of the supreme court justice differs from that of the office of the governor or the legislature. I believe there will be candidates, men and women of high integrity and character, that they will not reduce themselves to the level of ordinary political campaigns as ordinary politicians do.

A. TRASK: We're not getting into the merits of whether or not - -

CHAIRMAN: The Chair will be glad to recognize you, Delegate Trask.

A. TRASK: Thank you, Mr. Chairman.

Without going into the merits about the level, high or low, of politics and politicians, would the delegate give an estimate in money, how much it would cost the individual justice, because I might be interested in running for this office, and I would like to know in dollars how much it is.

SAKAKIHARA: Your guess is as good as mine.

CHAIRMAN: Will you please keep order.

BRYAN: I'd like to point out, while the Chair rules this amendment is in order and covers a slightly different subject than the amendments that were proposed when the subject came up before, that the proposer has by his own words brought this back to the same thing we talked about Friday, that we voted on.

TAVARES: I'll be very brief. I'm getting a little tired about this argument about not trusting the people. The very requirement that we have to have a written constitution in this country is a requirement which shows that we don't trust the people's hasty actions. If we can trust the people in every respect, all the time, then why do we even need to have a written constitution. I say that the very existence of a written constitution presupposes a lack of confidence in the people's actions which may be hasty at some times.

Secondly, why do we have to have a Bill of Rights. The very people here who are most vociferously in favor of arguing for trusting the people are the ones just as strong in favor of a strong Bill of Rights. Now, what does the Bill of Rights mean? It means that it must protect the minority because we don't trust the majority. Therefore, I submit that the argument that in arguing for an appointive system we don't trust the people, is just as unsound or just as sound as it would be against the Bill of Rights, and I think it ought to be dropped.

There are some things in which we know that the people are not able at the time to act always with full knowledge and full understanding of the situation. And that is the reason why, among other things, we require and we ask that judges be appointed.

There is one more thing, and that is, that when we were in committee, at the request of the proponent of this measure, we held up a vote on the elective and appointive system so he could hear from the bar of Hilo. He was very much concerned about hearing from it. The bar of Hilo voted ten to one for appointive judges but he didn't change his mind.

FUKUSHIMA: As I have already said, all I'm interested in is a strong judiciary. I feel, still feel, that the election of judges is it. In fact, I argued it so strenuously as perhaps to incur the wrath of our learned chairman of the Judiciary Committee. But at this time I'd like to state that any judiciary to be strong cannot be one of compromise. Here this is exactly what we have, the election of our supreme court and the appointment of circuit court by the chief justice with the concurrence of two of the associate justices, which meets the same ill which I pointed out with the second amendment proposed by the delegate from the fifth district. In such a thing as a constitution, there should not be a compromise. We compromise certain things. If I came to a legislature and asked for an appropriation of $1,000 and I could get $500, I'd take that $500, yes. But for a constitution which sets up a fundamental basic law, we should not compromise, just as we will not compromise our principles.

We should not have a scrambled judiciary, which this amendment is, or an omelet judiciary or a chop suey judiciary. I am for the election of judges, period, paragraph, full stop, nothing else, but I will not let the electorate say that I did not provide in our Constitution a judiciary article.

Since the appointment system will be carried overwhelmingly I will now go with the appointment system, but I also have another amendment which I'd like to offer on the question of tenure. I'd like to make this statement right now so that I will not be foreclosed from presenting my amendment by a motion for previous question after I finish.

My amendment merely amends the second paragraph of Section 3 of Committee Proposal No. 7. It reads, "The justices of the supreme court shall hold office for a term of eight years and the judges of the circuit court shall hold office for a term of six years."

I feel that the original proposal, the committee proposal, calling for the six year and twelve year tenure is a little too long. I am mindful of the fact that the tenure should be long to attract good attorney candidates, but, however, a long tenure for judges may tend toward judicial stagnation, due to lack of incentive. Here I have also provided for the longer tenure for supreme court justices and a shorter one for the circuit court judges. In all the states -- most of the states --

LEE: Will the speaker yield to a point? It might be wise to speak on the subject after we vote on the amendment proposed by Delegate Sakakihara.

CHAIRMAN: I think that's proper.

PHILLIPS: I rose to a point of information. As a result of Delegate Bryan's inquiry, I'm confused now as to whether there is actually a motion and a second on the floor of Delegate Sakakihara's amendment.

CHAIRMAN: As the Chair stated at the beginning of the session, Sakakihara's motion is now on the floor; it has been moved and seconded; it was the other day before we closed debate. The debate is now on the motion to Section 3.

PHILLIPS: Thank you, Mr. Chairman.

AKAU: I do not wish to speak directly to the amended motion by Delegate Sakakihara, but I do want to say a word regarding Delegate Tavares' statement. I think we all thoroughly agree that there are many things regarding the judiciary as well as other sections which will not be very clear to John Q. Public. It's not within his grasp, we agree. But I would like to ask Mr. Tavares, if I may, Mr. Chairman, isn't it up to you and me and all the rest of us to help, to explain, shall we say, even to educate slowly but surely, so that the people will grasp the significance of this very important document? I think you'll agree, Mr. Tavares, we have come a long way, let us say since 10 or 15 years ago, so there is much more hope for our people here. I would like to have the delegates please say a word on that.

CHAIRMAN: Did you have a question? Is it on the amendment?

AKAU: Mr. Chairman, it's not directly on the amendment.

CHAIRMAN: If it's not on the section -- on the amendment, the Chair feels that we ought to go on and discuss things relative to the business before us.

LEE: I notice that Delegate Gilliland wanted to speak. Unless there were other speakers, I was going to move the previous question.

GILLILAND: I have been in politics since 1925. I have run for the office of city and county attorney some years ago and served two terms and I think I know what I'm talking about. If a man is a candidate -- if a lawyer who is a candidate for judgeship must depend on the electorate to vote him into office, I'm certainly opposed to any election of any judge. I want to say that in my experience in running for the office of city and county attorney, I received donations from friends, and I want to say this, that some of these friends, when it came to handling some of their cases, expected me to return the favor and have the case dismissed.

I want to say also that the man who runs for office, the office of judge—if this Constitutional Convention is going to provide for election of judges—he's got to look forward to the question of how much money it will cost him to run for that particular office, how many favors he will have to dish out to the electorate, how many political factions he will have to deal with, and he will have to worry about finding his expenses for the next election.

I say that in our Constitution, we should provide for the election of judge -- for the appointment of judges and not for the election of judges.

CHAIRMAN: State your question.

PHILLIPS: If you say you don't approve of election of judges --

CHAIRMAN: Will you speak to the Chair, please.

PHILLIPS: I would like to talk directly to him because the question is to him.

CHAIRMAN: The Chair will put the question.

PHILLIPS: I would like to know then, if he is not in favor of the election of judges, would he have the chief executive have complete control over the appointment of judges without any kind of a check on his appointment, and he generally gets his recommendation for appointments from a political party or political adviser? I would like to know then, would he approve of the chief executive, the chief of patronage in the state, would he have him be solely responsible for the appointment of judges, which I feel is comparable to the election of judges?

CHAIRMAN: Would you care to answer that, Delegate Gilliland?

GILLILAND: The governor will be elected by the people, and any appointment he makes he will certainly take the advice of the judiciary, members of the Bar Association, the people at large, and any appointment he makes will be subject to the confirmation of the Senate.

LEE: I move the previous question.

PHILLIPS: Then along that same line of reasoning, I would like to ask the delegate from the fifth district why certain states have found it necessary to create commissions which would involve laymen and all other complicated machinery to prevent this very thing which he felt sure that he had precluded. Why is it that Missouri and other states, California, would care to create a commission who would certify three names to the chief executive, and through that commission be able to cut out this patronage which everybody is aware of?

ANTHONY: I think the question addressed by the last speaker is not germane to the amendment. It may be a good question later on, but I suggest we confine ourselves to the amendment.

HOLROYDE: I second Senator Lee's move for the previous question.

CHAIRMAN: The motion before us is, shall the previous question be put? All those in favor say "aye." Opposed. Carried.

The question now is on the adoption of the amendment offered by Delegate Sakakihara. All those voting in favor will be voting in favor of the amendment; those voting in the negative would be voting against the amendment. All those in favor say "aye." Opposed. Amendment is lost.

We are now back on Section 3, as it stands. The Chair will recognize Delegate Fukushima.

FUKUSHIMA: I don't have very much to say, but I have the amendment already circulated. I believe it's on the delegates' desks. If you will note - -

CHAIRMAN: The Chair would like to state, Delegate Fukushima, that the amendment you offered was not seconded so that we can get it before - -

SAKAKIHARA: Second that.

CHAIRMAN: Will you make the motion, then I'll recognize the second.

FUKUSHIMA: I move at this time that the amendment which I have distributed be adopted.

> The justices of the supreme court shall hold office for a term of eight years and the judges of the circuit courts shall hold office for a term of six years.

SAKAKIHARA: Seconded.

CHAIRMAN: The amendment to Section 3, Proposal 7, has been made and seconded and is before you now.

FUKUSHIMA: As you will note, in the amendment I have provided for two categories; that is, the supreme court justices will serve a term of eight years, and the judges of the circuit court for a period of six. I made this distinction because I believe in most of the states it is customary that the judges in the upper court have a longer tenure. I believe that the proposal as submitted, calling for a period of six years, does not make the differentiation between the circuit court judges and the supreme court justices, and the reappointment portion which gives the judges or the justices a period of 12 years is a little too long. I feel that even for a re-appointment the original tenure should prevail.

LEE: At this time those who have supported the committee report, the majority of us, there were some phases of it which - - some of us didn't give as much attention as possible to this particular question. For myself, I'd like to say that I'm in favor of this amendment. I do believe that the tendency of having a judge appointed for a term of six years and then appointed for a term of 12 years, a period of 18 years, is a long period. It's a question of drawing the line as to the dangers of having short term appointments as well as having judges appointed so that they develop corns in their posterior. I believe that the amendment is in order. I spoke to the chairman of the committee of one of these things that I felt the tenure was a little too long, but I'd like to say that I am in support of the amendment.

A. TRASK: I am in favor of the amendment offered by Delegate Fukushima. The amendment seeks to make the tenure of office for justices of the supreme court eight years and for circuit court judges six years. The second section - - the second paragraph of Section 3, which this amendment seeks to modify, provides that the judges of the supreme and circuit courts shall hold office for a term of six years and upon their reappointment shall hold office for a term of 12 years.

I am reminded of a great jurist, Albert Moses Cristy. He was appointed by - - for a term of at least 20 years. He was appointed by five presidents, having in mind terms of four years each. He said that a judge should be sought, the man should not seek the office. And I think if we put that and use that as a yardstick of measurement for office without the reappointment for a term of 12 years, I think we would make the judges more acutely aware of what is going on in the community.

We are concerned about judges, some of them who limit their activities merely to the fourth district. Very few judges go into the fifth district, see what's going along in the slums, the alleys, byways. Judge - - Associate Justice Peters made a remark some time ago in tribute to the district courts, that because you appeal to the supreme court, it doesn't mean the supreme court has superior knowledge of social condition existing in the community. I do feel strongly, therefore, that there should be some etching, needling incentive, and that the shorter term as provided by the amendment I think would help make our judges acutely aware of conditions, have them get down and mix around and increase their humanity, as Judge Cristy had. He mixed with the people, he talked with the jurymen, he was out in the lobby of the court constantly talking with everybody. That's the kind of judge we would want to have, and although I sympathize with the elective system, I feel that the humanity of judges will be better maintained with a shorter tenure.

CHAIRMAN: Before the Chair recognizes any other speaker, I'd like to state that we have in the audience one of our distinguished members of our legislature, also a fellow Kauaian. I would ask the Sergeant at Arms if you would please escort Delegate Marcelino to the rostrum - - Representative, pardon me. He should have been a delegate. There'll be a short recess.

(RECESS)

ANTHONY: [Beginning of speech not recorded.] . . . on the committee proposal which provides for long tenure and upon reappointment a term of 12 years. Now in the first place there is no valid reason for making any distinction between the tenure of a judge on the circuit court and the tenure of a judge of the supreme court. It is equally important that both courts have long tenure, and had I obtained the support of the majority of the committee, I would have been addressing you on the subject of life tenure.

Now what is the purpose and purport of this amendment? It is simply an attempt to stir up recurrently, every six or eight years, the appointment of the judiciary. Now if you will

examine the list of states, you will find the strongest jurisdictions have longer tenure as provided in the committee proposal. The federal system, as you all know, is life tenure; the State of Pennsylvania is 21 years for the supreme court; and you can go on down the line. Every state that has a strong judicial system has a long tenure. Now the reason I opposed this amendment—and I opposed the other one which is equally, if not worse, more obnoxious, that is currently being circulated—is, it is going to make the judiciary some kind of a political football.

Now I think that we have reached a happy medium here between life tenure and long tenure. All competent authorities on the judiciary agree that in order to have a good judiciary you have got to have security in office and long tenure, and the proposed amendment will be an inroad on that basic principle. Therefore, I think the Convention should vote against it.

CHAIRMAN: Anyone else wish to be heard?

TAVARES: Just one more thought. If anyone takes the trouble to read the newspapers he will find that the one court that people like to get into if they can, where liberal attitude is desired, is the federal courts, and they have life tenure. The most liberal court in the United States today is the court -- the Supreme Court of the United States and the lower courts who hold office for life. As I say, if you will read the papers you will find that the first place that people want to go when they want the most liberal court possible is to get into the federal courts.

Now, when New Jersey adopted its split term system of seven years and then life, the American Bar Association Journal, which I think represents the thinking of the American Bar Association, had an editorial which was entitled, "New Jersey Goes to the Head of the Class."

True separation of power lies not so much although somewhat, in the method of appointment -- well not so much. As a matter of fact, I don't think it lies in there at all. It lies in the security of tenure given to the judges after they get into office. The members have cited here examples of where presidents have put in judges who they thought would follow their views, and as soon as those judges had security of tenure they used their own judgment and they were independent. I say that giving these judges short terms will tend to reduce their independence below what it would be if you gave them long tenure.

Now one more thing. Something was said about removing judges if they got too tired, they became too much kamaaina. Some people know the definition of "kamaaina," about how the blood in your veins turns to lead in the lower part of the anatomy. The provisions of this article for liberal removal will tend to take care of that. We have provided liberal removal provisions, and that is the thing that will take care of that situation.

I hope that the members of this delegation vote against the amendment.

CHAIRMAN: Anyone else wish to be heard?

RICHARDS: There's something that isn't quite clear in my mind and I would like to ask the chairman of the committee. I notice that in all of the proposals for a lengthy term of office, there is nothing regarding any staggered term. Is it the expectation that each time there is a resignation or a removal and a new judge is appointed, he will receive appointment for the full term and in that way obtain the staggered possibility, or do they merely fill out for the balance of the term? That is not clear.

CHAIRMAN: Chairman of the Judiciary care to answer that?

ANTHONY: Upon the making of a new appointment, the appointee will get the terms specified in the provision, the full term. There is no attempt, in fact it is not even desirable, to stagger the terms. You stagger the terms when appointing or electing a public utilities commission in which you want a continuous -- a body that is more or less continuous. That has no application to the judicial system, in my judgment.

A. TRASK: The statement was made by Delegate Tavares that he saw no difference—and apparently in Section -- paragraph 2 there is no difference—with respect to the tenure of the supreme court justices and the circuit court judges, namely just six years. I was just wondering whether or not this reappointment refers only to that particular supreme court or circuit court. I'm having in mind this situation. Say if a circuit judge has been on the bench and at the conclusion of his six years, he is appointed to the supreme court. Now, if the thought that there is no distinction and there should not be and it is the sense that there is no distinction, a judge is a judge, should -- would there be opportunity for the contention that upon his elevation to the supreme court it would be in the nature of an reappointment, and therefore be entitled to 12 years?

ANTHONY: I think the language of the article and the clear intention of it, as well as the understanding of the committee, is that that case would be a new appointment. In other words, a circuit judge elevated by appointment to the supreme court would then have a new appointment as justice of the supreme court, and upon his reappointment he would then serve for an additional term for 12 years.

ROBERTS: I'd like to speak to the amendment which provides for a term of eight years for judges of the circuit -- excuse me, for the supreme court and six for the circuit court. As I got the objection by the chairman of the Judiciary Committee, that objection is to the differing lengths of the terms, as the circuit court and the supreme court should have the same length of term. Now the committee proposal provides for only six years. I'm in favor of longer tenure. I could support a proposal which would provide for eight years initial term of the supreme court, but I'd like to have the terms identical with the circuit court. I therefore would amend the proposal -- amend the amendment to have a uniform eight years for both the supreme court and for the circuit court.

CHAIRMAN: Is there a second to that amendment?

TAVARES: Mr. Chairman, I --

CHAIRMAN: Is there a second to that amendment?

PHILLIPS: I second it.

CHAIRMAN: The amendment's been seconded.

Will you state now, Delegate Roberts, will you please state your amendment as it would read?

ROBERTS: The amendment would read that, "The justices of the supreme court and the judges of the circuit courts shall hold office for an initial term of eight years and upon reappointment shall hold office for a term of 12 years." It provides for a longer term, but uniform term.

CHAIRMAN: Did you say for "an additional term of eight years"?

ROBERTS: I assumed that the amendment covered the reappointment in paragraph 2 of Proposal No. 3 -- Section 3.

FUKUSHIMA: In proposing my amendment, it does not foreclose the justices of the supreme court and the judges of the circuit court for reappointment, but the period -- the tenure of the reappointment remains the same as the initial period; in other words, eight for the supreme court justices and six for the circuit court judges.

TAVARES: Before vote is brought on any of these proposed amendments, I would like to make one more suggestion; and that is, if it is the sense of the majority of this Convention that the term should be, at least for the moment say six or eight years, then it should be provided that they should be for not less than those periods so that the legislature might be able to lengthen the terms, because I sincerely believe, and I think your authorities that have studied this question universally agree, that longer terms produce a better judiciary.

KAGE: I am in favor of a long tenure for the judges and so I should vote for the eight years tenure instead of the six years, and make the amendment that when he is reappointed, he should be reappointed for 12 years, but I shall not make the amendment. We believe --

CHAIRMAN: I believe that amendment has already been made.

TAVARES: I'll second Mr. Roberts' motion.

KAGE: Then I would like to speak against the motion -- the amendment. We believe in three distinct departments. If our appoint -- the term of office is for eight years, then the appointment will fall upon the year that the governor is elected, and therefore the judiciary will become dependent upon the executive. I would rather see six years because the governor is already in office.

MIZUHA: We have heard a great deal about the independence of the judiciary. What more could we want, if we had a long term for our judges, to give them that independence and give us that basis of the separation of powers in government between the judicial department and executive and the legislative branch. And as the proposal now stands, the initial appointment of six years, if the governor or the people or the bar feel that that judge should not be reappointed for a long term of 12 years, then that is the time, through their representatives in the legislature, in the Senate, to fight confirmation of the judge whose initial term has not been so proper as to indicate a need for his reappointment. And if we are to follow the doctrine of separation of powers, then the second appointment of our judges should be for a longer term to give them the independence they need.

CHAIRMAN: Ready for the question?

BRYAN: I'd like very much to know what the question is.

CHAIRMAN: The Chair is about to state the question. We are dealing with Section 3. To Section 3, the following amendment was offered by Delegate Fukushima: "The justices of the supreme court shall hold office for a term of eight years, and the judges of the circuit courts shall hold office for a term of six years." To that amendment, another amendment was offered by Delegate Roberts; that amendment reads -- The Clerk will read the amendment, please.

CLERK: "I would like to speak for the amendment which provides for a term of eight years for judges of the supreme court and six for the circuit court. As I get the objection of the chairman to the Judiciary Committee, that objection is to the differing lengths of the term, that the circuit court and the supreme court should have the same length of term. The committee proposal provides for only six years. I am in favor of longer tenure and I could support a proposal whicl would provide for eight years for initial terms but I would lik to have the terms identical for circuit courts also. Now, I would therefore amend the amendment to have a uniform eigh years for both the supreme court and for the circuit courts."

ANTHONY: I took down the amendment, I can read it if the Chair would like to have me read it.

CHAIRMAN: Would you, please?

ANTHONY: Delegate Fukushima's amendment as amende by the motion of "Justice" Roberts. "The justices of the supreme court shall hold office for a term of eight years, and the judges of the circuit court shall hold office for a term of eight years, and upon reappointment, shall hold office for a term of 12 years."

CHAIRMAN: Does Delegate Roberts agree that that was the motion the way he stated it?

ROBERTS: That's substantially correct, Mr. Chairman.

PORTEUS: I'm much in sympathy with the point that one of my colleagues from the fourth district made this morning about a way of getting at particular motions by votes. As I understand the amendment that was offered by the delegate from the fifth district, he offered it on the theory that he wanted some difference in term between the circuit court judges and the supreme court judges. That he accomplished. However, his amendment had two -- was twofold in purpose. It was also designed to eliminate the 12 year reappointment. My colleague from the fourth district very delicately has inserted back into the amendment, in order to nullify one of the purposes of that amendment, the reappointment for 12 years.

Now if that's a fair parliamentary maneuver, then it is als a fair parliamentary maneuver to move that that amendment be further amended, and unless we get a straight vote on the delegate from the fifth district's amendment with an amendment to that only for eight years and not for reappointment, I'm going to move that we amend that amendment further to knock out the 12 year reappointment, because it is striking down part of the purpose of this other amendment. If you want the 12 years, let's get a separate vote on the 12 years. But in this way, it's being maneuvered in such fashion that you have to take two things at once, and I am in agreement that we want to separate these matters out so that we can ascertain the will of the delegates.

HEEN: Then as I understand Delegate Roberts' amendment, it's simply this: substitute the word eight for six in line two. In other words --

CHAIRMAN: Of the original Section 3, that would be correct.

ROBERTS: The purpose of my motion was not to frustrate the proposal put in the form of an amendment by the delegate from the fifth district. As I understood the discussion, the objection raised by the Judiciary Committee was for unequal terms, and since the amendment provided for an eight and six, I merely moved the amendment to provide for uniform eight year terms, which provides for a longer tenure on first appointment. The original proposal provides for reappointment, and therefore my motion did not repeat that. If the delegate from the fifth would like to get a vote on his proposal, I'd be very happy to withdraw my amendment to permit his presentation. Now my assumption was, and apparently it's an incorrect one, that the author of the motion wanted a longer tenure for the supreme court justice for eight years and a six year term for the circuit court.

CHAIRMAN: The Chair asked a while ago if Delegate Fukushima's amendment was one on reappointment and was informed that it was, rather than on the original tenure of office. Is that correct, Delegate Fukushima? Or is this to replace that paragraph of Section 3?

FUKUSHIMA: This amendment which I have proposed would substitute this wording here for the second paragraph in Committee Proposal No. 7.

CHAIRMAN: Thank you, then the Chair was in error.

LEE: And in order to get a straight vote on that, Mr. Chairman, I suggest that Delegate Roberts withdraw his motion.

CHAIRMAN: Before he does that, the Chair would like to recognize Delegate Nielsen who had asked to speak.

NIELSEN: Well, I had a point of order but as long as we've gone along, I'll skip it. I think we had about three amendments on there and we can't stack them that high.

CHAIRMAN: I realize that we can't stack them that high, but we haven't gotten that high. There have only been threats of amendments.

ROBERTS: I had previously offered to withdraw the amendment. In light of the statement made that the purpose was to replace the sentence in the second paragraph of Section 3, I will withdraw the amendment.

CHAIRMAN: The question then is on the amendment as proposed by Delegate Fukushima.

ANTHONY: Just one point that should be borne in mind. One of the purposes of having seven years in the New Jersey Constitution for the initial term, and our committee proposal agreeing on six years, was to avoid an appointment in a year in which the governor runs for election. Now if you are going to put in eight, then you are going to run into periods of appointment when the governor is running for election. We thought that undesirable.

CHAIRMAN: That was the point raised by Delegate Kage; there was no second to either his motion or suggestion.

The question now is on the amendment. The amendment as proposed to substitute for the last paragraph of Section 3, proposed by Delegate Fukushima, reads: "The justices of the supreme court shall hold office for a term of eight years, and the judges of the circuit courts shall hold office for a term of six years." Ready for the question? All those - -

SHIMAMURA: I move that the amendment be further amended by striking out the figure "eight" in the second line and insert in lieu thereof the figure "seven."

KAM: I second that motion.

CHAIRMAN: It's been moved and seconded that this amendment be further amended.

FUKUSHIMA: I'll accept that amendment.

CHAIRMAN: He has accepted the amendment. The section now reads - - The amendment now reads, "The justices of the supreme court shall hold office for a term of seven years, and the judges of the circuit courts shall hold office for a term of six years." Are you ready for the question?

SILVA: Roll call.

CHAIRMAN: All those desiring roll call, please raise your right hand. Sufficient number. The Clerk will please call the roll. All those voting "aye" will be voting for the amendment; the negative will be voting against the amendment. Will the Clerk please call the roll.

KAWAHARA: As I understand it, if we vote once, does it mean that we're voting for the whole amendment?

CHAIRMAN: Will you speak into the microphone, please. I couldn't hear you.

KAWAHARA: Do we have two separate amendments?

CHAIRMAN: No, there is only one amendment now before us. That is the amendment on tenure of office, original tenure of office of seven and six years as proposed by Delegate Fukushima, amended by Shimamura, and accepted by Delegate Fukushima. Those voting "aye" will be voting for the amendment. Those voting "no" will be voting against it.

HEEN: The Chair has just stated that the amendment was on the original appointment. That contemplates another term for reappointment, but this is a period of tenure that will continue all along the line, whether it's the original appointment or a subsequent reappointment.

CHAIRMAN: That's correct. The Clerk will please call the roll.

Ayes, 32. Noes, 29 (Anthony, Apoliona, Arashiro, Bryan, Castro, Cockett, Corbett, Dowson, Hayes, Heen, Holroyde, Kage, Kanemaru, Kawakami, Kellerman, King, Larsen, Loper, Mizuha, H. Rice, Richards, Roberts, Smith, Tavares, White, Wirtz, Wist, Woolaway, Crossley). Not voting, 2 (Sakai, Sakakihara).

CHAIRMAN: The amendment has carried.

NIELSEN: I'd like to ask a question of the chairman of the Judiciary; it comes from the New Jersey Constitution. I'd like to know what discussion they had on that phase of the New Jersey Constitution which reads, "No nomination to such office shall be sent to the Senate for confirmation until after seven days' public notice by the governor."

CHAIRMAN: What section are you speaking on, please?

NIELSEN: Well, it's in the same - - it would be in the same section of our Constitution. If they have the proper explanation, I won't make it as an amendment, but I wish to make an amendment.

ANTHONY: That's in the committee proposal, Mr. Chairman.

CHAIRMAN: Would you care to answer, Delegate Anthony?

ANTHONY: Section 3. "No nomination to such office shall be sent to the Senate until after ten days' public notice by the Governor." Section 3.

NIELSEN: Thank you.

ASHFORD: I was a little bit concerned, and I still am, over this language in the last sentence of the first paragraph of Section 3. "No persons shall be eligible to such office who shall not have been admitted to practice law before the supreme court of this state for at least ten years." I am informed by the chairman of the committee that it is proposed that some provision shall be made to cover service as a member of the bar of the Territory; otherwise, we would have no one eligible to serve as judges, and that is before another committee. I'd like to check on that if the Chair would be kind enough to do so.

CHAIRMAN: Would the chairman of Judiciary please answer that?

ANTHONY: We debated that in committee and the technical difficulty was in using the expression "State and Territory" and we concluded the simplest thing to do was to see to it that in the miscellaneous section of the Constitution, where this problem will come up not only with the judiciary but elsewhere, that an appropriate section be incorporated in the Constitution to take care of the delegate from Molokai's question.

CHAIRMAN: Is that satisfactory?
What is your pleasure on Section 3?

AKAU: In the first section -- in Section 3, between the first and second sentence. In explaining the other day, the chairman of the Judiciary said that there would be hearings for people who wish to come, regarding this statement. Now then, I'd like to ask him a question, if I may, Mr. Chairman.

CHAIRMAN: Proceed.

AKAU: Would the public hearing, since they would be provided, what would happen if the citizenry didn't approve of the nominees that had been already suggested? Is there any provision for that sort of thing or it just doesn't have any effect?

CHAIRMAN: Delegate Anthony, would you care to answer?

ANTHONY: I think the Chair could answer it better than I. That's simply a question whether or not the citizenry can make their voice heard and felt in the vote in the Senate on confirmation. If they've got good arguments, they can satisfy the Senate that the confirmation should not be approved.

CHAIRMAN: I might point out to Delegate Akau that it's not a public hearing, it's "public notice."

PHILLIPS: I feel at this time that there is little doubt in our mind about whether we should have appointment or election of judges, and I think due to that fact, and I believe that the reason why we are chiefly concerned with why we should appoint judges is to see if we can eliminate any politics or partisanism from the appointment of judges. Now, due to that, I'd like to ask the chairman of the committee if he -- or why that committee hasn't taken into consideration the value of a commission, a judicial commission, as is demonstrated in the constitutions of California --

CHAIRMAN: The Chair would like to point out that the question of the judicial commission has been voted on. Also, the elective or appointive system has been voted on, I believe, four times --

DELEGATE: Mr. Chairman.

CHAIRMAN: -- and has been defeated each time; so unless you have an amendment to offer that is different than the amendment --

DELEGATE: Mr. Chairman.

PHILLIPS: I'm sorry, Mr. Chairman, I don't yield the floor yet.

CHAIRMAN: The Chair will be through in just a moment. Unless you have an amendment to offer, why I would feel that you're out of order at this time.

PHILLIPS: I rise to a point of information.

CHAIRMAN: Point of what?

PHILLIPS: A point of information.

CHAIRMAN: A point of information? State your point.

PHILLIPS: Has the Convention voted or acted upon a commission or upon a council?

CHAIRMAN: On a judicial council.

PHILLIPS: I'm talking about a judicial commission.

CHAIRMAN: Are you proposing an amendment to Section 3?

PHILLIPS: I'm asking a question of the committee chairman as to why a judicial commission was not considered. I wondered if he could answer us as to why a judicial commission is not in there.

CHAIRMAN: The Chair will put the question, but before putting the question, what is your point, Delegate Arashiro?

ARASHIRO: I had an amendment that I wanted to submit.

CHAIRMAN: It will be -- I'll recognize you next. Someone had the floor; they were speaking on the section; they have asked a question of the chairman of the Judiciary. Would you care to answer that, Mr. Anthony?

ANTHONY: The delegate that last spoke said, why wasn't the matter of a commission or a council considered. As a matter of fact, it was considered and written into the report, the reasons why. In fact there was a division seven to eight whether or not there should be a judicial council, and incidentally, the expression "council" is no different than "commission." If the Convention wants a council, they can vote on it, but the reasons are stated in the report why we didn't recommend it in the proposal.

ARASHIRO: I have an amendment to offer at this time, an amendment to read as follows, and --

CHAIRMAN: Has this amendment been circulated?

ARASHIRO: Circulated.

Section 3. The chief justice of the supreme court shall be elected by secret ballot of the joint committee of both houses of the legislature with equal representation from each county, the names to be submitted to the legislature 30 days prior to the election as provided by law. The other justices and judges of the circuit courts shall be appointed by the chief justice by and with the advice and consent of the Senate.

The reason for this amendment is that it seems like that there was much argument and discussion on the elective system --

HEEN: Point of order, Mr. Chairman, point of order.

CHAIRMAN: What is the point of order?

HEEN: As I understand it, the delegate is offering an amendment and I take it he is moving for the adoption of the amendment. And it's out of order for him to talk about it unless it's seconded.

CHAIRMAN: Your point of order is well taken. Is there a second to -- have you made this in the form of --

ARASHIRO: Just a minute then.

No person shall be eligible to such office who shall not have been admitted to practice law before the supreme court of this state for at least five years. The chief justice's term of office shall be for six years and the other justices and judges terms of office shall be for eight years

CHAIRMAN: Is there a second?

NIELSEN: I'll second the motion.

CHAIRMAN: The motion is now before us. I'll recognize Delegate Arashiro.

ARASHIRO: The reason for the amendment is that we have discussed and argued on this section for the last two days and we haven't reached agreement. It seems like we have quite an opposition for the original section which is the appointive system, and then the amendment that was submitted was on the elective basis and also there was quite an opposition, and not only quite an opposition, but it was defeated.

So now, I'm offering this amendment which is an amendment away from the elective system and away from the appointive system by the governor.

This is an indirect elective system in which the chief justice of the supreme court will be elected by the legislature, whose names will be submitted to the legislature 30 days prior to the election in order to give the legislature time enough to go over the names, the names to be submitted by some body which will be created by the legislature through some legislation.

And then, in this method, I feel that it will iron out all the points that were brought up by the different delegates in arguing against the appointive system and the elective system. The term of office being six years for the chief justice and eight years for the other appointed judges was to make the appointed judges independent from the chief justice, and under this system I feel that it will be an independent judicial department or branch of the government.

C. RICE: I'd like to ask a question of the introducer of this. "With equal representation from each county." He means if the legislature was apportioned the same as it is now, Kauai would sit with - - would have as much right with two senators and four representatives as the 18 from Oahu. Is that right?

ARASHIRO: That's right.

C. RICE: There would be four counties. How about if we had a tie, two-two?

ARASHIRO: The intent of this proposal was that we have equal numbers of representatives from each county. In other words, if we were to have two senators from - - if we were to decide on two senators, that meant that we will have two senators from each of the four counties and then if we would decide on having two House members in this committee, then it will be two representatives from each of the counties.

SILVA: Personally I'd like to offer an amendment if it would be acceptable. I see no reason to put Oahu in. Just make it simple and leave Hawaii, Maui, and Kauai, and leave Oahu out of it, because the primary purpose, as I see it, would be that the outside counties would really have the power of appointing - - nominating all the judges. That's what it really means; it simmers down to that.

ASHFORD: Mr. Chairman.

CHAIRMAN: Delegate Ashford - - oh, sorry.

SILVA: I still have the floor.

CHAIRMAN: Delegate Ashford had asked for the floor next.

SILVA: I'll yield to Miss Ashford for a question. Is that what you want?

ASHFORD: I was just going to suggest that the possibility of a tie was just one more argument for the County of Lanai.

CHAIRMAN: Delegate Silva, will you carry on?

SILVA: Well, I was under the impression that Miss Ashford was probably going to ask me a question, but since she didn't, I yield the floor to any speaker that may desire the floor at this time.

CHAIRMAN: Are you through, Delegate Silva?

HEEN: Supposing the legislature adjourns and there is a vacancy in the judgeship. How are you going to appoint a judge during the interim period between the session that had just adjourned and the next session of the legislature ?

CHAIRMAN: Delegate Arashiro, will you care to answer that?

ARASHIRO: If the introducer of this amendment has overlooked those things, we invite some suggestion and idea, but we are probably going to have an annual session, and if not, we'll have a hold-over committee.

MAU: I was just going to point out that problem which was raised by the delegate from the fourth district. I think this is - - would make it very, very impractical. I want to state to the Convention that the idea of election of judges has been licked on this floor three separate times, and I think that those of us who are in the minority ought to bow to the majority and let's get on with our work.

LEE: Kokua. I move the previous question.

CHAIRMAN: The question is before us, I think. Are you ready? Without the previous question, I think we can vote on the amendment before us. All those voting "aye" would be voting for the amendment; voting "no" would be voting against the amendment. Are you ready for the question? All those in favor say "aye." Opposed. The amendment is defeated.

We are now back to Section 3 as amended. Are you ready for the - -

FUKUSHIMA: Is there a motion to that effect?

CHAIRMAN: There has been no motion now to adopt Section 3 as amended.

FUKUSHIMA: In that event, I move at this time for the adoption of Section 3 as amended.

ROBERTS: I spoke yesterday and I voted with the majority on the question of appointment versus election. I indicated at that time that my own personal preference was for a commission to nominate names of individuals and for the governor to appoint from that panel. The persons so nominated and confirmed by the Senate would then serve in office for a period of time and then stand for election on a nonpartisan ballot - -

SILVA: I rise to a point of order. I don't think there is anything before the Convention now. The motion was made to adopt the proposal as amended. There's no second to that proposal and there's really nothing before the - -

CHAIRMAN: Section 3 is still before the committee and the floor is still open on Section 3.

ROBERTS: I plan to move an amendment when I've presented it.

CHAIRMAN: Delegate Roberts has the floor.

ROBERTS: I indicated at that time that I would submit a proposal providing in part the general language of the Missouri Plan. I have such a proposal, and I plan to offer it in the form of an amendment. I'd like to point out that the proposal is not the proposal I submitted yesterday, the last day of our meeting, on the question of a study group dealing with the judiciary process. That council had nothing to do with the selection of names from a panel and the question

that I'm proposing today in the form of an amendment goes to that question.

I'd like, if it's agreeable with the Convention, after I move the amendment and if I'm -- if I have a second, to provide for a short recess for two purposes: one to read the amendment, and second, to give the delegates a chance to get over the feeling of amendments. I recognize that you are all pretty tired and not in the mood for amendments. I'd like to get you back in the mood to consider this particular amendment that I plan to offer.

The first sentence of the first paragraph of Section 3 of Committee Proposal No. 7 is hereby amended to read as follows:

Section 3. The justices of the supreme court and the judges of the several courts of the state shall be appointed by the governor subject to confirmation by the Senate. The chief justice and associate justices of the supreme court and the judges of the circuit courts shall each be appointed from panels of five names submitted to the governor by a commission to be created by the legislature and to be composed of judges, members of the bar and laymen.

Each appointed justice and judge shall hold office for a term ending December 31 following the next general election after the expiration of twelve months in office. At the general election next preceding the expiration of his term in office, the name of such justice or judge shall appear, unopposed, on a separate nonpartisan ballot which shall read as follows:

"Shall judge [or justice] _____
(Here insert the name of the judge
_____ of the _____ court
or justice) (Here insert the title of the court)
be retained in office? Yes _____ No _____"

If a majority of those voting on the question shall vote in the affirmative, the justice or judge shall remain in office for the number of years after December 31 following such election as is provided for the full term of such office, and at the expiration of each such term shall be eligible for retention in office by election in the manner here prescribed. If at any such election, a majority shall vote against retention in office, a vacancy shall then exist upon the expiration of the appointive term. Should any justice or judge not desire to continue in office beyond the original term provided for in his appointment, he shall, at least 60 days prior to the said general election, give notice thereof to the governor and his name shall not be placed upon said ballot.

CHAIRMAN: Has the amendment been distributed?

ARASHIRO: I second that motion.

ROBERTS: I have copies of the amendment which I will have distributed now.

ARASHIRO: Mr. Chairman, I will second that.

CHAIRMAN: The motion has been moved and seconded. It's been suggested we take about a five minute recess. Hearing no objection, why we stand at recess for five minutes.

(RECESS)

CHAIRMAN: The Chair will recognize Delegate Roberts.

ROBERTS: I'd like to speak in favor of the amendment proposed. I think it provides an effective and fair method of dealing with a problem on which there is a division, strong division of opinion, on the question of an elective versus an appointive system. This proposal was a proposal which was adopted in the State of Missouri after a similar discussion and consideration of the pros and cons of an elective versus an appointive system. It seems to me that this provides some of the better features of the appointive system and some of the better features of the elective system.

On the appointive system, it provides a check, it provides an opportunity for the community, in the form of judges, in the form of the Bar Association and attorneys, and the lay people of the community to nominate those best able to perform the function of judges in our new State. It provides an opportunity, then, for these men to get together and to present a panel of names to the governor from which to choose the members of the court.

It also provides, it seems to me, the better features of an elective system since it does not require that a person run for office in competition with other individuals or to ask favors of individuals to provide enough funds with which to run. This proposal provides a nonpartisan ballot: it provides that the individual does not run against anyone; his name is presented to the people in the form of a confirmation. The people then have the opportunity to vote yes or no. There is no problem of partisan politics; there is no problem of a competitive position with regard to presenting the question to the electorate.

It seems to me that so far as the basic tenure is concerned, the tenure is already set forth in other sections of the committee proposal. This proposal, this amendment, goes only to the question as to how the judges of the supreme court and the circuit court are to receive their office. It provides for a careful review in the form of a panel, appointment by the governor, and confirmation by the Senate, and provides a review at the end of a one to two-year period, depending on the date of appointment, to give the judge the opportunity to serve, and then give the people an opportunity to vote on the question, yes or no.

I don't think we ought to take too much time discussing the proposal. I think the basic questions have been considered in detail. If there are any additional comments, I personally would like to hear them. I don't want the debate drawn out on this thing if we can get to an early vote.

ANTHONY: Has there been any second to this?

CHAIRMAN: Yes, it's been moved and seconded.

ANTHONY: This is a rehash of what this Convention has voted on at least three or four times, namely the central issue, whether we are going to have an elective system of judges. Now, no matter how thin you slice it, it's still an election. Now, if the delegate did what he -- what I understood him to be doing, namely, propose a panel from which the executive should make the executive appointment, that would be one thing. That has not been done. We are right back again to the old debate, whether or not we are going to have our judges stumping the country, and for that reason, I am against this amendment.

ASHFORD: May I call attention to a further matter in this? We have already adopted Section 4 as amended which provides for removal of judges. Now this would be in absolute conflict, as I read it, with Section 4, and if Section 4 is going to be repealed, I want the vote on election of judges to be had again.

PHILLIPS: I disagree with Delegate Anthony insofar as stating generally that this is a rehash of the election of judges. This election of judges comes after the appointment has been made by the governor and has been approved by

this commission consisting of laymen, which is a check on the patronage tendencies of the chief executive. Now, I would say that unfortunately Missouri has in their last election -- was not successful with this placing the judges on the list. They got more, considerably more noes and a very small vote. I do not believe that this election system here has proven successful, but I would say that the first part of the commission, as I said before, does have its value and it does remove or provide this check and balance, this separation of powers which is, I believe, what the entire Convention is making every effort to strive for.

CHAIRMAN: Anyone else wish to discuss this?

ROBERTS: I don't think anyone answered Miss Ashford's question. As I get the question, the suggestion is made that Section 4 of the committee proposal is negated by the amendment. Section 4 reads that "The justices of the supreme court and the judges of the circuit courts shall be removed from office on impeachment for, and conviction of, treason --"

CHAIRMAN: No, that section has been amended. You are reading from the original text.

ROBERTS: What does the amendment now provide, Mr. Chairman?

CHAIRMAN: I do not have the amendment before me at the present.

ROBERTS: Oh, I think I have it. The proposal as amended provides, "The justices of the supreme court and the judges of the circuit courts shall be subject to removal from office upon the concurrence of two-thirds of the membership of each house of the legislature sitting in joint session for such causes and in such manner as may be provided by law."

It seems to me that that particular proposal is still applicable. The purpose of that section, as I recall, was to provide some method of removal from office because of treason, bribery or other high crimes or misdemeanors, and that such a procedure is still possible if the amendment were adopted.

CHAIRMAN: Any further discussion on the amendment? The question is the adoption of the amendment proposed by Delegate Roberts. All those voting --

ROBERTS: May I have a show of hands on that or a roll call?

CHAIRMAN: Roll call has been requested. All those desiring roll call will raise your right hand. Sufficient number. Those voting "aye" will be voting for the amendment. Those voting "no" will be voting against the amendment. The Clerk will please call the roll. Will you please answer with your microphones. It's very hard for the clerks to hear the vote.

Ayes, 24. Noes, 37 (Anthony, Apoliona, Ashford, Bryan, Cockett, Corbett, Crossley, Dowson, Fukushima, Gilliland, Hayes, Heen, Holroyde, Kage, Kawakami, Kellerman, Kido, Kometani, Lai, Larsen, Lee, Mizuha, Okino, Porteus, C. Rice, H. Rice, Richards, Silva, Smith, St. Sure, Tavares, A. Trask, White, Wirtz, Wist, Woolaway, King). Not voting, 2 (Sakai, Sakakihara).

CHAIRMAN: The amendment is lost.

There was a motion made that Section 3 be adopted as amended. That was made by Delegate Fukushima; it was not seconded.

HEEN: I now offer an amend ment to the second paragraph of Section 3 as amended. The amendment that was voted upon favorably was the one offered by Delegate Fukushima and it read, "The justices of the supreme court shall hold office for a term of seven years and the judges of the circuit court shall hold office for a term of six years."

My amendment is in this form. "The justices of the supreme court shall hold office for an initial term of seven years and the judges of the circuit court shall hold office for an initial term of six years. Upon reappointment, the justices of the supreme court shall hold office for a term of twelve years, and the judges of the circuit court shall hold office for a term of ten years." I move the adoption of the amendment.

CHAIRMAN: The Chair is just a little bit in doubt as to whether or not this is a proper motion because the section was adopted and it was the Chair's understanding, upon question, that that was not only the initial term, but was the term of the reappointment as well. There was a continuing term. Therefore unless someone who voted in the affirmative, or voted on the adoption, would vote -- move for reconsideration, this motion would not be in order.

SILVA: I rose to a question.

HEEN: This leaves the number of years of the first appointment the same as was adopted by the Convention, and the amendment is to have that tenure be the tenure of the initial appointment, and that the reappointment shall be for a longer term of years.

CHAIRMAN: Well, you made the point, Delegate Heen, at the time the vote was taken, that the Chair had stated the motion in error, and that it was not only the original tenure, but it was also the continuing tenure of office.

HEEN: That is correct.

CHAIRMAN: Therefore that was the motion on which we voted, that was adopted. Therefore, this motion would be out of order unless we reconsider our actions.

HEEN: I don't think that is correct. The Convention has acted along certain lines. Now, I take it there's nothing to stop the Convention from amending the action that was taken in that connection.

ANTHONY: In regard to the Chair's tentative ruling, were we not focusing our attention on the question whether there should be a different term for judges of the supreme court and judges -- justices of the supreme court and judges of the circuit courts? It seems to me that's what the delegates had in mind when we voted on that amendment of Mr. Fukushima now.

CHAIRMAN: The amendment was that "The justices of the supreme court shall hold office for a term of seven years and the judges of the circuit court shall hold office for a term of six years." The Chair stated that it understood the motion to be that this was on the reappointment. The Chair was corrected by Delegate Heen to say that this was the original tenure of office and reappointment thereafter. And therefore, that was, as the Chair sees it, that's what we voted on. This is now an amendment to something that we have adopted, and therefore, unless there can be reconsideration of our action, why it will have to stand that way.

ANTHONY: It doesn't change one iota the original vote. All it says is upon a reappointment what the term shall be. I think the Chair's in error in the ruling.

SERIZAWA: I believe the Chair called on the mover, Mr. Fukushima, to clarify whether or not the reappointment term was also a part of his amendment and the delegate from the

fifth district stated definitely that it was not. And we voted on that, I believe.

SILVA: Point of order. You've ruled on the question and it's your right to rule, unless the Convention so decides it isn't your right.

CHAIRMAN: It's been pointed out that this amendment has the word "initial term," whereas the previous amendment that we adopted did not have the "initial term" in it, simply said what the term should be, which was the reason that I queried as to whether or not the -- it was a continuing term. Therefore it's the Chair's ruling that we have already voted on the motion, that this motion is out of order unless we move for reconsideration.

ST. SURE: I so move for reconsideration.

CHAIRMAN: It's been moved. Is there a second?

KIDO: Second, I second the motion.

CHAIRMAN: I believe that both Delegate St. Sure and Kido voted with the majority and therefore it's proper that they move for reconsideration. All those in favor will say "aye." Opposed. I think we should have a show of hands. All of those in favor of reconsideration will raise their right hand. Opposed. 26 ayes, 22 noes. The motion to reconsider is carried, so the amendment is now properly -- can properly be introduced.

HEEN: I move the adoption of the amendment which I have offered, the same one that I spoke about a moment ago.

CHAIRMAN: Is there a second?

RICE: I second it.

CHAIRMAN: It's been moved and seconded, this amendment which would not be an amendment to Delegate Fukushima's amendment.

HEEN: I'm speaking in support of the amendment. I believe that after -- we'll call it the short, initial term, the term on reappointment should be long so that these judges will be removed from politics to a greater extent.

CHAIRMAN: Any further discussion?

LEE: I believe this is a rehash of the previous vote that was taken, 32 - 29. At that time I spoke in favor of the amendment to have it eight years and six years and then later it was amended from eight to seven, and then six. That was on a continuing term. Now, I still believe that there should be an adequate check upon the judges who come up for appointment. If you have such a term upon reappointment of 12 years, you are actually putting it for a period that he's going to develop those things that I mentioned, and I feel that the original amendment which was passed is proper, and I am opposed to this amendment.

HAYES: I just wanted to clarify some questions that I have in my mind. I have been standing -- I mean voting for the appointment of judges for eight years and then it was amended and has been amended and amended and amended. Now, "The justices of the supreme court shall hold office for an initial term of seven years." That would mean, I suppose, his first term. Correct?

CHAIRMAN: Correct.

HAYES: "And the judges of the circuit court shall hold office for an initial term of six years. Upon reappointment, the justices of the supreme court shall hold office for a term of twelve years." Now, that 12 years, does it mean that it would add to the other seven years that he had already served as a judge by appointment?

CHAIRMAN: It would be a new term of 12 years?

HAYES: His new term, of the same man, will be 12 years?

CHAIRMAN: That is correct.

HAYES: And the circuit court shall hold office for a term of 10 years on reappointment? Now the legislature can impeach the judges, remove them?

CHAIRMAN: That's correct. They can be removed for trial.

HAYES: Now, he's in for a much longer term.

CHAIRMAN: That is correct.

HAYES: These judges would be in much longer term.

CHAIRMAN: The only difference from this and the proposal adopted a few moments ago is on the reappointment portion of it.

ANTHONY: The committee, I believe, was unanimous in one thing, that is, the Judiciary Committee. They favored long terms for judges. Now, the proposal as recommended by the majority would have an initial term and then a longer term upon reappointment. What some of the delegates do not fully appreciate, I think, is the fact that we have liberalized the method of removal of judges. Under the Section 4 as it presently stands, any judge can be removed from office at any time upon concurrence of two-thirds of the membership of each house.

Now, the essential thing in a judiciary is to have long tenure. That is the way you get good judges on the bench. I think we ought to adopt the amendment proposed by the delegate from the fourth district because it will make for long tenure; it will make for better judges on the bench; and you can still remove them if you've got a bad one easily.

CHAIRMAN: Are you ready for the question?

TAVARES: Perhaps we could compromise a little more by reducing that 12 years to 10 years and having the second term be 10 years for both, and I move, therefore, that the amendment be amended so that the second sentence will read "Upon reappointment such justices and judges shall hold office for a term of 10 years."

WOOLAWAY: I'll second that amendment.

CHAIRMAN: Would the introducer accept the amendment?

HEEN: I'll accept the amendment.

CHAIRMAN: Fine. Delegate, would the second accept the amendment? Would the second?

OKINO: I rise to a point of information. To me, it is not clear whether or not upon reappointment of justices of the supreme court or the circuit court judges, the confirmation of the Senate is required?

ANTHONY: That's the -- first sentence in Section 3 would require that.

CHAIRMAN: The first sentence in Section 3.

OKINO: Am I to understand from the chairman of the Committee on Judiciary that upon reappointment, the first sentence of Section 3 will apply, namely, in that confirmation is necessary. Is that correct?

ANTHONY: That is correct.

DELEGATE: Question.

MIZUHA: I would like to amend the section to reduce the term upon reappointment from ten years to eight years. If you reduce the justices of the supreme court to ten, then I think the circuit court judges should be lowered to eight years. So I so move.

ARASHIRO: Second the motion.

CHAIRMAN: It's been moved and seconded that the term of reappointment be -- of the circuit court judges be reduced to eight years.

HEEN: If that proposal to amend the section appeals to the delegates, then that last sentence there or the second sentence of this paragraph would read "Upon reappointment, the justices of the supreme court shall hold office for a term of ten years and the judges of the circuit court shall hold office for a term of eight years." Is that correct? I'll accept that amendment.

CHAIRMAN: The amendment's been accepted.

H. RICE: The amendment is on amendments, so I think it's in order that I make another amendment. After they have served their apprenticeship, six and seven years, give them life tenure or until they are seventy.

CHAIRMAN: Is there a second to that?

There are no amendments on amendments at the present time. In each case the amendment proposed has been accepted by the original movant so that we have only one amendment before us, and the amendment now reads, "The justices of the supreme court shall hold office for an initial term of seven years and the judges of the circuit courts shall hold office for an initial term of six years. Upon reappointment the justices of the supreme court shall hold office for a term of ten years and the judges of the circuit court shall hold office for a term of eight years." Are you ready for the question?

FUKUSHIMA: When I proposed my amendment for seven years -- eight, and six, I did this deliberately after much study. Now we have many, many amendments, acceptance of amendments, and what do you find? Just taking arbitrary figures. I think the Convention should not be confused in this manner. I think the original amendment which we voted on is proper, and now the delegates are just bringing this up to confuse the Convention here with no reason for making these changes. Twelve to ten, ten to eight, is utterly ridiculous.

DELEGATE: Question.

CHAIRMAN: Are you ready for the question?

DELEGATE: Question.

CHAIRMAN: All those voting "aye" will be voting in favor of the amendment as I have just stated it. "Noes" will be opposing it. All those in favor say "aye." Opposed. The motion is lost.

PORTEUS: There seemed to be a volume of sound and it was a little confusing to some of us here as to what is was. May I suggest that the Chair call for a division of the house either by standing or by raising of the hand?

TAVARES: I move that we have a showing of hands. I was caught unprepared on this matter myself. I didn't vote at all.

CHAIRMAN: Do you want roll call?

DELEGATES: Roll call.

CHAIRMAN: All those desiring roll call raise their hands. Sufficient number. Those voting "aye" will be voting for the amendment. Those voting "no" will be voting against the amendment. The Clerk will please call the roll.

C. RICE: Which amendment?

CHAIRMAN: The amendment proposed that I just read, proposed by Delegate Heen which calls for reappointment of ten and eight years, respectively.

C. RICE: Only on the reappointment?

CHAIRMAN: Well, the first part of that amendment is the same as we have previously adopted. The only change is on the reappointment.

The Clerk will please call the roll.

Ayes, 30. Noes, 32 (Akau, Arashiro, Ashford, Cockett, Doi, Fong, Fukushima, Ihara, Kam, Kauhane, Kawahara, Kawakami, Kido, Lee, Luiz, Lyman, Mau, Nielsen, Noda, Ohrt, Okino, Phillips, C. Rice, Sakakihara, Serizawa, Shimamura, Silva, Smith, A. Trask, J. Trask, Yamamoto, Yamauchi). Not voting, 1 (Sakai).

CHAIRMAN: The amendment has lost.

LEE: I second the motion to adopt Section 3 as amended.

CHAIRMAN: The motion has been made and seconded that we adopt Section 3 as amended. It is the Chair's understanding that the -- by the adoption of that -- The amendment should be considered as an amendment to the last paragraph which previously had been voted on separately and is now simply offered as an amendment on the whole Section 3.

LEE: I believe that amendment passed.

CHAIRMAN: We reconsidered our action.

LEE: Well, I move for the adoption of the amendment.

C. RICE: Second the motion.

CHAIRMAN: We're now talking about the amendment proposed by Delegate Fukushima which we reconsidered.

HEEN: There was a motion to reconsider the action that was taken on the amendment offered by Delegate Fukushima. Now, that being so, I would amend that amendment by changing the figure "seven" to "eight,"so that will be the same as what Delegate Fukushima put in originally.

CHAIRMAN: I didn't get the -- the Chair didn't get the amendment, Delegate Heen.

HEEN: The amendment would be to change the figure "seven," in line two, to read "eight." "The justices of the supreme court shall hold office for a term of eight years and the judges of the circuit court shall hold office for a term of six years." Same as the original amendment that was offered by Mr. Fukushima.

CHAIRMAN: Would Delegate Fukushima --

SILVA: I'm afraid that we're beginning to lose sight of the fact that the purpose of this portion in the Constitution is to dispense justice to the people rather than for continuation of office in the courts. It seems that those who are intending or hoping to become appointed to these positions are trying to prolong themselves in office. And if more attention will be given to the -- for the reasons why these longer tenures should be granted, then perhaps we would come to a point, rather than for the personal interest of holding themselves longer in office. I see no reason at all, unless sufficient reason is given, for the elongation of the term in office, rather an arbitrary figure. I think that the

previous question -- the previous motion put by Fukushima is very much in order, and if it isn't, I'll be glad to put it, that the justices of the supreme court shall hold office for an initial term of seven years and the judges of the circuit court shall hold office for an initial term of six years, upon reappointment, and that is all.

CHAIRMAN: The Chair would like to point out to Delegate Silva that Delegate Fukushima's original proposal called for --

SILVA: We'll leave the "initial" out.

CHAIRMAN: -- the term of eight years and six years; he accepted a floor amendment of seven and six.

SILVA: Well, I'd like to move the amendment to seven and six.

LEE: I believe I made a motion to adopt the amendment of Delegate Fukushima which required seven and six. That motion was seconded.

CHAIRMAN: That's correct.

LEE: So that if Delegate Silva would want to move the previous question on that, I would be glad to second the motion.

CHAIRMAN: Well, Delegate Heen had moved to amend that back to eight and six again.

LEE: But there was no second.

SAKAKIHARA: I'll second, Mr. Chairman.

CHAIRMAN: Do you second that, Delegate Sakakihara?

SAKAKIHARA: I'll make a motion for the previous question.

DELEGATE: Second the motion.

CHAIRMAN: The previous question has been called for. All those in favor of putting the previous question say "aye." Opposed. The question is the adoption of the amended section which reads, "The justices of the supreme court shall hold office for a term of seven years and the judges of the circuit court shall hold office for a term of six years." All those in favor say "aye." Opposed. Carried.

LEE: I now move for the adoption of Section 3 as amended.

SAKAKIHARA: I second that.

CHAIRMAN: It's been moved and seconded we adopt Section 3 as amended. All those in favor will say "aye." Opposed. Carried. Section 3 is adopted as amended.

The Chair notes that it's 12 o'clock. What is your pleasure?

HOLROYDE: I move we rise and report progress and beg leave to sit again at 1:30.

SILVA: Second the motion.

CHAIRMAN: It's been moved and seconded the Committee of the Whole rise, report progress, and beg leave to sit again. All those in favor say "aye." Opposed. So ordered.

Afternoon Session

CHAIRMAN: At ease. The Committee of the Whole will please come to order. When we recessed, we had completed the adoption of Section 3. We are now on Section 5.

ANTHONY: In view of the action of the Convention on Section 4 liberalizing the method of removal of judges, it now strikes me that Section 5 that is before the house at the present moment is unnecessary. Therefore, I move that that section be eliminated from the proposal.

CHAIRMAN: Would you restate the motion?

ANTHONY: I move that Section 5 of Committee Proposal No. 7 be deleted.

HEEN: Second the motion.

CHAIRMAN: It's been moved and seconded that Section 5 be deleted. Any debate? Any discussion? Are you ready for the question? All those in favor say "aye." Opposed. Carried.

HEEN: I move that Section 6 be adopted.

DOWSON: I second the motion.

CHAIRMAN: Thank you.

ASHFORD: I move an amendment to Section 6. The amendment was distributed the other day; I think it was -- I've lost count of the days we've spent on this article, Mr. Chairman, but when we were working on it last week I had distributed to all the delegates a proposed amendment to Section 6, Committee Proposal No. 7. Insert after "diminish" and that -- the word should be "diminished," not "diminish," the following--beginning with a small "u," not a capital "U"--"unless by law applying in equal measure to all officers of the State." I move the adoption of the amendment.

CHAIRMAN: Is there a second?

BRYAN: I'll second the motion.

CHAIRMAN: It's been moved and seconded that Section 6 be amended.

WHITE: I also have a proposed amendment to this which I think would help to clarify it. It's now in the process of being typed. Would you like me to read it in the meantime?

CHAIRMAN: Please.

WHITE: "The compensation for the justices of the supreme court and the judges of the circuit court shall be established by law, and shall not be decreased for the term for which they shall have been appointed. They shall retire upon attaining the age of 70 years and shall receive pensions as provided by law." I think the question of establishing the salary for the term for which they are appointed will not preclude any increment adjustments to take care of cost of living or anything of that nature.

ASHFORD: Speaking on my amendment, and may I also refer to Delegate White's amendment --

CHAIRMAN: Would you second his, so we could speak on it too, please.

ASHFORD: I don't -- I don't --

WOOLAWAY: Mr. Chairman, I'll second Mr. White's amendment.

ASHFORD: We have two amendments in there that I don't -- I think my amendment should apply to his as well as to the original. In other words, Mr. White's amendment uses the word "decrease" instead of "diminished." My purpose in adding "unless by law applying in equal measure to all officers of State," is that if a bonus were given in good times, that would be increasing the compensation of the judge, and if we then have a depression and everybody else was taking a cut, under the provisions of the section as it now exists the compensation of the judge could not be cut. I think that

judges should be no more immune to the slings and arrows of outrageous fortune than other men.

TAVARES: I see no objection to the amendment proposed by Delegate Ashford. I've lost my copy, but subject to Style I think it's a good amendment. In other words, I agree with the delegate from Molokai that in a period of stress when all salaries are cut, the judges ought to be willing to take their cut with the others, and I'm sure they will.

This also might tend to prevent the courts or anyone else from later raising the point that taxes which are applicable to all persons of the same class, if they are increased, it might be interpreted as a decrease of compensation. It's my understanding that after some shilly-shallying, the United States Supreme Court has finally okayed the proposition that the income tax law is not a diminution of salary. However, this would make that doubly clear and for that reason, whether this amendment by Delegate Ashford is adopted alone or as a part - - an addition to the amendment by Delegate White, I see no objections.

WHITE: I beg to differ with the delegate from the fourth district. I think there is a considerable difference between a man that is prevailed upon to take office for a period of eight years, and he takes it with an understanding that his compensation is going to be a certain amount of money, as against some appointive officer that takes it and serves at the will of the governor. I think there is a considerable difference, and I think that any man that leaves his law practice to take on a job of that kind is entitled to that protection.

ANTHONY: I am opposed to both amendments. The language as drafted is taken from the Federal Constitution, and the purpose of adopting the language, and with it goes the interpretations of the Supreme Court—the judges like everybody else have to pay taxes out of their salary—the purpose of adopting the provision of the Federal Constitution is to make a certain and definite provision for the salary, the compensation of judges.

Now, if you want to get good men on the bench, you've got to have long tenure and you've got to have security in office, and they ought to know what they are going to get. We all know that the legislature notoriously fixes rather low salaries for our judges. If you're going to superimpose on that the possiblility that a judge may have his salary diminished after he has severed all his connections at the bar, then you're going to have one further obstacle against getting good judges on the bench.

Therefore, I think that the section as drafted originally should stand.

SHIMAMURA: I agree with the last speaker for the additional reason that the proposed amendment loses sight of the theory and spirit back of the constitutional provision against diminution of the judges' salary, namely,the preservation of the independence of the judiciary and the theory of the three separate branches of the government. For that additional reason, I am opposed to the amendment.

CHAIRMAN: Are you speaking as being opposed to both amendments or - - Any further discussion?

OHRT: I have an amendment to that last sentence, "Provision for pensioning them shall be made by law." Is this the proper time to bring that in or - -

CHAIRMAN: There are already two amendments on the section I would like to straighten out. Delegate White, was your amendment an amendment on the section or on Delegate Ashford's amendment?

WHITE: It was a substitute; in other words, it was an amendment of her amendment, to take the place of hers.

CHAIRMAN: To take the place of hers?

OHRT: My amendment would only affect the last sentence.

CHAIRMAN: Would you - -

OHRT: Can we wait until this present motion is taken care of ?

CHAIRMAN: Let's get these out of the way and then I'll recognize you.

WHITE: Could I ask Mr. Anthony a question? As I read the provision that he has there, it would under no circumstances ever permit any reduction in the salary of one of the justices. I don't think that, at the time that they had the provision in the Constitution, I don't think they had these temporary adjustments made to take care of the cost of living, and so forth, and I don't think it was ever intended. The purpose of the wording that I submitted would provide that you would establish the compensation for the justices and you never could, for the term for which they were elected, reduce their compensation below that amount, but if temporary adjustments were made they could be made without any difficulty.

CHAIRMAN: Delegate Anthony, would you care to answer that?

ANTHONY: I don't know that it was in the form of a question, but if I understand the speaker, he would like to make sure that the salary of a judge will remain constant for the term during which he has been appointed, as distinguished from Delegate Ashford's amendment which would permit the legislature to raise it or lower it from year to year. The second - - the first amendment, Miss Ashford's amendment, would be a direct violation of what we are trying to preserve here, the independence of the judiciary. The second amendment by Mr. White would permit a reduction in salary or a temporary raise that had been put into effect by the legislature after the judge received his appointment, but it could not go below, the reduction could not go below the salary as initially fixed as I understand it.

CHAIRMAN: The Chair would like to state that these amendments are now being passed out, that perhaps a recess of about five minutes so that everyone can get it would be in order. No objections? So ruled.

(RECESS)

CHAIRMAN: The committee will please come to order.

Is there anyone now that has not received copies of each of the amendments, the two amendments that had been offered so far and one that is anticipated?

OHRT: My amendment is to Section 6. I move the adoption of that amendment.

A. TRASK: Second the motion.

CHAIRMAN: The amendment offered by Delegate Ohrt has been distributed and it's been - -

DELEGATE: We have so many amendments here that we'd like to know - -

CHAIRMAN: I'm trying to identify it for you right now. The amendment is

. . . amendment to Section 6 of Committee Proposal No. 7 by deleting therefrom the last sentence thereof reading,

"Provision for pensioning them shall be made by law," and inserting in lieu thereof the following sentence: "Provisions shall be made by law for the inclusion of such justices and judges in any retirement law of the State."

This has been moved by Delegate Ohrt and seconded.

TAVARES: I rise to a point of order. I submit that this entire series of amendments is now hopelessly confusing, and I submit that we should take them up in regular order. First, Delegate Ashford's amendment should be either considered as being moved to be amended further or we should vote on it. I submit that this is so confusing now we can't vote on anything.

CHAIRMAN: The amendments that now are in are amendments to the section rather than amendments to one another. Therefore, it would be perfectly in order to take the amendments up in the sequence that they were given. The Chair would, therefore, like to state that the first amendment to be considered will be Delegate Ashford's amendment, which has now been distributed.

ASHFORD: In reply to what the chairman of the Judiciary Committee had to say, may I say this. He said that this was a blow at the independence of the judiciary. It is not because no dimunition of salary can be made except by a general law applying to all officers of State. Now, if we -- our state goes into a serious depression, is there anyone who really believes the judges should be immune to the effects of that depression and have their salaries stand unchanged while everyone else has a cut?

CHAIRMAN: The question is the adoption of the amendment to Section 6. Does everyone understand the amendment or do you wish it read again?

NIELSEN: Will you please read it.

HEEN: I note in the written amendment, it reads, "insert after diminish." The word is "diminished" and not "diminish."

ASHFORD: I made that correction when I - -

CHAIRMAN: That correction was made from the floor.

ASHFORD: And the big "U" should be a small "u."

CHAIRMAN: That's correct. That correction was made, that the word should be "diminished" and the "U" should be a small "u." The section would then read: "The justices of the supreme court and the judges of the circuit courts shall receive for their services such compensation as may be provided by law, which shall not be diminished unless by law applying in equal measure to all officers of the State." And then continuing on with the last two sentences. "They shall retire upon attaining the age of 70 years. Provisions for pensioning them shall be made by law."

HEEN: It seems to me the period after the word "office" should be changed to a comma and then insert the clause, "unless by law applying in equal measure to all officers of the State."

ASHFORD: I accept that suggestion.

CHAIRMAN: That would seem to be in order.

HEEN: While we are dealing with the amendment of - - with amendments to this particular sentence, I think the word "continues in" should be changed to read "their respective terms of office," "shall not be diminished during their respective terms of office." In other words, if you set a salary of $10,000 for a circuit judge, that should hold during his term of office of six years. It should not be diminished during that term, but there might come a time when the legislature might diminish the salary of all circuit judges from $10,000 to $9,000 so that if this particular judge receiving $10,000 is reappointed, then upon his reappointment, he will receive only $9,000; whereas the word "continues" might mean the continuing or holding of office by appointment and reappointment. Therefore, the reduction, I mean the provision as to prohibiting the reduction of compensation should apply to the term of office of the particular judge. So in connection with this amendment, I think the language should be, "which shall not be diminished during their respective terms of office, unless by law applying in equal measure to all officers of the State."

ASHFORD: I'll accept that.

BRYAN: The two amendments offered, the one we are speaking on now by the delegate from Molokai and the one by Delegate Ohrt, would seem to me would apply equally to either the section as written or the other amendment proposed by Delegate White, and I would ask either that we take up Delegate White's proposal first or that he be willing to accept these amendments to his amendment if they are passed.

CHAIRMAN: Delegate White.

WHITE: If the intention is to have the judges participate in any reductions below the amount initially fixed for the office, I'm perfectly willing to withdraw my amendment.

CHAIRMAN: The question is now the adoption of the amendment as proposed by Miss Ashford - - Delegate Ashford, amended by Delegate Heen, and the amendment accepted by the original movant. That means that the section will read as follows: "The justices of the supreme court and the judges of the circuit courts shall receive for their services such compensation as may be provided by law, which shall not be diminished during their respective terms of office, unless by law applying in equal measure to all officers of the State. They shall retire upon attaining the age of 70 years. Provisions for pensioning them shall be made by law."

Are you ready for the question?

WHITE: Will that preclude the amendment of that last section to mine?

CHAIRMAN: We're voting only on the amendment now. We're not voting on the section as amended. You would still have time to make further amendments to the section.

HEEN: The amendment applies only to the first sentence of that section, so that the other two sentences will still be subject to amendment.

CHAIRMAN: That is correct. All those in favor of this amendment say "aye." Opposed. Carried. The amendment is carried.

I'll recognize Delegate White now. Do you still wish - -

WHITE: I'll withdraw my amendment.

CHAIRMAN: Your amendment has been withdrawn.

Delegate Ohrt now has an amendment on the floor which changes the last sentence.

OHRT: Speaking to that amendment, the last sentence reads, "Provision for pensioning them shall be made by law." I'd like to see that changed because it, if left alone, it will provide the means by which the judges will be given special pensions, which I think will be discriminatory.

We now have in terms of a retirement system, one of the most liberal retirement systems in the country. There are now 16,000 members with reserves of some $45,000,000. It is on a reserve basis; it is a contributory plan in which the employee contributes his share and when he retires, he gets a retirement allowance. A retirement allowance consists of two parts, a pension which is the part that the Territory gives him, as well as an annuity which is made up from his own contributions. It requires a little individual effort on the part of the employee to keep up his own contributions and the law as drafted permits anyone who comes in late in life to look it over and decide what he wants when he retires. He can build up his annuities by contributing more money.

I think he ought to be - - or the judges ought to be given the same rules as the other 16,000 employees of the government. Otherwise, we are setting up some discrimination and I think our attorneys don't want to see any discrimination go into this Constitution. If left to the legislature their prior service in the event that they have served as attorneys for the government might be given them as prior service, and I think the whole thing will work out better if my amendment is adopted. I move for the adoption of the amendment.

CHAIRMAN: That's already been moved and seconded.

HEEN: I'm wondering if the delegate from Maui who is a judge of the circuit court there might yield to the question as to how they are treated with respect to retirement benefits.

CHAIRMAN: Delegate Wirtz.

WIRTZ: You mean presently? The present circuit judges, being under the federal system, for some unknown reason, the circuit judges are considered members of the Federal retirement system. Five per cent of our pay is deducted towards that fund. The supreme court judges and justices are covered by a special act of Congress providing for their retirement on pay. I think it's on ratios of 1/16 for each year of service, is it not? That is the present system.

CHAIRMAN: Thank you. Delegate Heen asked a question. He had the floor to - -

HEEN: Yes. I was going to ask another question based on what the delegate has just stated, and that is whether or not the justices of the supreme court make any contributions.

WIRTZ: To my knowledge, the members of the supreme court make no contribution, but five per cent from the circuit judges is deducted from their pay.

ANTHONY: I think the movant of the amendment has lost sight of the difference in the character of the employees that he is dealing with. In the case of the Board of Water Supply or the public school system or any number of the other executive departments of government, you will have the employees who will go into the public service and remain there for a long period of time. Now, in the first place, a judge has to be a member of the bar for ten years before he can even be appointed. He then has a term, if he's on the supreme court of eight years - - seven years, or on the circuit court, six years.

Now, the difference in the two kinds of employment is simply this. A person who is of sufficient capacity and ability and notoriety in the profession to be appointed to the bench has got to have wide experience at the bar. Now, if he's going on the bench, he will then break off all his connections. The effort on the part of the states generally and the federal government is to make sure that a judge who serves a stated number of years on the bench may retire without having to go back into practice. Most of the states have provisions by statute which enable the judges to retire any place from one-half to full salary, and none of them, to my knowledge, have them in the uniform retirement system because of the fact that they are in a different category than other employees that spend their whole lives, from the minute they graduate from college till the time they die in the public service - - die or retire in the public service. And it is for that reason, in order to make the position on the bench attractive, there should be provision for their retirement.

This is wholly a matter of legislation. The debate in the committee was whether or not we should make it retirement on full salary or half salary or three-quarters salary. We finally decided to leave it up to the legislature entirely.

TAVARES: I speak against the amendment. I realize that the delegate who proposed it has his heart and soul so much in this retirement system which he helped so much to build. I think it is destroying his perspective a little bit. For one thing, our legislature now has provided for several types of pension systems. One is the county pension system which is based on no contributions at all. Another one is the police and firemen system which is a carry-over from the old system, and they make no contributions. And the third one is this retirement system.

Now, it seems to me that if we look around as Delegate Anthony has said, to the other systems, we will find that, for instance, the federal government today after ten years allows retirement of judges of the Circuit Courts of Appeal and the United States Supreme Court at full salary after ten years. And now they have - - the district judges have been given that privilege also, after ten years. We have now pending in the Congress, which we hope to get through, a bill that will give our circuit and supreme court justices here in Hawaii the same privilege of retiring on federal pensions after ten years instead of sixteen, or, say, the way they have it now. If you serve ten years, when you retire, you get ten-sixteenths, and if you serve sixteen years, then you get all of that full salary as your pension. It seems to me that we should not foreclose our legislature from examining all of the other systems.

I think it is very important that we bear in mind this. Your lawyers today, as they have always been, are some of the highest earners in the business, and every time you take a really good lawyer out of private practice and put him on the bench, you are going to ask him to make a substantial sacrifice in salary. You are also going to take him, as has been said, later in life than most people go into the territorial service. When they go into the territorial service, they first of all usually go when young, they have opportunities for promotion all the way through and they have increments, an increase of salary every year for five years. They have civil service which prevents them from being fired except for cause, but a judge under the system which this Convention has just adopted is going to have to take his chances on reappointment every six years. There is no merit in that situation. He doesn't even have that protection.

Now, if these - - if the members of this Convention really want to give security enough to these judgeships to attract the best men, I submit they should leave it to the legislature to experiment and to make up its mind to which system of pensions will help attract the best men, and should not tie their hands by forcing them to go into a retirement system which maybe our legislature will abolish someday if the federal social security, for instance, should be extended to territorial - - to our state officials, as it might be. I, therefore, hope that the delegates will vote against this amendment.

OHRT: I was quite interested in listening to the delegate from the fourth district. He's mentioned the county pension plan which we know is all wrong. He's mentioned the police and firemen's plan, which we also know is all wrong, and that we should treat everybody alike when it comes to pensions.

Now, as I have sat through this Constitutional Convention, I've heard a great deal about this use of this word "discrimination" and I think that if the lawyers or the attorneys insist on passing this, that they are just encouraging discrimination. We all know that it's statutory again. We shouldn't put anything statutory into this Constitution, but we're doing it.

Now, Delegate Wirtz from Maui said he was paying five per cent, he's probably - -

CHAIRMAN: Will the delegate suspend a moment. If you'll hold your microphone a little closer, we can all hear a little better.

OHRT: Delegate Wirtz said that he was paying five per cent. He's probably a member of the federal plan that's applied to everybody, and they are getting the same treatment, and, I think, that is rather important.

Now, Delegate Tavares said we were talking about microbes the other day when we were talking about a few dollars. As a matter of fact, we are really talking dollars and cents. Let's take an example of a judge who is retiring and he is given ten thousand dollars, and he lives ten years. He is being given ten times ten thousand dollars or a hundred thousand dollars when he retires.

Now, I want to give you my own example. I've been in the service 35 years. I've made my contributions and I've gotten my share of prior service and I can retire anytime now, and after 35 years I would get about 40 per cent of my salary, half of which I have taken care of in my own annuity.

Now, the lawyers who insist on a hundred per cent pension, I think are just discriminating in favor of themselves. They are different, apparently a different type of human being; therefore, they should get all this - - these favors, and I hope that this Convention votes for this amendment.

ANTHONY: There's one statement by the movant which I can't allow to go unnoticed. He says that the lawyers are trying to put statutory provisions in the Constitution. That's precisely what we do not want, and that's why we have left it to future legislation. What Mr. Ohrt wants to do is to put legislation in the Constitution to tie the hands of a future legislature. And I'm opposed to that.

CHAIRMAN: Are you ready for the question?

OHRT: That clause could be easily eliminated entirely and then the legislature could take care of it in its own way, but when it's tied up to pensions, that means a non-contributory plan and the lawyers may not realize it, but that's what they are trying to put into this Constitution.

CHAIRMAN: Ready for the question? All those in favor of the amendment say "aye." Opposed. I think we should have a showing of hands. All those in favor of the amendment will raise their right hands. Will all those in favor raise their right hand, please.

DELEGATE: Roll call.

CHAIRMAN: All those favoring roll call raise their hand. Roll Call. All those in favor of the amendment will vote "aye." Opposed will vote "no." The Clerk will please call the roll.

Ayes, 30. Noes, 23 (Anthony, Apoliona, Cockett, Corbett, Crossley, Doi, Fukushima, Hayes, Heen, Kellerman, Lai, Larsen, Mizuha, Porteus, C. Rice, H. Rice, Richards, Shimamura, Tavares, White, Wirtz, Woolaway, King). Not voting, 10 (Fong, Gilliland, Lee, Loper, Mau, Sakai, Silva, Smith, A. Trask, Wist).

CHAIRMAN: The motion has carried. The amendment has carried.

MIZUHA: Now for the record, do I take it that the delegate from the fourth - - fifth district who proposed this amendment and which passed, will mean only one retirement law, or will it be any other retirement law that we may have for judges separately? How can you bind our legislature? What retirement law are we going to deal with?

OHRT: Well, the only one - -

CHAIRMAN: Would the delegate from the fifth district care to answer?

OHRT: The only one that we now have 16,000 members in.

MIZUHA: Can our legislature get another retirement law?

CHAIRMAN: Will you address the Chair please, Mr. Mizuha.

MIZUHA: Mr. Chairman, may I ask another question?

CHAIRMAN: Yes.

MIZUHA: Can our legislature pass another retirement law?

OHRT: The legislature may, but I'm sure that they won't discriminate as much as this will appear to be.

MIZUHA: And there's another question that I would like to ask, Mr. Chairman. Does the delegate from the fifth district intend that we will eliminate our policemen's and firemen's pension law and the county pension system under a separate article in the Constitution or section in the Constitution?

CHAIRMAN: Would you care to answer that?

OHRT: Those that are now in the police system already have a contract, and I'm sure the legislature is not going to repeal that. But everybody that's been in - - that has joined the police department since nineteen hundred and twenty six are now in the standard system. That applies to the firemen; that applies to every other government employee, and that's what we would like to see. Everybody given the same treatment, which is, I think, one of the basic tenets that I have heard the attorneys arguing on here for the last 40 days.

HEEN: I'd like to point out that the pension system for firemen, policemen and bandsmen will eventually become functus after the last fireman, after the last bandsman, and after the last policeman dies who are entitled to the benefits under that system. And as to the county system, the same thing applies. When the last county pension person entitled to pension dies that system will also become functus.

CHAIRMAN: The question now before us is the adoption of the proposal of the section as amended.

HAYES: I have a question in my mind. Supposing the judge is not reappointed at the end of his second term. How

would he continue, does he -- he doesn't continue to put his retirement in there, would he?

CHAIRMAN: Delegate Ohrt, would you like to, care to answer that.

OHRT: He could leave the service, leave his funds within the system, and at the age of 55, go in and get whatever the formula gives him. Again like everybody else.

CHAIRMAN: That's correct.

PORTEUS: I don't think we need to get too excited about this, but on the other hand I think that we can all perceive that the judge is not going to be treated as the ordinary government employee is. So far as I can see, the judge is not going to have the protection of civil service. He's going to have a six-year term only. There are a number of other aspects in the position of the judge that is different from the government employee. He is one of the living representatives of the judiciary department as distinguished from the executive. So far as I can see, under the particular clause, we now have the word "retirement." If the legislature determines that if such a small amount would be given to a judge after six years service as to render it almost next to nothing as compared to someone who may have been able to acquire after 35 years service some 40 per cent of his pay, then it will rest with the legislature to determine whether or not perhaps the higher contribution, a higher percentage might well be required for the judges and in turn, in the long run, those judges given higher benefits for the number of years that they are in service. As far as I can see, this matter leaves it for the legislature to provide. Even under a retirement system, there is a pension that's involved in that because the Territory is making a contribution. It's not just the contribution of the employee.

So it seems to me that this leaves the matter at such a position that if the legislature does not wish to make special provision for judges, and a retirement bill, they will go in with the other 16,000. If, however, the attorneys and judges are able to persuade the legislature that this is not the best system, and that another system should be set up that would be equitable, and would not discriminate against other employees, that course would be open. I'm satisfied to leave that decision, now that the delegates have spoken, in the hands of the future legislatures of the State of Hawaii.

HEEN: I'd like to find out if the delegate from the fifth district will yield to a question.

CHAIRMAN: Will you state the question, please.

HEEN: The question is this. Are the district magistrates who are now appointed for terms of two years, are they -- have they joined the retirement system?

CHAIRMAN: Would the delegate care to answer that?

OHRT: If they are government employees, they must become members of the system.

HEEN: Well, do you know as a matter of fact that they are?

OHRT: I don't know, but the law is that any government employee on a permanent job must become a member of the system.

ASHFORD: I can answer that question. I was appointed magistrate for a short period of time and I was a member of that system and without particular election either.

BRYAN: I think that further discussion on this might be ruled out of order.

CHAIRMAN: The section has not been adopted yet, therefore, the question is still open. The Section 6 should be -- now they should move for the adoption of Section 6 as amended.

TAVARES: Because I think this thing is so important, I am going to move to defer action on this matter. The question is not whether any lawyer is going to get a break in a pension. The question is, if you adopt this section as it now stands, do you want to get the best possible caliber for your judges, the people who are going to have the right of power of life and death over those accused of capital offenses, the people who are going to determine, perhaps, whether people are going to get large judgments or going to lose very important cases, who are going to decide the constitutionality of your statutes, and all those very, very absolutely vital things that a judge must do.

It seems to me that the attitude here at this Convention is that we lawyers are trying to do something selfish for ourselves as lawyers. As a matter of fact, that is furth- - est from our minds. We know and believe that the function of a judge is so important that the public, not just the lawyers—and the public are the ones that suffer from the mistakes of judges—that the public is entitled not to just any ordinary lawyer being appointed judge but to the best possible men and women that they can attract to that bench. And to the extent to which they fail to achieve that goal, they are being to that extent unjust to the public.

CHAIRMAN: Did the delegate wish to move to defer?

TAVARES: I therefore move to defer until further -- we can think this matter a little more -- over a little longer.

CHAIRMAN: I'd like to point out to Delegate Tavares that this is the last section to be adopted. We have completed all other sections of this, and this is the third day of almost continuous debate.

PHILLIPS: I second the motion for a deferral.

PORTEUS: Mr. Chairman, is it in order for me to speak to the matter of deferral?

CHAIRMAN: That's correct.

PORTEUS: May I point out that under a provision requiring a pension system, you are waiting the pleasure of the legislature as to how much that will be. The same legislature that will provide a 50 per cent of salary after ten years time can surely see its way clear to providing a 50 per cent retirement after ten years based on some contribution, so I can't see that the thing -- the fight is won or lost depending on the words that are used here. So long as the Committee on Judiciary has not brought a provision in that says it will have to be 50 per cent of salary, you are going to have to turn to the legislature and find out what it's willing to give you, and it ought to be able to -- it ought to be willing to give you just as much under the wording "retirement" as it will give you under the word "pension." The same factors, the same arguments will have to be presented, and I am against deferring this matter.

TAVARES: Under the understanding that that is the meaning of this provision, the legislature does have some discretion, I'll withdraw my motion to defer.

SAKAKIHARA: I move that the amendment as agreed be adopted.

CHAIRMAN: Delegate Phillips, you had seconded the motion. Is that satisfactory with you?

PHILLIPS: I'll withdraw my second.

SAKAKIHARA: Now, I move that the amendment as agreed be adopted.

NIELSEN: I second the motion.

CHAIRMAN: The motion is the adoption of Section 6 as amended.

MIZUHA: In connection with this question of retirement of judges, I'd like to point out one fact, and I believe we have a jurist here who is serving under the federal government on the circuit bench on Maui. Now, he makes his contributions to the federal government for his retirement system. I'd like it to be made clear in the record that it was the intent of this body that in the event we become a State of the Union, that those years of service that he served on the bench on Maui will be considered by our legislature as though they were years of service with the State or the Territory of Hawaii in the computation of his retirement income.

CHAIRMAN: I don't know that it would be in order for that to be anything more than the statement of the discussion on the floor.

The question now is the adoption of Section 6. You ready for the question?

SAKAKIHARA: Question.

CHAIRMAN: All those in favor of the adoption of Section 6 as amended will say "aye." Opposed. Carried.

ROBERTS: I'm going to move that we reconsider Section 5 which was acted on by the Convention on the motion of the delegate from the fourth to delete. Section 5 provides for a separate machinery for the handling of judges who are incapacitated and are unable to perform their judicial functions. Section 4 as amended, provides for removal on the basis of a law to be established by the legislature which carries certain stigma attached to it, more in the form of an impeachment. I think the original purpose of the committee in Section 5, as set out in their report, indicates a very useful function and it seems to me that that section should be left in the proposal. I will therefore move that we reconsider our action on Section 5.

CHAIRMAN: Is there a second to that?

KELLERMAN: I second that motion.

CHAIRMAN: It's been moved and seconded that we reconsider our action in the deletion of Section 5. All those in favor will say "aye." Opposed. The section is now open for debate.

ROBERTS: I now move the adoption of Section 5.

CHAIRMAN: Is there a second to that?

KELLERMAN: I second it.

CHAIRMAN: It's been moved and seconded that Section 5 be adopted.

HEEN: I have a suggestion to make, that is, instead of having the supreme court certify to the governor, have a commission or agency as may be authorized by law certify to the governor. In other words, "Whenever a commission or agency authorized by law for such purpose shall certify to the governor that it appears any justice" and so forth and so on. If that appeals to the delegates, I will change that into a motion.

ROBERTS: I'll accept that amendment.

HEEN: I move that the words the "supreme court" be deleted and in lieu thereof insert the words "a commission or agency authorized by law for such purpose."

ASHFORD: I second the motion.

ROBERTS: It is acceptable.

CHAIRMAN: The amendment has been accepted.

HOLROYDE: I understand the original reason for removing Section 5 was because Section 4 had been liberalized. I wonder if you could have somebody read the new Section 4. I don't seem to have the amended version of it here.

ANTHONY: I have it.

CHAIRMAN: Delegate Anthony, would you read Section 4 as amended, please?

ANTHONY: "The justices of the supreme court and judges of the circuit courts shall be subject to removal from office upon the concurrence of two-thirds of the membership of each house of the legislature, sitting in joint session, for such causes and in such manner as may be provided by law." That's the substitute for the impeachment section.

CHAIRMAN: That's correct. Any further questions on that? The Chair was in order in stating that the amendment offered by Delegate Heen could be accepted by Delegate Roberts, inasmuch as Delegate Roberts had moved for the adoption of the section as such. Therefore, we would have to vote on the amendment first.

HEEN: Correct.

CHAIRMAN: And if you would be good enough to restate the amendment, we can vote on the amendment and then on the section as amended.

HEEN: My motion was this. Delete the words "the supreme court" in the first line of Section 5 and insert in lieu thereof the words "a commission or agency authorized by law for such purpose." That motion I understand was seconded.

CHAIRMAN: That motion was seconded. I'd like to have another second just for the record. Delegate Ashford, I believe seconded it.

ASHFORD: I second the motion.

CHAIRMAN: Thank you.

RICHARDS: As I have understood frequently in discussions here in this Convention that where there is a question of interpretation, the action of the Convention is used as a basis for determination. There were two different amendments presented to this Convention, both of which were voted down, which provided for interim suspension of judges between the meetings of the legislature. Now, if I understand previous interpretations, if this Convention takes no further action, it will automatically mean that the judges will have absolute power to remain in office between meetings of the legislature. And I ask, is it the wish of this Convention that that interpretation shall stand on the record?

PORTEUS: May I point out that under Section 5 that we now have under consideration that on the certification by this agency or commission to the governor, the governor himself is given the power to retire the particular judge in question, and will not need the attendance of the legislature in order to accomplish -- to carry out this particular section. Now, this does give you the alternative of providing one of several ways in order to achieve the same end.

RICHARDS: In answer to that, it says that this can only operate if a judge is so incapacitated as substantially to prevent him from performing his duties. That is the only reason why this commission can certify. Now I don't know if a man accused of a crime -- of a high crime is incapacitated or not.

ANTHONY: The original purpose of keeping these two sections separate was to have separated in the judiciary article a removal when a judge has done something bad from the situation in which you remove a judge simply because of decrepitude or incapacitated, and I think that they should be kept separate. If Delegate Richards wants to offer further amendment to remove judges who have committed murder during their time of office, we could then debate that. But I don't think we ought to confuse it with this particular section.

CHAIRMAN: In the previous discussion of this section, many amendments were made along that line. It seemed to the Chair that the two subjects are quite widely removed, one dealing with Section 4 and one with Section 5; that amendments were already made along this line, I believe by Delegate Richards; and unless the amendments offered now are totally different, why the Chair will rule them out of order.

RICHARDS: The amendments were offered as with respect with Section 4, not Section 5. I merely brought up the subject to Section 5 as to whether or not such an amendment could be included or if it was the wish of the Convention to grant judges absolute immunity during the interim period of the meetings of the legislature. That's up to the Convention.

CHAIRMAN: Do you have an amendment, Delegate Richards?

RICHARDS: I do not. Since my amendment was voted down, I leave it entirely up to the Convention and to the members of the bar if they wish to propose such an amendment.

CHAIRMAN: Are you ready for the question? All those in favor of the amendment will say "aye." Opposed. Carried.
The motion now is to adopt Section 5 as amended.

ROBERTS: I move that we adopt Section 5 as amended.

J. TRASK: I second the motion.

CHAIRMAN: It's been moved and seconded that we adopt Section 5 as amended. All those in favor please say "aye." Opposed. Carried.
That completes all sections.

LAI: If there's no further question on this proposal No. 7, I move that we rise and recommend passage of No. 7.

CHAIRMAN: We have completed all other sections. All sections of the proposals are now complete.

MIZUHA: At this time for the purposes of the record, I would like to move that in the passage of the amendment to Section 7 and Section 7 as a whole, it was the intention of this body that in the writing of any retirement law for the judges of the future State of Hawaii that the prior service of our circuit judges and supreme court justices would be considered as though they were officers of the Territory of Hawaii in the transition period.

ARASHIRO: I second the motion.

CHAIRMAN: Is there a second to that? You've all heard the motion. Delegate Woolaway.

WOOLAWAY: Point of order. I imagine he means [Section] 6.

CHAIRMAN: That's not Section 7, he's talking to Section 6. Ready for the question?

OHRT: I have no particular objection to that. That was one of the real reasons why it should go to the legislature. If the legislature decided that they wanted to give these people prior service, either on a contributory plan or a non-contributory plan, it could be decided at that time.
While I'm on my feet, I'd also like to point out to the delegate from the fourth district that he said we were all under civil service. I want to comment that I serve at the pleasure of my own board. Most of the department heads in the government will serve at the pleasure of their boards. So we haven't got that protection that the delegate from the fourth district thinks we have.

CHAIRMAN: Well, I think that the subject is no longer germane to the discussion before us and the question is now on another motion. Unless you wish to speak to that motion --

TAVARES: I just want to say, we don't have staggered term boards to protect our judges, either.

CHAIRMAN: I said that that is out of order.

HEEN: I now move that this article be --

CHAIRMAN: We have a motion before the Committee of the Whole at the present time that prior service be counted in the new state pensioning system, if and when. All those in favor say "aye." Opposed. Carried.

HEEN: I move that this Convention adopt Committee Proposal No. 7 as amended.

WOOLAWAY: I second that motion.

CHAIRMAN: It has been moved and seconded that we adopt Committee -- we are sitting as Committee of the Whole, we don't adopt it, we rise and make the recommendation. If you will restate the motion --

HEEN: No, I was going to say this, that we adopt it as a matter of form. Then the next motion should be to rise and report progress so that the chairman of the committee, this committee may prepare his written report.

CHAIRMAN: And will you please state that the Chair will need quite a few days.

HEEN: Right.

CHAIRMAN: Motion is on the adoption of Committee Proposal 7. All those in favor say "aye." Opposed. Carried. I think that there is some question. All those in

favor of adopting Committee Proposal No. 7 as amended say "aye." Opposed. It's carried.

It is now proper to make the motion that we rise and report.

HEEN: I now move that this committee rise, report progress and ask leave to sit again in order to consider the written report of the chairman of this committee.

WOOLAWAY: I second that.

CHAIRMAN: All those in favor say "aye." Opposed. Carried.

JUNE 23, 1950 • Afternoon Session

CHAIRMAN: Committee of the Whole please come to order.

HOLROYDE: Point of information. Could somebody please interpret the top part of this for me?

CHAIRMAN: I might say that the chairman of the committee apologizes for the fly sheet. That was supposed only to go to those listed, so it will please be detached from the report. It means by royal order, etc.

You have had distributed to you the entire report, and today two corrections on the proposal itself, pages 2 and 3 of the proposal, the last two pages. You'll note RD 1 on page 2, RD 1 on page 3. That is no change in what took place. It was simply an error in copying the report and having left out in one case, in the case of Section 5, the words in the first line beginning with "authorized by law for such purpose." I reviewed this with Delegate Wirtz; I showed him the original minutes that I had and those words were there.

In Section 6, the next to the last sentence, "They shall retire upon attaining the age of 70 years," I did the same thing. Delegate Anthony had also checked it and both of those corrections were in my notes and in the action that we took.

The committee report, therefore, having been circulated, is now ready for action. I'll recognize the chairman of the Committee on Judiciary.

ANTHONY: I move the adoption of the committee report, and that the proposal attached pass second reading, if that's in order.

CHAIRMAN: That is in order. It's the adoption of the committee report with a recommendation that the proposal attached thereto pass second reading.

PORTEUS: I'll second the motion, if no one else has.

CHAIRMAN: It's been moved and seconded. All those in - -

TAVARES: I am very sorry to confess that I have not yet fully studied this report, and I wonder if we could - - I don't want to hold up the adoption of the report, but if the gentlemen wouldn't feel too hurt if later on I moved to reconsideration, if I find any grave error which I don't think I will. But not having gone through this, and this being one of the major departments of government—I've been on a few other reports and things—I'll vote for it with that warning, and I hope that the delegates wouldn't be offended later on if I did do that.

PORTEUS: May we do what the captain of the ship did to the gunner's mate who failed to strap down the gun? After the gun broke loose and the man at the risk of his own life got it together again, first he gave him a medal and then he shot him. I'd be very happy if the delegate from the fourth district finds a grave error in this, to join with him in a motion to reconsider, and then I'll shoot him.

CHAIRMAN: I would like to state - - The Chair would like to state that I spent all of last weekend and quite some hours, about 18 hours, writing this up. I did present it to everyone, and I know how busy they have all been. We have delayed it day by day and I have promised the President that today was the absolute deadline.

I'll put the motion. All those in favor will say "aye." Opposed. Unanimously carried.

DOWSON: I move that the committee rise and report the adoption - - recommend the adoption of the committee proposal and the report - -

CHAIRMAN: On second reading.

WOOLAWAY: I second the motion.

CHAIRMAN: It's been moved and seconded that the committee rise and report the adoption of the committee report and the recommendation that Committee Proposal No. 7 in Committee of the Whole Report No. 8 pass second reading. All in favor say "aye." Opposed. Carried.

Debates in Committee of the Whole on

TAXATION AND FINANCE

(Article VI)

Chairman: NELSON K. DOI

JUNE 6, 1950 • Afternoon Session

CHAIRMAN: Will the Committee of the Whole please come into session.

We have before us the consideration of Standing Committee Report No. 41. I believe it has been already circulated, and you will find it in one of your folders. At this time I would like to call on Mr. White to point out the issues before this committee.

WHITE: If the question that we're to consider now is the recommendation of the Committee on Finance and Taxation that the Committee on Ordinances and Continuity of Law draft an ordinance which would provide in effect, that home exemption would continue until December 31, 1949 [i. e. 1959], that for the reason that in the proposal of the Committee on Finance and Taxation, no provision has been made for home exemptions, in order to bring this matter before the committee, I'd like to move the adoption of the committee report.

CHAIRMAN: Is there a second to it?

DELEGATE: Second that motion.

CHAIRMAN: It has been moved and seconded that committee -- Standing Committee Report No. 41 be adopted. Discussion.

WHITE: Now, in support of this motion, I'd like to give you a little information that I think has a bearing on it. In the first place, in starting off I think it might be well to refer to the action taken by the committee, and I'll read it.

"The chairman suggested that the question of home exemption be discussed and drew attention to the memorandum on this subject. Several of the members were in favor of abolishing home exemption but it was pointed out that this would probably not be acceptable to the public. The chairman, Mr. Castro, and Mr. Tavares were in favor of immediate abolition and Mr. Yamamoto was in favor of retaining home exemption but making it a flat $1500. Mr. Tavares stated: 'Is the strength of our country only in home ownership or is it in the strength of industries?' After considerable discussion pro and con, the members compromised on the principle of no home exemption with the understanding that an ordinance be written that it would not take effect until January 1, 1960."

Now, in starting it might be well to say that Mr. Mizuha was not present at the meeting, although a member of the committee, and that in the filing of the report both Mr. Mizuha and Mr. Yamamoto were opposed, or did not concur in the action taken by the committee.

Now, subsequently, copies of this memorandum or of a memorandum entitled "Spreading the burden of property taxes on all property through the elimination of home exemption" was distributed to all delegates and I would suggest that each of you get a copy of this memorandum before you for reference. I might summarize the memorandum briefly. First of all, it points out that while in theory home exemption is intended to encourage home ownership, in actual practice it plays a minor part in influencing people to own their own homes. Second, home exemption is both unsound and discriminatory in its application. Third, it weakens the tax structure and complicates the job of financing the cost of government. If we had no home exemption, that limitation to the state and county could be set at 18 per cent of assessed value of taxed property, in order to justify limits of 75 million dollars, the minimum that the committee believes will be needed in order to take care of the present situation.

ANTHONY: Could the speaker ask us -- tell us the date of that memorandum that he has referred to? I don't seem to have it here.

WHITE: The date of it is May 22, 1950. It wasn't printed by the Convention; it was printed by the committee and circulated to all delegates. I have a few extra copies here.

CROSSLEY: May 23 is the date.

WHITE: As I said a minute ago, in order to support a debt limit of 75 million dollars, that would require a ratio of 18 per cent. Now, if home exemption continues, that percentage would have to be increased to 22 1/2 per cent. Now, in extending this concession to a limited group of people, the net result is to transfer the burden to other tax payers, including a great number who would be unable to own homes under any circumstances. Further than that, because you, by extending the home exemption, cut down the taxable value to an extent where you are in effect at present rates, making exemptions of about two million dollars, that will mean that that amount of money will have to be made up from other sources, in which event the home owners will be required to pay some of it, although it may not be proportionate to the amount of their exemption.

Exhibits -- attached to the memorandum of May 22, there are a group of exhibits which I might summarize as follows: (a) only 12 states permit home exemption; (b) the Territory will lose over two million dollars in revenue in 1950 because of home exemption, or, if home exemption is eliminated it is estimated that the average tax rate could be reduced $5.76 per thousand, and yet raise the same amount of money. Now, if you apply it -- if you break it down into classes of homes, of homes having an assessed value of $1500 or less, $1500 to $3000, $3001 to $5000, and over $5000, the exhibits show this: that 7,359 home owners pay no real property taxes at all and yet receive all the benefits of government, such as fire, and police protection, schools, and so forth; 9,839 home owners pay taxes on an aggregate assessed value of $3,576,000 or an average assessed value of $363 per home, which at a tax rate of $30 per thousand amounts to only a tax of $11 per year; 8,681 home owners pay taxes on an aggregate assessed value of $10,295,000, or an average assessed value of $1186, which at a tax rate of $30 per thousand amounts to but $35 a year. Now, 5,996 home owners pay taxes on an aggregate value of $30,000,880, or an average assessed value of $5,150, which at a tax rate

of $30 per thousand amounts to $155 per year. Thus, there are 31,875 home owners who would have been granted home exemptions. The average assessed value of all their homes is $1404 which at $30 per thousand would produce an average tax of but $42 per year.

The discrimination also exists as between counties. For instance, in the County of Honolulu, 57.76 per cent of the assessed value of all real property occupied as homes is exempted from property taxes. The percentage in the other counties is as follows: Maui, 72.69 per cent; Hawaii, 75.45 per cent; Kauai, 72.89 per cent. The range on lease property runs from 58.82 per cent in the case of Oahu to 95.82 per cent on the Island of Maui. In free property, the range is from 57.71 on the Island of Oahu to 75.34 per cent on the Island of Hawaii. Home exemption also affects the over-all assessed value as between the counties and the amount of the debt each can incur, as the following comparison shows: the percentage of assessed value of taxes to real property in the City and County of Honolulu to the total assessed value is 76.02 per cent prior to home exemptions, and 74.83 if you have home exemption; for Maui, the percentages are 8.5 as against 9.08; Hawaii, 10.24 as against 10.43; and for Kauai 54.24 as against 5.66.

I should like to emphasize that there are approximately 32,000 owners of homes appraised at 112 million receiving home exemption of $67,500,000, so, as a matter of fact, they're getting -- about 60 per cent of the assessed value is eliminated. And there are over 60,000 taxpayers who do not receive the benefit of such exemptions.

In all my discussions on the subject, no one has submitted a valid argument for continuing this type of exemption. All of the reluctance to prohibit the granting of homestead exemptions in the Constitution is influenced by political or emotional considerations. In my judgment, we delegates were sent to the Convention to draft a Constitution which was in the best interests of the State of Hawaii and its people, and I do not feel that our judgment should be influenced by political -- by personal, political, or emotional considerations.

That's all I have to say, Mr. Chairman, but I'd be very happy to answer any questions that anybody has, and I have some other committee members here who are willing to assist.

CHAIRMAN: Anyone who wishes to be recognized?

H. RICE: Originally in the Senate of the Territory of Hawaii I did not vote for home exemption. I thought that, just what the speaker said, our chairman said that the same people that had home exemption believed in -- should have the policing, the fire protection and so forth. But it's on the books now, and even the last legislature went further and gave those who were interested in leaseholds an exemption.

As I say, so far as I'm concerned, I think of the people that are getting homes on the understanding that they have home exemptions at the present time. The average home that's being built in the so-called Dream City on Maui costs around $7500, the lot costs only $100, and in amortizing this loan over a period of 20 years, it will cost them, I understand, the average home-owner, $46. Now, if we charge them with $32.50, at the present county rate on Maui it would increase this amount by $8 per month per year or instead of $46, which I claim is high enough for those people to pay, there'd be an average of $54 per month. To me—and that's just one part of Maui. Pioneer and Wailuku Sugar Company are encouraging their people in good faith. They are all building with the understanding that they will get this exemption from taxation up to the $32.50.

I say that you'll find that a state like New Jersey who has just drawn a model Constitution has left the exemption from taxation entirely in the hands of the legislature. I signed the majority report, but I feel that on this matter I've changed my mind, and so far as I'm concerned I'd rather leave the home exemption up to the legislature, and leave all exemptions intact as they are at the present time. So, so far as I'm concerned, I'm against the inclusion of the home exemptions in the Constitution.

MIZUHA: As one of the members of the Committee of Taxation and Finance that signed his name to the report and added the phrase, "I do not concur," I wish to state this fact: that the subject of exemption from taxation is a matter for the State legislature to decide in future sessions, and it is -- it should not be written into the Constitution. And examination of the various state constitutions on the mainland would indicate that there is no such provision placing just homes in the Constitution, eliminating home exemptions, but they might provide for other types of exemption, but just to single out the homes itself is something that is going against the traditions of constitutional provisions. And I may be wrong in that statement, but maybe in a great majority of the states they do not specifically state in the constitution that there shall be no home exemption.

LARSEN: [Beginning of statement not on tape] ... the Finance Committee, I imagine it's been considered, but it seems to me that one thing that makes a state strong is to have homes and the one thing that some countries have tried is even to endow each infant. I'm in favor of -- anybody who is willing to marry and have a home and have children should be given some recognition. It seems to me the one thing that we want is to have more people buy homes, and if this is merely a little come-on, I just wondered what the thinking was in not trying to stimulate more home-buying, rather than less.

ANTHONY: I have a great deal of sympathy with the chairman of the Taxation Committee in endeavoring in a constitutional article to eliminate exemptions. Several years ago, when I was attorney general, I think it was Senator Rice called at my office and posed to me the problem, the mounting problem of exemptions. If you will examine Section 51-51 of the Revised Laws of Hawaii, you will find there 20 or 30 specific exemptions, some of which are for religious and charitable purposes, others are not; some of which are within the provisions of the Organic Act which prohibit the legislature from granting any special privileges or immunities, and some do not. This is an effort, as I understand it, on the part of the Taxation Committee to get rid of this bad system of particular exemptions and addressing itself to one question alone, namely home exemptions.

I think the question whether or not we should incorporate this in the Constitution should devolve about whether or not there will be a greater burden placed upon individuals. If we are satisfied that the individual home owner in the last analysis will not pay any more in taxes, then it seems to me that this is a constructive step to eliminate a very bad legislative practice that we've gotten into, namely a number of exemptions from real property taxes. Exemptions, as I view it, should be confined to religious and charitable -- educational and charitable institutions, not such as we have under 51-51 of the present Revised Laws. If the chairman could explain that further, I think it would be of some assistance to the Convention.

WHITE: To answer Dr. Larsen's question first, sure, I'm heartily in favor of encouraging home exemption, but I don't think that you should favor home exemption to a certain group at the expense of all the other residents of this Territory. And that's what you're actually doing is to pass two million dollars of tax burden from 30,000 people on the other

60,000 people because the amount of taxes to be raised is proportionately increased.

To talk to Mr. Anthony, to Mr. Rice also, I'll agree that this in normal times is a legislative proposition, but in my opinion the legislature has fallen down on its job for a great many years in allowing this thing to continue on the way it's been going because it's going from bad to worse. Now, if we're -- we sit around here and talk about the Bill of Rights and all the rest of the things and eliminating discrimination and then we allow rank discrimination in taxation to go on.

BRYAN: I'd like to ask Mr. White if they considered in the committee a proposal to the effect that there should be no tax exemptions except by general law and if that would'nt clear up some of the points that Mr. Anthony mentioned.

WHITE: As the proposal is now written, any -- the provisions that have to do with tax exemptions are written on a permissive basis to try to protect the wide range of exemptions that are presently in effect, but that doesn't mean that they have to be continued by the legislature. If you were to go over the number of exemptions, probably the largest -- the longest provision I think that we have in the proposal is on home -- on tax exemptions to take care of the present situation. Now, it's drawn in a way that it's permissive, it's not mandatory so that the legislature can change them at any time.

ASHFORD: I would like to ask the chairman a question. Is it not true that in a very substantial measure the home tax exemption is an equalizer in values? That is, when a man owns a large area of a thousand acres it's usually assessed at about $100 an acre, and when he sells a half acre for a home that's immediately assessed at about $10,000.

WHITE: Well, I think that that is more opinion. I doubt whether that could be [inaudible]. There may be instances of it, but nevertheless I don't think that any attempt should be made to equalize taxes by home exemption, I think that's highly unsound. If there's something wrong with the basis of assessment that should be corrected.

HEEN: I would like to ask the chairman of the Taxation Committee this question. Does that committee have in mind the recommending of the adoption of the proposal relating to the exemption of real property and personal property in certain classification, then end up by saying, "All laws exempting from taxation property other than property enumerated in th at proposal shall be void"? In other words, there is a provision in the Constitution of Missouri which is I think quite appropriate, without mentioning home exemption. It's a short proposal -- provision, and I may read it:

> Exemption from taxation: All property, real and personal, of the State, counties and other political subdivisions, and non-profit cemeteries, shall be exempt from taxation; and all property, real and personal, not held for private or corporate profit, and used exclusively for religious worship, for schools and colleges, for purposes purely charitable, or for agricultural and horticultural societies may be exempted from taxation by general law. All laws exempting from taxation property other than the property enumerated in this article, shall be void.

Then you don't have to deal with the question of home exemption itself, you deal with it in a general statute.

WHITE: Well, that's just what we've endeavored to do, Senator Heen, in listing the exemptions. We list the properties that are -- that can be granted exemption, and it does not list homestead, so that it would automatically be eliminated. But the reason for the meeting today is because of the feeling on the part of a large part of the committee that to terminate it immediately Hawaii became a State would be unfair, and in order to give the people who had bought homes figuring on home exemption, a period of ten years in which to adjust their finances. That's the reason for this report.

HEEN: May I rise to a point of information. I'd like to get this from those who have been attached to the attorney general's office. We have homesteads under the homestead law belonging to various persons. Now, I believe under the law relating to public lands which have been set aside for homesteads that these homesteaders have to pay the real property taxes on those lands whenever they may not hold the title, and if that is so, they wouldn't have the benefit of this tax exemption because under the present statute the tax exemption on homes was made for the benefit of those who have fee simple title or those who hold leases for a certain term and have the right -- and who have, under the terms of the lease, the ownership of the improvements.

TAVARES: I'll try to answer that question. It's been some time now since I left the office of the attorney general, and I left before this new-fangled leasehold exemption was put into effect. It's my recollection that there is a provision in the land laws that where persons take a general lease of public lands, they shall be subject to taxation. I think the reason for that was that this is public land and the Congress didn't want it to be felt that because it was public land, even though under lease, it couldn't be taxed. I don't believe that that would prevent it from being taxed in an equitable manner or exempted in an equitable manner in the same way as other similar property, similarly used, is exempted. I think that would be the proper interpretation, and furthermore, if we became a State, I think we would -- that problem would probably not exist any longer. We could change those laws to a -- I think, to a substantial extent, depending on what we put in our Constitution, so as to eliminate that as far as the problem of taxation is concerned, in my opinion.

KING: In the first place, may I ask the chairman of the committee a question. The purpose of this meeting, as I understand it, in Committee of the Whole on Committee Report No. 41, is to get the consensus of the Convention with regard to the home exemption. If the committee report is voted down, the chairman of the Committee on Taxation and Finance would take it as the judgment of this Convention that the Constitution should not include a ban on home exemption, but leave it to the judgment of the legislature in the future and leave the existing law. That's the purpose for which this Committee of the Whole is meeting. Now, is that right?

WHITE: I'd say that the practical effect of the decision on whether or not this goes to the Committee of Ordinance really is a decision as to whether you want to continue home exemption or whether you want to ban it by the Constitution.

ANTHONY: Mr. Chairman.

CHAIRMAN: Delegate Anthony, what are you rising to? President King has the floor.

ANTHONY: Well, I'm rising to straighten out the statement which I think is erroneous, that we do not --

KING: I appeal for a point of order, but --

ANTHONY: No, I just wanted to straighten out one statement, President King, if I may.

KING: I yield, Mr. Chairman.

ANTHONY: There's no doubt there will be incorporated in the Constitution a provision, either in the legislative branch or some place else, against special privileges or immunities. Now, unless there is some exception made to that in favor of the special immunity which we're talking about, then I think there would have to be an affirmative statement in the Constitution granting the legislative exemption, or constitutional exemption, for home ownership. In other words, I don't think you've got to deny home ownership, but you've got to affirmatively vote for it in the Constitution, otherwise you won't have it.

KING: Well, the point that I wanted to make was this, that the purpose of this discussion on this particular committee report was to clear the air for the Committee on Taxation and Finance. Delegate White, as chairman of that committee, wanted the judgment of this Convention whether he should incorporate into the report of the Committee on Taxation and Finance a ban against home exemption. I have here the draft of that committee report and it lists the properties that may be exempt and does not include homes. Therefore, if we approve of this committee report, under some modified form, not as an order or an instruction to the Committee on Ordinances and Continuity of Laws, but in some other form, the chairman of the Committee on Taxation and Finance would take that as the go-ahead signal to include a ban on home exemption in his report, or the report of his committee. Is that correct?

WHITE: That's correct.

KING: On the other hand, if we table this committee report, the chairman of the committee would take that as the judgment of this Convention that no such ban should be incorporated in his committee's report. Now, I'm not going into the question of whether there should be some provision in the Constitution that explicitly permits home exemption. Now, I would like to speak in favor of the -- in opposition to the motion to adopt the committee report, and later may second or may initiate a motion to table that report.

I was a member of the Tax Commission that went into this quite thoroughly some years ago, when we organized our whole system of taxation. At that time the home exemption was already on the statute books of the Territory of Hawaii, and the Tax Commission argued the problem to and fro, and finally decided that it was a desirable piece of legislation and would not recommend its abolition; so it remained on the statute books. Even had the Tax Commission recommended its abolition, the legislature might not have followed out our advice.

Now, we're constantly criticized for the lack of general home ownership in the Territory of Hawaii. That is one of the points that's been made by many congressional visitors that have come here to the islands. We have tried over the years. You can go back into Hawaiian history and find that over a hundred years ago the kings of Hawaii made recommendations to the legislature to secure a wider distribution of land and a wider home ownership among the people, and right down to the time of President Dole, who made such a recommendation to the legislature of the Republic of Hawaii. My feeling is that this home exemption is an indirect subsidy to a man that is going to buy a home. Nevertheless, it's considered to be in the public interest, and in the general welfare.

The comparison made by the chairman with regard to the tax situation is not exactly correct, at least the figures are correct but they are limited in their use. The chairman of the Committee on Taxation and Finance has called attention to the fact that out of some millions of dollars worth of taxable homes, 67 million are exempt, about 60 per cent, and leaving 40 per cent. But the taxable real property of the Territory of Hawaii is 401 million dollars—that's homes and land that is not used for homes—so that the home exemption is 67 million out of 401 million, a very much smaller percentage of the sum total of all the real property owned in this territory.

And now, there's another point to consider. It was not only to increase the home ownership in the territory but increased improvement of land. A man may build a home, and up to a certain limit get 100 per cent exemption and up to another limit get a 50-50 exemption. Now, I don't consider that the exemptions in this day and age are very generous. The maximum total exemption is $3,250, at the current rate, it's approximately $100 a year. It does not increase with increase in value. A man who has a home that's worth 15, 25, or $50,000 gets no greater exemption than a man who has a home which is assessed at only $5,000; so the grant is not a very great grant. It was given with the idea of increasing home ownership, promoting the improvement of property, and getting wider distribution of land into the possession of the individual. It has accomplished its purpose, and to abolish it at this time would, in my opinion, be a mistake.

Nevertheless, I feel that the point that we should consider is not whether it should or should not be abolished, but whether we should leave it to the judgment of the legislature in the future.

There's another point I'd like to point out, although the parallel isn't exactly the same. Nevertheless, on the exemptions from real property taxes in this proposed draft of the proposal from the Committee on Taxation on exemption, they listed all kinds of properties that are going to be exempt. Homes are to be barred, but property dedicated to a forest reserve may be exempt by law. In other words, if I were the owner of 2,000 acres of land and didn't want to use 1500 acres of it, I'd put it in a forest reserve and escape taxation until such time as I wanted to withdraw and put it to some other use. Property set aside for reconstruction, redevelopment, rehabilitation is to be exempt. For a limited period, that's true, but nevertheless it's permissible to exempt it. Property essential to the conduct of a business, together with the improvements thereon, may be exempted from taxation. There again for a limited period, but nevertheless, the principle of subsidizing, if you want to use that word, of giving a grant-in-aid to people who own real property and are going to use it in the public benefit or in the general interest is accepted by this document which is a tentative draft of the committee report. So I feel --

SILVA: I second the motion we file it.

KING: Well, I am coming to that. I feel quite strongly that it would be a mistake for this Convention to incorporate in the Constitution any ban on the extension of home exemption I think that's a question that we could leave open to the legislature, with a probability that the legislature will not ban it. Thank you.

RICHARDS: I would like to ask a question of Mr. White to make sure that I heard his statement correctly. Do I understand that you state that there are approximately 30,000 home owners who have exemption as against 60,000 renters that have to pay the tax in their -- as part of their rent?

WHITE: I don't have the exact figures, but the best figure that the Tax Office could give us was that there were approximately a thousand -- I mean a hundred thousand home units, of which 30,000 are exempt.

RICHARDS: Well then, in other words, there are about 70,000 home units where the individuals will have to carry the load, the tax load of the people who own their homes. In other words those who cannot afford their homes.

KING: If the gentleman would yield.

CHAIRMAN: Mr. Richards, will you yield for an explanation from President King?

RICHARDS: I yield.

KING: That doesn't put the situation fairly at all. There may be a hundred thousand family units in Hawaii, of whom 32,000 are exempt, but that doesn't mean that the 70,000 carry the load. The whole real property of the territory carries the load, including the land that is owned by businesses, corporations, and large estates. The renters don't carry the load. If you took the home exemption on a piece of rental property and allocated it to the tenants, their rent wouldn't go up or down fifty cents a month. The landlord would absorb the home exemption and pocket the difference. That's about the size of it.

RICHARDS: I question our worthy President's last statement; I have yet to hear of any landlord that's absorbed any tax.

I want to also point out to this Convention that this morning the Committee on Agriculture, Conservation and Lands adopted as one of its proposals - - one section of its proposal, "The public lands shall be used for the development of farm and home ownership on as widespread a basis as possible." This refers to approximately 180,000 acres that, according to HR 49, is to be returned to the Territory at this time. Now, if this - - rather this land now for the most part is under lease and full taxes are paid on this land. If this land is sold into farm and home ownership, it will further decrease the tax base on which taxes can be collected, if home ownership does give a tax exemption. Therefore, it will further increase the load on renters.

KING: The point to remember there [is] 10,000 acres of ranch land leased to one landlord, to one tenant, at valuation that's fair for that purpose, cut into homesteads with homes built on it, the home exemptions if applied would pay a larger tax than the original undeveloped land. There's no question about that. We see that in Honolulu all the time. A man buys 20 acres of land up here for 11 cents a square foot at Palolo Valley; he puts in roads and water, and builds houses on it and sells it for 50, 60, and 75 cents a foot. Even with the home exemption applied to that improved property occupied by home owners, the total tax revenue will be greater than that land was paying to the Territory of Hawaii before it was sold and developed as a subdivision. Any part of the homestead lands of the Territory of Hawaii that are now occupied by homesteaders is paying more revenue into the treasury of the Territory of Hawaii than it did when it wasn't so used. I live in a homestead area that is now—Delegate Ashford has a lot in the same area—that was under lease at two bits an acre years ago and was opened up to homesteads and sold for $50 an acre, now valued at something like 50 cents a square foot. The tax value has gone up by leaps and bounds, even with a home exemption in that particular area. That's true of every single area in the Territory that has been opened up for development for small farms and homes, even with the tax exemption applied to it.

KELLERMAN: I would like to speak on several points that have been made. In the first place, I'm speaking in favor of the committee report. We all know that home exemption is a so-called "hot potato." The question has been brought up in various legislatures, various sessions, for the last eight to ten years. It has consistently been ice-boxed because there were many who did not wish it to be known how they stood on such a controversial matter.

It seems to me that the delegates of this Convention were elected to do a job, that which they thought would be best for the Territory regardless of any political consequences to themselves. And it seems to me that we should judge this matter on its financial merits. We all know that when you reduce the amount of a tax base, you necessarily impose to that degree the extra load of tax upon those who are not - - who are included in the tax base. If we have home exemptions for 30,000 home owners to the degree that we have it, we necessarily are increasing to that degree taxes on the properties that are rented, and the renters then must pay increased tax.

It seems to me that if we view at large those persons who own their homes and those who do not own their homes, we will find that the greatest majority of the home owners are persons of greater wealth and therefore more able to pay the tax than those who are renting, and those who rent pay it just the same through the rent that they pay to the landlord. We are, as I see it, subsidizing those better able to pay a tax by relieving them of the obligation of paying a tax.

In the second place, the question was raised that our legislature indicated an extension of home exemption by including leaseholds. I happen to live in a leasehold area. I was a member of a community association which went into the matter, and over my vote went to the legislature—not that I could control, but I mean that I voted against the action—went to the legislature and attempted and pressurized through leasehold exemptions. I may state, and I think I can prove, that the entire argument in that association was that if home owners get exemption, we should get it. If home owners don't, we're willing not to have it, but what we are opposed to is the discrimination between home owners and those who pay for a leasehold and own the improvements and yet get no exemption for it. Their argument was not to extend the principle of exemptions, but to receive fairer and equal treatment with those who already had the exemption. So I hold that that argument is without merit.

It seems to me that we will be perfectly justified, in fact more than justified, in using the positions and responsibility which we hold to the people of this Territory to write into the Constitution a ban against the exemption of property held for homes, not written out in so many words, it doesn't have to be, but simply by elimination, because we are giving that group of people a subsidy and they are the people most able to pay the tax.

In addition, when it comes to the debt limit which we can set up for the State of Hawaii, we are relieving 66 million dollars, as I understand it, from the tax base. And every time we remove more from the tax base, the more difficult the financing of our State government and necessary improvements becomes. For those reasons I am very much in favor of the report of the committee.

SAKAKIHARA: Speaking in opposition to Standing Committee Report No. 41 I have been deliberating here since reading the report. How many of us campaigned in February in seeking nomination or election before the people of this Territory that if we are elected we will go to the State Constitutional Convention and write into the basic law of the future State of Hawaii, a prohibition against home exemption? I don't think any one of the delegates here had the audacity to tell the people in all sincerity and all truth that if you elect me, I will go to the State Constitutional Convention of Hawaii

and I will write a prohibition in the Constitution denying home owners home exemption, including the proponents of Standing Committee Report No. 41.

If the proponents of the prohibition against home exemption will go back and check up the original home exemption act, they will find that the purpose of granting home exemptions was for the reason that Hawaii believed in having contented citizens, to have good American citizens, so that people can own homes and enjoy certain exemptions so that they may bring up children who will be contented good Americans against foreign ideologies. We all believe today we have certain elements in our midst who are trying to undermine the American way of life, trying to arouse discontent among the citizens [by saying] that only a certain few, so-called Big Five, are the only ones able to provide homes and certain privileges, so that you should subscribe to these ideas that we possess, namely communism. Here we are, through the national administration and through the present administration of this Territory, advocating and promoting better citizens, and one method advanced by the present administration of this Territory is to open up more homes and farmlands so that we will have contented American citizens who will be so satisfied with the American way of life that they will not be influenced by the so-called communists.

In looking at the report submitted, memorandums, "Statement spreading the burden of property taxes on all property, through elimination of the present home exemption," they also state some 32,000 families, less than one-third of the total 100,000 family units in Hawaii, benefit by this exemption. Granted that is true, the fact nevertheless remains that these 32,000 people who own their homes, who have brought forth in this community families, have some definite securities compared to some less fortunate people, but the fact nevertheless remains that this Territory has not gone bankrupt because of these exemptions. On the contrary, Section 51-51 carries some 62 items giving specific tax exemptions to eleemosynary corporations and religious societies and some homes, homes to support aged and indigents. I don't see where this denial of tax exemption will in any way help to improve the so-called financial situation. We are here -- or I can say with all sincerity to the 63 delegates here that I was one of those who voted to give the leaseholders tax exemption during the 1949 Special Session which became Act 51 -- Act 64.

I believe that the committee report should be tabled, so I move that the committee report be tabled.

CROSSLEY: Mr. Chairman.

MAU: Mr. Chairman, Mr. Chairman.

TAVARES: Mr. Chairman, Mr. Chairman.

CHAIRMAN: Do I hear a second to it?

DELEGATE: Second the motion.

DELEGATE: I second the motion.

CHAIRMAN: It has been moved and seconded the committee report No. 41 be tabled.

CROSSLEY: Mr. Chairman, if you would recognize the people who are on their feet and not look for a second --

CHAIRMAN: The Chair feels it's proper that after a motion is made, a few seconds should be allowed for anyone interested who wants to second the motion, and that is what the Chair did.

TAVARES: Well, Mr. Chairman, in fairness to this committee whose report is about to be tabled, I think the members ought to be willing to hear all of the story. There have been some statements and mis-statements made here, not -- I say, not exactly correct, that ought be corrected before you vote on this situation.

CHAIRMAN: Will the movant --

HEEN: It seems to me that we are dealing with this problem in the wrong way. We ought to have before us first the main proposal as to tax exemptions. If there is a -- if that proposal is finally adopted with home exemptions being allowed, then --

SILVA: Mr. Chairman, I rise to a point of order.

CHAIRMAN: Delegate Silva, state your point of order.

SILVA: The point of order is that motion has been made and duly seconded to table, unless the motion is withdrawn, then we can proceed with the arguments pro or con or whatever you want to do. I would suggest that the Chair ask the courtesy of having the motion withdrawn first to table it.

CHAIRMAN: Will the movant --

SAKAKIHARA: In fairness to those who desire to further participate in this important question, I'm willing to yield -- withdraw my motion to table for the time being.

HEEN: If the main proposal has a provision allowing tax exemption, then this report of the committee at the present time would be unnecessary. If tax exemption is to be allowed for homes, this committee report then would be in order in order to have that exemption allowed for a certain number of years before going into effect finally. Therefore, we should proceed with the main proposal first, and not with this one.

RICHARDS: I would like to answer the delegate from the fourth district that many of the members of the committee who signed this report signed it only on the basis that there would be a continuation of tax exemption for a ten year period. That is the reason why this is placed before the Convention in this order. [It] is because of the fact that if this ten year period were not granted for financial readjustment to home owners and home purchasers that probably the committee would not submit a majority report out in favor of the matter of taking off home exemption.

LARSEN: Could I ask a question from the committee? Do you have any figures on how many families are living in leaseholds and not getting exemptions?

WHITE: As near as we can figure out it runs between 60 and 70 thousand.

SILVA: Under new law they got an exemption on leaseholds.

WHITE: This is the 1950 -- these are the 1950 figures that they figure out of approximately 100,000 family dwellings there are --

SILVA: Those are rental units, not leaseholds.

WHITE: Family units. There are 32,000 exempt, that would leave approximately over 60,000 non-exempt.

LARSEN: In other words, you have for each family that's paying this tax, you have -- I mean who were exempted, you have two families who do not pay it. That right?

WHITE: For every one family that is exempt you have two families not exempt.

LARSEN: Yes.

AKAU: Mr. White, along that same line would you clarify this so that we could know why it may be a legislative matter. It still enters into our thinking regarding this exemption pro or con. We know that many of our religious institutions here, as well as other organizations, do own and lease and rent a great deal of property to others on which to live; that is, the income is to the religious organizations. Now, in view of that situation, what happens from the point of view of exemption of land and property and real estate and income to those religious organizations over and above the question of eleemosynary institutions?

WHITE: Any property that is for profit-making purposes cannot be exempted, and is not exempted.

SILVA: I am really amazed at some of the remarks passed here about the person who uses the tenement is the taxpayer in all instances. In a lot of instances some of these units are not rented and sometimes they're vacant and the tax goes on just the same, and the landlord will have to pay it. To say that the land - - that the tenant is the sole taxpayer in that instance would be an admittance upon the fact that American Factors, Davies and Co., and any people in business pay no taxes because the consumer is the ultimate taxpayer, and I know surely that no one would care to admit that. They'd all say, "Well, we're in business and we pay our taxes," but there would never be an admittance that no one pays taxes but the consumer. We grant that that's quite true, but we would like to say that we do pay our taxes.

The point I'd like to say is this, is that in true Americanism, which we intend to build within this territory and to carry on, is that the average home owner, especially on the Island of Hawaii—I was thinking about Hawaii—where the tendency among the corporations themselves, plantations, is to eventually give these homes to the people. Well, when I say give, I mean sell, within a reasonable rate, about the cost. For us to now, just at that point, to invoke in our Constitution that those of that class shall not receive an exemption, will surely put those people, that class of people who intend to own these homes, in a very, very bad position, and in a position where they would have a doubt in even buying the home because the moment they would care to put in an improvement, we say for a bathhouse which would cost $500, they would have to pay a tax on it, but if it had an exemption of $1,500, they could put in this improvement and not pay the tax at all. And that in itself would be something for the Territory, which eventually brings in revenue, paint, employment and that would offset what we lose. I just want to say that as far as the Island of Hawaii is concerned, the tendency is that there will be a greater proportion of home owners than there are tenants.

CASTRO: I would like to speak in favor of the committee report, briefly. First, to contradict a statement that has been made, that is, a conclusion that has been made. When the home exemption law was passed some number of years ago, the stated reason was merely to encourage home ownership. It is, however, a fact that many of the proponents of home exemption felt that it would discourage the tendency on the part of large landlords to rent land and would force them to sell the fee. Now, this has not happened, and the best proof of that is the fact that some of the must substantial landowners are people who have refused to buy the fee when they have been given an opportunity. In 1948, out of 112 leaseholders in the new section of Aina Haina leasing from the Robert Hind, Ltd. who were offered the chance to buy the fee, some two dozen accepted. However, this isn't my argument.

The point is that I think that if the home exemption is pointed to be the thing which has encouraged home ownership, the argument falls because in Hawaii today we have only 24,000, 25,000 at the most, home owners, yet on the Island of Oahu alone you have 60,000 rental units. In the days when home exemption was granted and put through for the purposes of granting or encouraging home ownership, we did not have available to the populace the tremendous government aids in financing. The FHA was not known then. The Veterans' Bill of Rights was not known. The 4 per cent mortgage, while known, in some cases had no federal insurance. Today we have these emoluments that aid people who want to own their own homes. The problem is still a shortage of land. And you - - this cannot be solved by the process of granting home exemption.

Now, I would like to look at this home exemption thing, not on the basis of who is paying the tax, who is paying the real property tax, but upon a straight basis of who is going to finance this State. We have gross assessments of our land of 770 millions of dollars. We have exemptions amounting to 437 millions of dollars, leaving us a net taxable land area - - land assessed at 333 millions of dollars. Now, if we take out the United States lands and the territorial lands and the county lands, if we take out the charitable lands, if we take out the utilities, we still have not even four hundred thousand - - four hundred million dollars of assessed - - in assessments that can be taxed for real property taxation. I present that the matter of exemptions is actually dangerous when we are trying to finance our State.

How far can they go? If you're going to encourage home ownership, you're going to grant more exemptions. I foresee the time that it is possible that a State like Hawaii, limited as it is to land and income, may have to withdraw some of the exceptions to charitable organizations. I do not think that we can go on and on granting exemptions forever. We must stop somewhere; perhaps this is a good time, this is an historical moment, to look this business of exemptions in the eye. Here is 66-67 million dollars assessed land that can be taxed for which the government presently would get two million dollars more in taxation. It will create no burden, unsurmountable burden, uncarryable burden, on the part of the people who will pay the tax. This has been indicated by the facts. I see no sentimental reasons other than that where a man can use as a political drum this business of fighting for home exemption. But looking at the facts of paying the bills for the State, I feel that we should look at it on the basis of a balance sheet and I think we can find fair enough reasons to abolish the home exemption.

FUKUSHIMA: As I sit here and listen to the arguments day after day, I'm just wondering what kind of a Constitution we're going to have. For weeks on end we have been talking about the philosophy of certain types of governments, philosophy of the Bill of Rights, philosophy on public welfare. It seems to me that we will all be authors of a book on philosophy.

Now, we are arguing something which is strictly statutory, there is no question about it. They try - - the proponents say that this is a "hot potato" for the legislators. What if it is? We came here to write a Constitution, a basic law; now we're going and delving into the realm of legislative enactments, statutes. To me, it seems awfully ridiculous to have people stand up and talk about statutes when it should not be so, or else also going to have the Hawaiian Homes Act in our Constitution, something which is very different from the constitutions of the other states. I'm not saying that I'm against that, but when we come here and talk about statutory enactments in our basic law, I think we're going far afield.

People who get up and say that it is not statutory I know are wrong, because it is statutory. If they say so, they are varnishing nonsense with the charms of sound.

I feel, also, that we should not be the grand marshals in the parade of government. This is not the time that we should make changes. We should be here writing a Constitution and nothing else. I am of the inclination and I definitely feel that this is purely statutory; it has no place in our Constitution.

TAVARES: I'm going to be brief. I think that the prime problem here is equalization and equity, and you can't prove any equalization or equity in this iniquitous tax exemption. You've already been shown how 60,000 or two-thirds of the people don't get it.

There's another angle. Even among the people who do, who are, who have, who own homes, you have an iniquitous lack of equality. If a man has a home and he's built in such a way that he can draw a wall straight down to the ground he can get an exemption on half of it or any part of it that he uses. But if he happens to have a little basement or something on top and rents it out, he can't get an exemption. And that's just one of the many, many iniquities that you have to have when you have a home exemption. And you're going to continue that as long as you have it. There's no way, it seems to me, of changing that lack of equity. And it seems to me that since one of the problems of this Convention is to provide for equalization, at least in the same class, you are not getting it by your home exemption.

CROSSLEY: In 1943, when I served in the legislature, I introduced such a measure as is before us today except that it was more inclusive. I introduced it at that time because I feel - - I felt then as I'm sure the proponents of this measure do today that it was the equitable thing to do. I still think that is true, though I would be against including it in the Constitution because I feel, as some of the previous speakers have felt, that this is statutory, that this is something for the legislature to handle, whether it's hot or cold. They are really the people who are elected to go in and change the statutory laws of the Territory. I think our purpose here is a different purpose, and I do not think that we are here to take the "hot potatoes" out of the legislature, and if I were in the legislature I wouldn't hesitate for a moment to vote for such a bill, but in a Constitutional Convention I think it's a totally different thing and I do not think it has any place here.

WHITE: Could I just talk a moment? In the first place there are constitutions that do prohibit - - I haven't seen any constitutions that prohibit home exemption, but they prohibit the imposition of income taxes, so I don't think that this is so far afield that it can't be put in the thing. The reason why it is of serious concern to the committee at this time is that it has a bearing and a very definite bearing on the debt limitation that we fix for the State, and an answer to the thing, one way or the other, is important to the committee. And, for that reason, I think that it could well, very well go into the Constitution.

Now, I'd like to ask a couple of the opponents to this measure that have talked about all the good it does and how unfair it would be, whether, and I'd like to ask Mr. King in particular, whether he feels that it's right that 7,350 taxpayers pay no real property tax at all, and that another 9,839 pay on the average about $11 per year for the benefits of government?

KING: I would like to answer that question in this way. If we would put in the Constitution a ban against all exemptions of real property whatsoever, church schools, forest reserves, business property, then you are putting in a ban that is of general application. Once you admit that there is any justice or any merit in any exemption, then you can't stop at home exemption as a necessary point.

Now, while I'm on my feet, I would also like to refer to the inference of politics. The only office for which I've run myself is delegate to this Convention, in the last ten years. That's no promise for the future, but nevertheless, there's no question of politics in it; it's a question of justice, a following out of policy that this Territory's had for about 25 years on the statute book. I'm in entire sympathy with Delegate Crossley and Delegate Fukushima that it's a statutory matter.

Now, as we get down to the finances, this Territory isn't going to stop at 400 million. The legislatures of the future will have different sums to work on. The assessed values are going to go up, right today they lag behind current market value, and the tax burden will be prorated at those higher evaluations.

The problem that the Taxation and Finance Committee wants to settle now—that's why they're putting the cart before the horse, as Delegate Heen has pointed out, and want a decision on this particular issue before they bring in their final proposal—their problem is to fix a tax limit for the ensuing ten or twenty years. But this Constitution that we're writing today is going to be amended in ten or 15 or 20 years. The last one was 50 years ago, the Organic Act. That's been amended repeatedly by Acts of Congress. The one before that only lasted for six years, so we're not writing a Constitution in perpetuity, and the land values of this territory are going to increase in assessed values, and the tax burden would be distributed accordingly.

Now, to get back to the point that Delegate Castro made, he said there was 700 million dollars worth of taxable property here, but there is 400 million dollars of home owners' property. Where is the other 300 million? Why not put that on the tax roll? That's exempt for schools, churches, other public benefits. And if that's true, well, then, home exemption isn't so far off, 67 million dollars to promote home ownership and 300 million dollars to promote other general welfare projects.

CROSSLEY: There was one point that I - - one other point I'd like to speak to. That is, the Committee on Submission and Information is going to have a very difficult job, I believe, in presenting a Constitution to the people that is going to be well understood in all of its implications. If you take and add to that measures that could be considered to be purely legislative or statutory in nature, I think the job is going to be doubly hard, especially when you get into such controversial issues as the one on home exemptions.

I'm reminded again in 1943 of the hundreds of letters that I received against the proposal that I made at that time. Those are the same people that we're going to go to and ask to understand in a short time, in a relatively short time, a document that has taken us just hours and hours, and days and days, weeks and weeks, and how many months no one knows, to complete. And I think it would be very difficult to go and have to defend issues that the people themselves feel that they should have the right to speak on, and I would hate to see an otherwise perfect Constitution defeated on just one issue alone, and yet I feel so strongly that on an issue such as this the entire Constitution could be defeated.

CHAIRMAN: The Chair would like to state that the previous movant of the motion to table has been very anxious to be recognized. But none the less in fairness, the Chair would like to state and ask that we should give those who have

as yet not had the chance to speak, and after that give the chairman of the committee the last chance to say his few words. Unless Delegate Heen has - -

HEEN: I have a contribution to make, Mr. Chairman. All of the arguments this afternoon have been pointed to one question, whether we are to have home exemption or not. That's the argument. There are those who favor home exemption; there are those who do not favor home exemption. Therefore, we should decide that question first before we act upon this report. If we have the main proposal written in such a manner as to allow home exemption, then this report here would be out of order - -

KING: Mr. Chairman, will the gentleman yield?

HEEN: - - but if this were adopted, the Committee on Continuity of Law might write a long report and submit a proposal that might be thrown out of the window, if the main provision provides for home exemption. If it provides for no home exemption, then it would be in order for that committee to act.

KING: Will the gentleman yield?

CHAIRMAN: Delegate Heen, do you yield?

HEEN: Yes.

KING: The point at issue is not whether we shall have home exemption or not, it is whether we shall ask the Committee on Ordinances and Continuity of Law to draw a law that would extend it for ten years, and then the Committee on Taxation would bring in a proposal that would ban it. The Committee on Taxation brought this up by request, in order to have some instruction regarding its proposal. Now, if we follow Delegate Heen's suggestion, which I recognize as being the more proper order and procedure, nevertheless we would first have to have a proposal before us with the home exemption in it—that's the way that committee report has been done—with the home exemption banned, I think; and then this other instruction to extend it for nine years. While before that proposal is submitted, the chairman of the committee, I think very promptly, wants the judgment of the Convention whether he shall draft it that way or not. Delegate Richards said that many of them signed it with the understanding that it would be continued for ten years. So it isn't whether we shall or shall not have home exemption. It's whether the Committee on Taxation shall at this time ban home exemption.

CHAIRMAN: Is there anyone who hasn't yet spoken who would like to be recognized?

ARASHIRO: I've been listening this whole afternoon, and the question in my mind is whether this should be a constitutional matter or a statutory matter. If it's a matter that can be written into the Constitution and a matter that we do not have to worry for the next 10 to 20 years, and not a matter of controversy, then maybe it should be in the Constitution. But as it has been debated on the floor, there is a doubt in my mind whether it should be written into the Constitution, and again if it should be written into the Constitution - - or if it's not written into the Constitution, can this matter be taken care of? If it can be taken care of without being written into the Constitution, then should we leave it out?

SAKAKIHARA: Mr. Chairman.

CHAIRMAN: Are you through, Mr. Arashiro, or do you yield?

ARASHIRO: Well, I'll hear that gentleman from the first district.

SAKAKIHARA: It is purely a statutory matter which could be taken care of by legislative acts. We are about to write into the basic law a statutory provision, and if the gentleman from Kauai has any doubts that it is not a statutory matter, then it should be in the Constitution. But if it is purely a statutory matter, we are here to write a Constitution, and not a statutory provision.

ARASHIRO: I'm trying to get my mind clear whether this will affect the setting up of our government, the kind of basic law that we have, and whether it will have anything to do with the operation of the government.

CHAIRMAN: The Chair would like to at this time to recognize the chairman of the Committee on Taxation and Finance.

WHITE: Well, I don't have much to add to what I've already said. Answering to the point of these people that talk about all the voters wanting the home exemption continued, I think you were all furnished with a committee - - with a report that came in from Mr. McDonough in which he attached a report of the Joint Tax Study Committee in which they said that all their membership was wholeheartedly in favor of banning home exemption. I think that that represents a large number of voters in this community as well. As far as I'm concerned, I'm primarily interested in seeing a very flagrant discrimination cleared up. I have no wish to deprive home owners of anything that they are rightfully entitled to, but in this particular instance I think that they are getting something at the expense of a great many other people.

SAKAKIHARA: I desire to renew my motion. Before I renew my motion, I would like to say this. It is not because of political issues. Whether this committee report is adopted, we will have for the next ten years a guarantee of tax exemption but it seems to me that this Convention will dictate to the legislature ten years from now on a basic law when we have a proviso that all home exemptions shall be wiped out. I'm sure we will have just as intelligent or more intelligent people aspiring for legislative office under a State government. We have more and more young men and women graduating from schools, coming forth, and I'm sure we can entrust to these future citizens the destiny of our State, and I wish to state this is purely a legislative matter and has no place in the basic law.

I now move, Mr. Chairman, that the committee report be tabled - -

DELEGATE: Second the motion. Mr. Chairman, I second that motion, Mr. Chairman.

SAKAKIHARA: - - and that there be instruction to the Committee on Taxation and Finance that this Convention instructs them to leave the basic law - - home exemption alone, and explore the other field of taxation.

APOLIONA: I second that motion.

CHAIRMAN: It has been moved by Delegate Sakakihara and seconded by Delegate Apoliona that the Standing Committee Report No. 41 be tabled. All those in favor of the motion to table Committee Report No. 41 - -

WHITE: Could we have roll call?

CHAIRMAN: All those - - how many desire roll call?

SAKAKIHARA: I second the motion for roll call.

CHAIRMAN: We shall have a roll call. All those in favor will answer "aye." Opposed, "no."

TAVARES: I take it that that latter part of the movant's motion should not be included in this motion. I think it should

be a separate one. I think it's a little bit mixed up to vote on two things at the same time.

SILVA: There's only one question. The question was put to table, as put by the Chair.

TAVARES: All right, if that's the understanding.

CHAIRMAN: The understanding is that the motion is to table Committee Report No. 41. Will the Clerk please call the roll.

[Roll call not on record]

Clerk please read the results of the vote.

CLERK: Forty-three ayes, 13 noes, 7 not voting.

ANTHONY: Mr. Chairman.

CHAIRMAN: The ayes have it.

ANTHONY: I move that we reconsider that and defer action until the report of the Committee on Taxation and Finance is brought in. I think a great many of us -- on the general question of tax exemption, a great many of us who voted to table, voted that way because we would like to see the article first, before we dealt with the minutia of home exemptions.

CHAIRMAN: Do I hear a second to the motion to reconsider?

HEEN: I second the motion.

CHAIRMAN: It has been moved and seconded that—just a second—it has been moved and seconded that we reconsider the motion to table.

SAKAKIHARA: Mr. Chairman.

HEEN: And in support of that motion --

CHAIRMAN: Delegate Heen still has the floor.

HEEN: -- in support of that motion, if the report on the main provision as to tax exemption is written in such a manner as to provide for home exemption, then you don't need this action on this report at all. I voted to table the motion to adopt the report for that reason. If the provision, the main provision provides for the elimination of home exemption, then it would be in order to have some provision written into the law to postpone the final effect of this event, provision to some future date. Otherwise you wouldn't have to act on it at all. If home exemption is to be allowed, then it would become statutory matter.

WHITE: It's quite apparent from the expressions that were made here today, that the vast majority of the delegates here are very strong for continuing home exemption, and as far as the Committee on Taxation is concerned, the vote is ample notice to them that they don't want -- that the Convention does not want home exemption discontinued. So that the simple thing -- it makes our job a whole lot simplier because we then do not have to come in with any lengthy and detailed description of properties that are entitled to home exemption, that is left to the discretion of the legislature in its entirety. So that I would much prefer to have this vote stand and have it taken as an expression of this Convention that they are opposed to discontinuing home exemption, and we will then write our final report accordingly.

SAKAKIHARA: I make a motion at this time that we table the motion for reconsideration.

CHAIRMAN: Do I hear a second to the motion?

SILVA: If it's going to be withdrawn, I won't second it.

ANTHONY: In view of the statement of the chairman of the Committee on Taxation and Finance --

CHAIRMAN: Will you -- just a second, Mr. Anthony. Would you be willing to yield for one speaker?

ANTHONY: I would like to withdraw the motion.

CHAIRMAN: In that event, there is no business before this Committee of the Whole. Motion in order to rise.

C. RICE: I move the committee rise and report recommending that this proposal be tabled.

SAKAKIHARA: I second that motion.

CHAIRMAN: All in favor of the motion, please say "aye." Opposed, "no." Carried. Committee will rise.

Chairman: HERBERT K. H. LEE

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CHAIRMAN: The meeting will come to order.

CROSSLEY: I move that we have a five minute recess at the pleasure of the Chair.

CHAIRMAN: I see that there is no objection to a five minute recess. A five minute recess is declared.

(RECESS)

WHITE: In preparing its report, the Committee on Finance and Taxation has gone into considerable detail and it has done so believing that it was advisable in the interest of clarity. In presenting the views and recommendations of the committee at this time, I'll endeavor to brief them, as I assume the delegates have read the report a half a dozen times, so it won't be necessary to -- they have probably memorized a lot of the sections. In any event, we can refer to any section as and when necessary. At such time as we take up consideration of the proposal, it is my suggestion each individual section be acted upon separately.

Before proceeding to consider the proposal itself, I believe that a brief outline of the principles which guided the committee in its deliberations and conclusions would be in order. These are: (1) That an essential requirement of good state government is a strong chief executive, and accordingly he should be supported by a strong financial organization. (2) That adequate checks and balance should be provided between the legislative and executive branches of the State, without the encroachment of one on the prerogatives of the other. (3) That means for the early consideration and passage of the general appropriations bill should be provided so that the overall requirements of the State can be more readily determined and thus obviate confusion and uncertainty with respect thereto. (4) That effective control over expenditures is essential, as are also, when the legislature is not in session, means of curtailing expenditures when it is apparent that anticipated revenues will not be realized. (5) That the tax structure, the types of taxes, and the granting of exemptions therefrom should be left to the discretion of the legislature. (6) That safeguards to protect the credit of the State and its ability to issue bonds at favorable rates of interest are vital requirements. (7) That positive separation of pre-audit and post-audit functions is a prerequisite to effective financial control.

Now, turning to the subject of organization, the proposed offices and the duties of each are set forth on this chart. We divided this into the duties of the three officers that are proposed in the committee report, commissioner of finance, the treasurer and the commissioner of taxes, who would be in the executive organization. Now, there is a line drawn there to show that the auditor as proposed in this committee report is considered a part of the legislative branch of the government.

Under the commissioner of finance, here, all of the duties shown in black are those that are presently administered by the Bureau of the Budget: that is, analysing budget estimates of departments and so forth, except the public service corporations such as the department - - I mean, the Board of Harbor Commissioners and boards of that kind; consulting with department heads; submitting findings and recommendations to the governor; compiling the budgets for the governor; effecting periodic allocations of appropriations as directed by the governor.

Now, the examination of vouchers, or what is sometimes termed as pre-audit to make sure that the payments are according to law or authorized by law, and the establishment of accounting policies and procedures are now functions of the State auditor and under this proposed setup would be transferred from the auditor to the commissioner of finance so that the auditor's functions would be confined solely to post-audit. Also, there is one other item here, the establishment of purchasing policies and procedures. Then there's an over-all provision under the job description to provide for all other functions prescribed by law.

Now, under the treasurer's duties, the same duties are covered that he presently handles with two exceptions. He would still continue to carry on or be responsible for the receipt of State funds, custody of State funds, disbursement of State funds, and also for the sale of State bonds. The functions that have been transferred are the collection of bank and estate taxes which he presently handles and, as stated in the report, in order for him to assess the taxes it is necessary for him to get all the basic information from the tax commissioner, so that it would be better to leave the collection of those taxes with the tax commissioner rather than with the treasurer. And, as you will see in A under the auditor, the audit of the public subdivisions is presently handled by the bank examiner's office and should, in our opinion, the opinion of the committee, be handled by the State auditor, if that office is set up.

Now, below the office of treasurer here, you see in A, B, C, there are duties of fire marshal, insurance commissioner and the bank examiner. Now, those are presently duties or responsibilities of the treasurer's department. There is some question in the minds of the committee whether all of those functions should be continued under the treasurer's department. The nature of the work as well as the responsibilities of the job are such that it is felt that they might be better placed in some other department. However, that is just put there as a matter of calling the subject to your attention and that, naturally, would be left to the discretion of the legislature.

Are there any questions that anybody would like to ask about the chart?

ANTHONY: I think it would be well if we could have a statement from the chairman of the committee as to the relationship of the chart to the existing territorial government. I assume it is allocated on some such basis. Is it not, Mr. Chairman?

WHITE: Well, that's what I was explaining. These duties here are presently handled by the budget director with the exception of the examination of vouchers and the establishing of accounting policies and procedures, which are handled by the present auditor. Also, the collection of bank and estate taxes that are presently handled by the treasurer, under this proposal would be transferred over to the commissioner of taxes. That also applies to the audit of the counties which is presently handled by the bank examiner.

CHAIRMAN: In other words, Delegate White, those three offices there correspond to offices of the present Territory; that is, the commissioner of finance represents the budget director, and the treasurer, the treasurer, and the commissioner of taxes, our tax commissioner. Is that right?

WHITE: That's right. The only major difference there is a change in title as far as the budget director is concerned and separating the post-audit functions from the pre-audit functions.

Now, as stated in the report, it is not proposed that the respective functions be enumerated in the Constitution, but it is hoped that the description set forth therein will be a help to and used by the legislature in defining their duties. In accordance with the recommendations the Committee on Executive Powers and Functions, it is proposed three officials be appointed by the governor with the advice and consent of the Senate to serve at the pleasure of the governor. There is some support for the belief that because of the specialized character of his work and the dependence of the governor upon him in connection with fiscal affairs of the State that the appointment of the commissioner of finance should not require Senate confirmation.

Now, to get to the proposal itself. The first five sections cover the budget and appropriations. These provisions contemplate that the governor will be responsible for developing an over-all financial program either annually or every two years and it will be submitted in two parts, accompanied by bills to cover appropriations, new taxes or borrowings as may be required. A full chart has been developed to illustrate the course of action required under these proposals and I would like to refer to that even before we get to the proposal itself because there are a number of different sections of the proposal involved and I think it might bring about a clearer understanding of what is proposed.

Now, under the recommendations of the committee, as I stated a minute ago, the governor would be required eventually to develop an over-all financial program for the Territory. Initially, the departments—I just mentioned a few of the departments—the regents of the University, Department of Public Instruction, and other administrative departments, would be required to prepare a budget in two parts: one, covering their ordinary operating expenses which, incidentally, would also include any incidental equipment requirement for all of the departments, and then a capital budget. And those two budgets then would clear over to the commissioner of finance who would analyse them and, after full analysis, would then consult with all of the department heads concerning any of the recommendations made. After that work had been completed, he would then develop his findings and recommendations and that would serve as a basis for the general appropriation budget and also for the capital expenditure budget.

Now, those bills then would then clear over to - - He would also have to determine what the anticipated revenue was and also determine whether other additional means of providing revenue would be necessary, that is, the form of additional taxes. Then the budget would then go to the governor for consideration and, if it met with his approval, it would then pass on to the legislature for consideration. It is being proposed that the general appropriation bill be given first priority and that action on other bills other than special

bills, for instance the deficiency appropriation or the bill to cover the expenses of the legislature, beyond those two bills no other bills would take -- would be considered until after the bills had passed final reading by both houses of the legislature.

Now, you see there that it's proposed that on the general appropriation bill that any changes in the general appropriation bill would be limited to adjustments as between items within the bill and that the legislature could not exceed the amount -- the over-all amount recommended by the governor, but they could make switches in between departments. Any other bills -- any increases over that amount would have to be covered by separate bills, each bill applying to a particular project or purpose, and thereafter the bills would then go through the legislature as well as any bills that were introduced by members of the legislature, then go back to the governor for approval and under the sections of this proposal as provided, the governor would also be vested with the authority to make item vetoes, that is, by reducing or deleting amounts. And in those instances it would have the same effect as a veto of a whole bill and the legislature could override the veto by a two-thirds vote of both houses. And, thereafter, it's provided that in the handling of the -- or the control of the expenses, that the governor, under two particular situations, would be vested with the power to reduce appropriations, that is to reduce expenses below the amounts appropriated: One, if the revenues fall below the estimates on which the appropriations were based, and two, if such authority is given to them -- given to the governor specifically by statute.

As far as the allocation of funds is concerned, the purpose of that is to provide that there be periodic allocations of funds because, as pointed out in the report, under the present system the budget is really developed about three years in advance and the purpose of making these periodic allocations is not necessarily to interfere with the actual operation of any of the departments of government, but more to require that the governor can make allocations on a quarterly or some other basis to take care of work programs that are developed by each of the respective department heads. Now, the advantage of that is quite obvious in that if the governor didn't have the power to make these allocations, why it could conceivably develop that any one department could spend a very substantial part of their budget in the first quarter, and therefore it would be very difficult to cut down on expenses if it became necessary due to a falling off in revenues.

It's not proposed in here, and I think it's covered quite clearly in the report, that whatever legislation is enacted to implement this procedure could require that in making any reductions under those situations where the revenue falls below estimate that the governor would be limited in making those reductions to making them by amounts instead of by being able to tell a department head that he shouldn't be able to employ this man for this particular purpose or that he shouldn't buy this desk or that he shouldn't -- he ought to put off the purchase of a typewriter until the following quarter, or something like that.

I know that there has been some criticism of the present system due in part, in my humble opinion, to ineffective administration when the budget director goes to the extent of instructing the department head what items he should have and what items he shouldn't have, and I think the report is quite explicit on that. And, of course, it should be very -- the legislation should be very carefully drafted to make sure that that idea is carried out in the law.

SAKAKIHARA: May I ask the chairman of the Finance Committee a question? With the holding of budgetary sessions during the odd years, Mr. White, won't we be eliminating a lot of those powers, or the necessity on the part of the executive department to practice the austerity program that they have now in force?

WHITE: You mean to alter it?

SAKAKIHARA: No. If this Convention should incorporate in the Constitution to hold an annual session of the legislature, one known as a budgetary session and the other during the even years a general session, wouldn't it eliminate many of these things which the present administration is doing along the line that you pointed out?

WHITE: No, I wouldn't say altogether. What you would do is to -- you'd cut down the period over which you have to work your estimates, but even on an annual session, your estimates would still be prepared a year and a half in advance and things can change very radically within the period of a year and a half. I think that the number of times that the governor might have to exercise that power would be materially reduced by your annual session, but I don't think that it would be entirely eliminated.

SAKAKIHARA: I noticed from column 3 on the chart there Mr. Chairman, "Executive departments," you are taking away the policy-making power from the duly elected officials, namely the legislature, and investing it to the governor. Is that correct?

WHITE: Taking away what power?

SAKAKIHARA: The appropriations there.

WHITE: No, no. He passes it on for the legislature to act on. In other words, he approves the general appropriation bill and the capital -- general appropriation budget and the capital expenditure budget as prepared by the commissioner of finance. It goes to the governor for approval, who thereafter sends it on to the legislature for action.

SAKAKIHARA: It's still there under the caption of "Legislative Functions," "amendments, decrease or change but no over-all increase." Is that right?

WHITE: No over-all increase on the general appropriation bill but the legislature can increase by initiating separate bills.

SAKAKIHARA: But won't that be the general function, the policy of the legislature rather than to spell it out and say you cannot increase the budget as submitted by the budget director or the commissioner of finance to the legislature without introducing a separate bill? Isn't that policy-making a privilege of the legislature without the approval or limitations on the legislature?

WHITE: I don't think that it encroaches on the powers of the legislature at all because they still have the right to handle it by a separate bill. I think that one thing that it will do will assure the early passage of the general appropriation bill instead of having it held up by the legislature until the dying hours of the session.

SAKAKIHARA: It won't necessarily hold it up to dying night of the session. I think the legislature can pass general appropriation bills first without these prohibitions in the Constitution. I think it's a policy of the legislature. They should be left free—they are elected officials answerable to the people provided they make adequate provisions for revenues.

WHITE: I don't think that there's anything unreasonable about that because, after all, we're talking about a strong

executive and he spends a considerable amount of time developing this program and he comes in with a program.

SAKAKIHARA: That is true.

WHITE: Now it's quite possible that the legislature may not agree with him and they have the right to disagree with him. The only requirement there is that if they do disagree with him and they are going to exceed - - if the general appropriation bill provided for $50,000 and they are going to exceed that amount, whatever the excess was would have to be covered by a separate bill.

SAKAKIHARA: Provided the legislature would enact a sufficient revenue measure to provide the additional increase without a separate bill.

CROSSLEY: Point of order.

CHAIRMAN: State your point.

CROSSLEY: It seems to be that we're beginning to debate sections of this proposal without having any part of the proposal before us. We are taking out a certain section and debating it without that section yet being before us.

CHAIRMAN: The Chair feels that your point is well taken. It has allowed the questions to be put by Delegate Sakakihara in the point of allowing it to go in as far as possible, but I think your - -

SAKAKIHARA: I want to clarify - -

CHAIRMAN: Your points are merely points of clarification.

SAKAKIHARA: That's right.

CHAIRMAN: So that's a matter of debate.

SAKAKIHARA: In view of the fact that we have a chart here, the chairman of the Taxation and Finance Committee is trying to explain to this Committee of the Whole from this chart here. [Facsimile of chart on page 440.]

CHAIRMAN: Delegate Sakakihara, I believe the points have been clarified, so that there are differences of policies, so that if Mr. White will proceed in his explanation.

CROSSLEY: I wonder if Mr. White would be willing to follow out, say, on his tri-borough bridge here along the solid highway lines and the broken highway lines an item beginning with the D. P. I., say, and going clear through to the governor, back, and how it gets into the legislature, following one course all the way through and what the various lines, solid and broken, mean on just one item.

CHAIRMAN: Well, the Chair hasn't thought to direct Delegate White how to present this matter, but I believe he prefaced his remarks that he was proceeding on a certain basis, showing the procedure. He's at this point of stating the procedure. Do you want to follow the suggestion made by - -

WHITE: Well, I would be very glad to do whatever is going to help bring about a clear understanding of the proposal.

CHAIRMAN: If that is the desire of the committee, I guess you do that then, Delegate White.

WHITE: Well, as you see here, if we take the D. P. I. budget, the D. P. I. budget would be developed - - would be prepared in two parts, the operating budget and the capital budget. Thereafter, that budget would go to the commissioner of finance who would analyze the budget and if there were differences of opinion—and I can't imagine that there wouldn't be between what is recommended and what the commissioner of finance may not believe is advisable—in any event, he may want clarification on some of the items. Then he would go back and consult with the head of the D. P. I., and once having satisfied himself on that particular thing, he would then develop his findings and his recommendations to the governor and the D. P. I. general operating expenses and capital budget expenditures would then be incorporated as part of these two bills, the general appropriations budget and the capital expenditure budget. Now, that would then go to the governor for his approval. As a related activity of that, there would have to be revenue bills, appropriation and revenue bills drawn up to support whatever this - - the recommendations developed by the commissioner of finance, and those would go to the governor who would then send them on to the legislature for submission.

The general appropriations bill, that would receive prior - - preferred action, come down and be handled here. As you see, the general appropriation then would come down here and would come over to the governor to review any changes that had been made up here. If we assume that the total of the general appropriations budget was $40 million, the legislature could make changes in between items there, but it could not exceed over-all $40 million. Now, when it comes down here, the governor would then have the right to reduce or to strike out or reduce items, after which, then, the general appropriations bill would go back to the legislature who would then be in a position to override the governor if they did not agree with the changes that he made.

Now, the same procedure would follow on your capital improvement budget except that the capital improvement budget might come through with a number of bills, because they'd all be separate bills on each project and the legislature wouldn't necessarily have to consider all of them and act on all of them at one time.

CROSSLEY: I had one more question along the highway here. The broken line from the governor back to the "Findings and recommendations" wasn't explained as to just what that function was and how it worked or the relationship between the "Determination of anticipated revenues" and the "General appropriation bill."

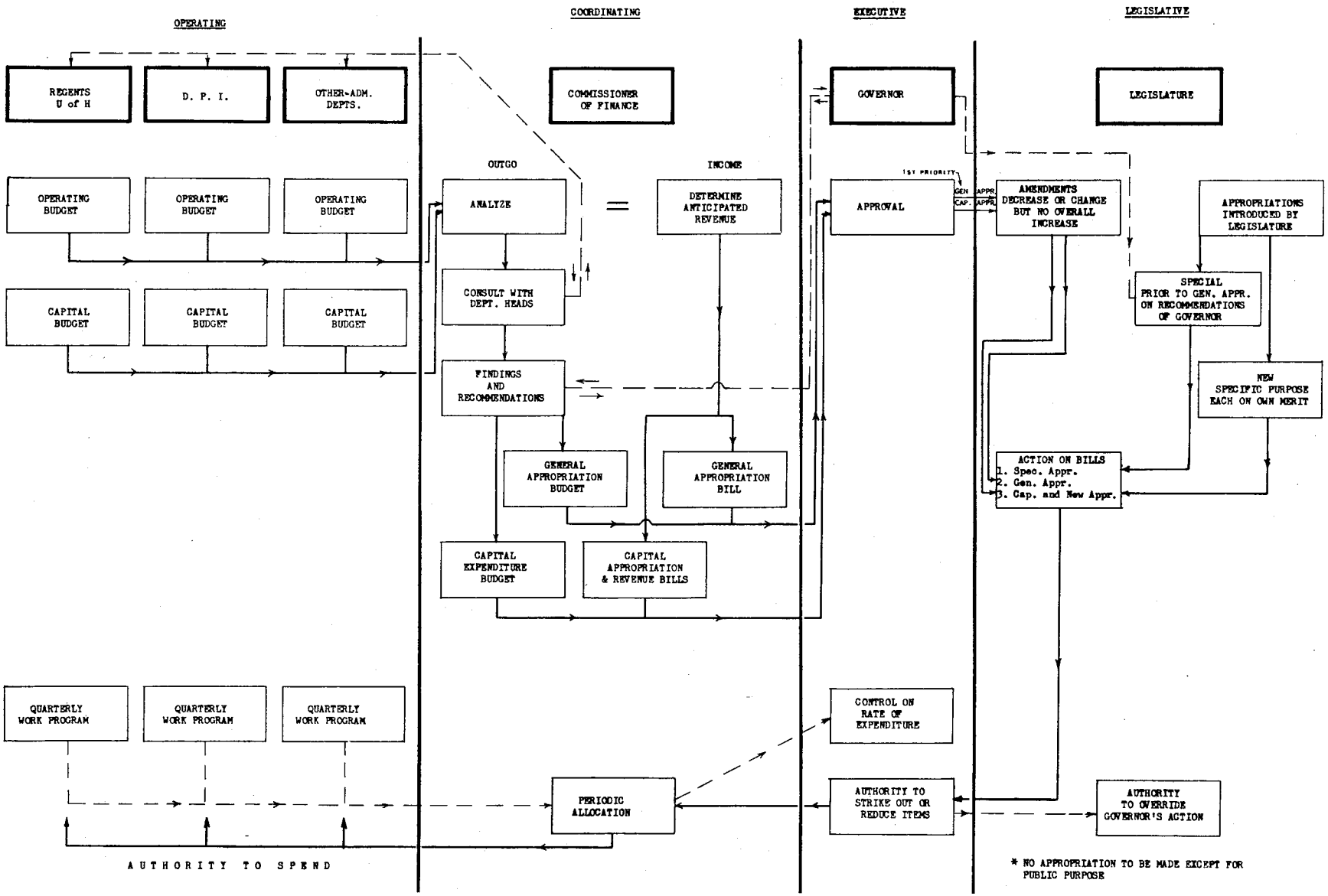
WHITE: The only difference in the broken line is that it indicates contact but no actual working or line arrangement. That's all.

DOI: I have two questions. The first is in regard to the legislative column there, headed "Amendments." That would mean that the legislature can refuse to appropriate anything for a specific item. Is that right? "Decrease or change but no over-all increase." Now, suppose the legislature does refuse to appropriate any money for a specific item. When that particular item comes down to the "Executive" column on the bottom where it says "Authority to strike out or reduce items," the governor does not have the power or even the power of suggestion to say that that item is necessary, it should be - - some appropriation should be made so that if the item was unduly reduced by the legislature that an increase should be made. Is that correct?

WHITE: Well, the governor would have the right to make the adjustments in the general appropriation bill to conform with the amount that he originally proposed and if he deleted some items, it might result in increasing other items.

STATE BUDGET PROCEDURE

(Presented to The Constitutional Convention by Committee on Taxation and Finance June, 1950)



DOI: I'm referring to a specific item.

WHITE: Well, a specific bill or a specific item?

DOI: Specific item in the general appropriation bill.

WHITE: Well, he would - - if a bill came back to him after the adjustments had been made by the legislature, he would have the opportunity to reinstate the items that he originally proposed to be - -

DOI: No, no, Section 5 doesn't say that.

WHITE: That's right, he wouldn't have the right. If the legislature reduced it, he wouldn't have the right to increase it. I was confused.

DOI: I don't want to get into a debate, but would you state the reasons why he shouldn't have the power?

WHITE: Well, because the legislature has considered the appropriation and that's the amount of money that they've appropriated. Now, if he doesn't think it's right, he can veto the bill.

DOI: If I say what I want to say I'll be getting into a debate, so I won't.

LOPER: Would the chairman of the committee point out the answer to this question? If we are talking about a $40 million budget and the legislature should decide to cut that to 35 or raise it to 45, can you show us on the chart where that action would originate and where it would be traced through from the commissioner of finance to the governor to the legislature? I'm speaking of revenue rather than expenditures in budget.

WHITE: You mean if the governor cuts the general - - Are you talking about the general appropriation bill, now?

LOPER: I'm not sure that I know. I'm talking about the question of whether we're going to raise more or less money in taxes. Where does that originate? How do you trace it through?

WHITE: Well, the over-all financial program submitted by the governor to fund the general appropriations bill and the capital expenditures may either require borrowings or additional taxes, and if they do, then at the time that the budget is submitted by the governor, it will include those two items. In other words, it will be a complete financial program for funding the program that he recommends.

LOPER: If the recommended budget then went over the amount that existing taxes might raise, it would be an obligation on the part of the governor to suggest additional taxes to cover it. Is that your intention?

WHITE: Yes. In other words, in making his recommendations he will have to show what the anticipated State revenues are, and if they aren't adequate to take care of your general appropriation bill and your capital improvement budget, he'll have to submit other bills to take care of the additional revenue that is necessary.

HOLROYDE: In case the finance commissioner and department head can't get together, I imagine they would both go to the governor to settle their difficulties. The finance commissioner doesn't have the power, does he, to make the final decision on the departmental budget?

WHITE: Well, the governor has the final decision, but the governor may be influenced by the findings and recommendations of the finance commissioner, but that doesn't preclude a department head going to the governor.

KELLERMAN: May I ask a question? If your general appropriation bill, say, runs to $40 million, and the legislature by special bill increases the appropriation for, say, the D. P. I. —we'll just take a department there for example —and suppose the revenues, estimated revenues, after the legislature has adjourned, the estimated revenues appear to be less than those originally anticipated and so the governor then starts reducing or controlling the rate of expenditures, is he allowed to actually reduce? For instance, you've got a quarterly program. If you divide the two years into eight quarters, is he allowed to reduce the special appropriation bill at a greater rate than the general? Is there any priority of whether the appropriation bill items shall take precedent as to rate or as to volume over the special appropriation bill which may have been passed by the legislature for the same executive department?

WHITE: No, because your regular - - In other words, any capital expenditure bill would be for specific purposes.

KELLERMAN: I don't mean the capital, I mean the special appropriation bill to grant an extra general operating budget appropriation to the department. I am foreseeing that, say, that the legislature reaches the maximum permitted by the governor's general appropriation recommendation for the department and sees fit to enact in addition a special appropriation bill for that same department for operating budget. Do they stand on the same footing when it comes to rate of expenditure or reduction, or does the general bill take priority over the special bill on any reduction in case of failure of anticipated revenue to reach the amount anticipated?

WHITE: I'd say that they both fall into the same category.

KELLERMAN: They go into the same category.

Now, there's one more point I'd like to ask. Does - - is there any provision in your proposal, or is there a contradiction in the proposal to the possible power of the legislature to decide that certain departments, if cuts are necessary in the operation of the government because of deficiency of funds, that certain departments or certain items shall not be cut at all because the legislature may consider those departments or items to be essential to the public welfare in the amounts appropriated, rather than any over-all cut or any decision on that point by the governor? Do you make room for that possible exercise of power by the legislature, to designate certain specific departments or specific phases of governmental operations that shall not be reduced at all? It seems to me that would be a very worthwhile power in the legislature. Does your proposal permit that? As I see it, it allows only a general across-the-board cut and possibly would not allow the legislature to have the power to designate items that shall not be reduced at all.

WHITE: The proposal doesn't provide that it has to be a uniform cut in every department. But whatever cuts are made by departments would be made by dollar amount, that's all. There's no specific requirement that if revenues fall off ten per cent or if a cut in expenses of ten per cent is necessary, that he has to cut everybody across the board ten per cent.

KELLERMAN: Then the governor is allowed the freedom of cutting one department and not another department. Is the legislature given the power then to designate which department shall not be cut?

WHITE: No.

KELLERMAN: Well, it seems that's a matter we should take up.

LOPER: Will the chairman of the committee assist us in our thinking by answering a specific question? If the gross income tax is two and one-half per cent, and the legislature should decide to change that to two and one-quarter per cent or to two and three-quarters per cent are they free to do so under this plan of yours, and where would that act originate?

WHITE: You mean if they change the taxes?

LOPER: Yes.

WHITE: This wouldn't provide for that at all. All that this is, is to cover the budget procedure and has nothing to do with taxes, as such.

LOPER: In other words, Delegate White, what you're saying is that the legislature still has the power to raise taxes.

WHITE: Yes, it's still the responsibility of the legislature to raise taxes.

ASHFORD: May I ask a question? You provide for the determination of anticipated revenue by the, what is it, the financial commissioner? Is that -- Do you consider that as binding upon the legislature, or can they just say, "Well, we think we're going to have $2 million more and so we'll appropriate that much more."

WHITE: Well, they can say that and, of course, if they make the appropriations it makes the cuts that are necessary even more severe.

Now, I think that -- my experience with budgets has been that when it comes to anticipating revenue, as a rule, they are on the low side, and when it comes to anticipating expenses, they are generally on the high side. So I think there is a certain amount of cushion in there under any budgetary procedure.

The legislature, on the other hand, may disagree with the governor's recommendations and say, "Well, we're going to get a million more in revenue than you anticipate," and they may go ahead and appropriate on that basis. But, if they do, it would be necessary -- and the revenues didn't materialize, it would be necessary for the governor to make more severe reduction.

HEEN: As I understand it, the general appropriation bill is designed to cover all operating expenses of the State. Is that correct?

WHITE: Yes, all operating expenses plus equipment necessary for the respective departments.

HEEN: Now, I take it then that an appropriation such as has been made in the general appropriation bill, in the past, appropriation to the Hawaii Visitors Bureau, would have no place in that general appropriation bill because that is not designed for operating expenses of the government. Is that correct?

WHITE: That's right. I'd say that would be a special purpose bill.

CHAIRMAN: Unless you establish a Territorial Visitor's Council as proposed by your chairman in the last session.

HEEN: You mean to make that a department of government?

CHAIRMAN: That's correct.

HEEN: That might get around that.

Now, the other question is this. I take it that the item of contingency fund allotted to the governor would have no place in the general appropriation bill where you would find it now.

WHITE: Oh, I would think that you could -- the legislature could still give him --

HEEN: By a special appropriation bill. Is that correct?

WHITE: That's right.

HEEN: Now, is there anything in the committee proposal to prevent the appropriation of public funds for the purpose of the Hawaii Tourist -- Visitors Bureau?

WHITE: No. In the initial proposal that we drew up for items that were permitted we endeavored to cover that as well as grants to hospitals, and were advised positively, as you will see by the letter attached to your proposal -- to the committee report, that the attorney general says that it's unnecessary to mention those specifically for the reason that they are covered by the doctrine of public purposes. There is a letter in there attached to the committee report.

ASHFORD: To go back to that question, the determinatio of anticipated revenue. In effect, have you not frozen the power of the legislature to make its guess when you say, in Section 3, that, "The legislature may make any amendments to the general appropriations bill, provided such amendments shall not result in increasing the total amount in the bills recommended by the governor." In other words, isn't that total amount based on the determination of anticipated revenue?

WHITE: Well, they would be frozen here, but they have the right to put in a separate bill for a particular purpose, so that they can exceed the general appropriation bill by separate bills.

ASHFORD: And your proposal does not require them to provide methods of financing that special appropriation?

WHITE: Well, I think that that would necessarily follow when it came back to the governor, if he vetoed the items because of the inadequacy of revenue.

I think that if there are no other questions, it might be well to get this thing under way if I move the adoption of Section 1 of this Committee Proposal No. 10.

CROSSLEY: I second the motion.

WHITE: I think that there has been enough discussion on it. It doesn't require any further explanation, but if there are any of the other members of the committee would like to talk on it, why I'd be very -- Nils, would you like to?

H. RICE: We have always taken the procedure that to adjourn we have to go into general session. I think the committee itself could take a recess 'til half past one, at this time, ten minutes to twelve—and I don't think --

DELEGATE: Second the motion.

APOLIONA: I so move that we recess until half past one this afternoon.

HEEN: Point of order. I think that what we should do is rise, report progress and ask leave to sit again.

CHAIRMAN: In other words, you state your point of order, Delegate Heen. Unless under suspension -- well, I don't know whether you can suspend the rules. I think Delegate Heen's point of order is well taken, so the motion is ruled out of order, for the present time.

HEEN: I so move that this committee rise and report progress and ask leave to sit again at half past one.

DELEGATE: Second.

CHAIRMAN: All those in favor of the motion please signify by saying "aye." Carried. Unanimous.

Afternoon Session

CHAIRMAN: Committee of the Whole is now meeting. As I recall, the motion before the committee was the adopti of Section 1 of Committee Proposal No. 10. Any discussion If there is no discussion, the Chair will be glad to put the motion to a question. All those in favor --

DOI: I have something to say on this. I'm not very clear on the section here. To me, it appears that the first sentence in Section 1 and the last sentence in Section 1 deal with the same question. Therefore, they are repetitious. It speaks about - - both sentences speak about the duty of the of the governor to submit a budget to the legislature and the last sentence - - the only dfference is that the last sentence speaks in a little more detail. That's about the only difference. I would like to ask the chairman if that is not correct.

CHAIRMAN: One is the budget and the other is submitting the budget together with the bill to the legislature. One deals with the preparation of a budget and the other deals with the preparation and submission of the bill to the legislature.

DOI: In other words, if you have the budget and the bill together, the last sentence you are referring to, it is not necessary to have the first sentence because that covers it.

CHAIRMAN: Well, the first one provides that - - the first part of it provides that at such time as the legislature shall prescribe, the governor shall submit to the legislature a budget.

DOI: And the last sentence on that point says, "shall be submitted by the governor to the legislature and shall be introduced therein as soon as practicable."

TAVARES: Perhaps I can help clarify that. It's my understanding that the legislature generally likes to have the governor submit the budget to the members of the legislature some time before the session opens so that they can study it before the session opens, and that first sentence requires that whatever time the legislature fixes, the governor shall submit the budget that period before the session so they can study it. The last sentence, as I understand it, provides that when the legislature meets, the governor must submit a bill or bills for the appropriations to implement his budget, and I think that you do have separate functions, and it isn't necessary for the governor to submit the bill as early as it is to submit the budget.

CHAIRMAN: Any other questions?

NIELSEN: Isn't this legislative? I don't see where this has any point of being in the Constitution. It's strictly legislative and it's always been handled that way. It's certainly extending the wordage of our Constitution. I'd like to know whether we should have it in the Constitution or not.

WHITE: I think it sets forth a basis on which this shall be done, that's all. It's a customary provision in a Constitution.

CHAIRMAN: If there are no other questions, the Chair will put the question. All those in favor of the adoption of Section 1, please say "aye." Opposed. Carried. That was Section 1.

LAI: I move for the adoption of Section 2.

CROSSLEY: I second the motion.

CHAIRMAN: Any discussion? If not, the Chair will put the question.

HEEN: There is a part of that bill - - I mean section which I don't understand. It says that, "No appropriation bill, other than bills to cover the expenses of the legislature, shall be passed on final reading by either house until the general appropriations bill shall have been transmitted to the governor, unless the governor has recommended the immediate passage of such appropriation bill, in which case, such a bill, if enacted, shall continue in force only until the appropriation bill shall by its terms become effective." Just what does that last part mean? I don't quite understand it.

CHAIRMAN: Will the chairman of the committee or Mr. Tavares - -

TAVARES: I think the delegate who spoke last has a point there. It may not be clear on the face of it, but actually what that section is intended to do is this, to prevent the legislature from passing any other appropriation bill except the appropriation bill, until the appropriation bill has been passed and sent to the governor, except for such special or emergency appropriation bills which the governor may recommend to be passed before the general appropriation bill is passed, or bills for the legislative appropriations. That is the intent of this section. In other words, the words "unless the governor has recommended the immediate passage of such appropriation bill," doesn't refer to the general appropriation bill, but to the first type of appropriation bill mentioned in the first line of this section.

HEEN: Then what does this mean? That that bill "shall continue in force only until the general appropriations bill shall by its terms become effective."

TAVARES: The explanation for that is this. As a rule, as we know, the legislature meets before the end of a biennium, or if we have annual sessions, it will meet before June 30th of each fiscal year. And generally the appropriation bill takes effect the subsequent July 1st. Now ordinarily, the type of appropriation bill the governor will recommend to be passed before the general appropriations bill will be deficiency appropriations bills which have to take care of the remaining fiscal period before the beginning of the next fiscal period, and therefore there will be no trouble there because the deficiency period will end when the effective date of the new appropriation bill is reached.

ANTHONY: Mr. Chairman.

CHAIRMAN: Are you through, Delegate Heen?

HEEN: Not through yet, Mr. Chairman. Why should it be limited that it shall remain effective, that is remain in force, only until the general appropriations bill shall by itself become effective? If you pass the deficiency appropriations bill, it remains in force until it works itself out. It should not be terminated when the general appropriations bill goes into force.

TAVARES: This is not intended to change the general law which is in existence under similar provisions which are followed all the time that if, under a deficiency appropriation bill there has been a what we call - - what's the word now, a commitment? No, if there's been a commitment or the amount or obligation has been incurred, then naturally the appropriation bill will carry over. We have that all the time under appropriation bills that say that in appropriations for the fiscal period from July 1st of one year to June 30th of two years from that date, every item on which there is a commitment before that period is carried over by the auditor automatically, and there will be no harm in doing this. All that has to be done is to let a contract or make an order or do something that starts the obligation to expend the appropriation and the appropriation automatically carries over beyond the fiscal period. That is just common ordinary financing and it's done today.

ANTHONY: I'd like to ask the chairman or Mr. Tavares a question. The third line from the bottom of the section, "such bill." What does that refer to?

TAVARES: That "such bill" refers to the special type of appropriation bill, such as deficiency bill, which might be passed before the general appropriation bill is passed.

ANTHONY: I don't find that in the language. Does it refer to "such appropriations bill" in the sentence immediately before it?

TAVARES: Yes, and the words, "such appropriation bill," refer to the first use of that word in the section. You notice the general appropriations bill is capitalized.

ANTHONY: That's the point, and I think that being so, "such bill," referring to "such appropriation bill" in the sentence immediately preceding it, and "such appropriations bill" referring to the "general appropriations bill," the same thing will be accomplished if you put a period after "governor" and delete the remainder of the section.

TAVARES: I do not think so. I don't think that will be the result. It may be that that section is ambiguous, but I don't think that that's the way to resolve the ambiguity.

CHAIRMAN: Delegate Crossley is recognized.

HEEN: As I understand it - -

CHAIRMAN: Delegate Crossley is recognized.

CROSSLEY: As I read this section, this has to do with legislative appropriations procedure and not the general appropriations bill. It simply says that before the general appropriations bill shall have been passed or even transmitted to the governor there can be emergency bills passed, and they would go for the balance of the biennium. In other words, they couldn't pass an emergency bill beyond the end of the fiscal period.

TAVARES: That's correct. If it were to go beyond that, it should be included for the period beyond that in the appropriation - - in the general appropriations bill for the succeeding fiscal period.

CROSSLEY: And therefore it would seem to me that the last portion of that sentence would be necessary because that does spell out exactly that. It says, "shall by its term become effective" - - "and shall continue in force only until the general appropriations bill shall by its terms become effective." Well, the general appropriation bill does not become effective before the beginning of the next fiscal period, the next biennium. Therefore what they are providing for here is the deficiency spending that has taken place; they are providing the funds for that and any other emergency, such as the legislative cost itself, up until the time the general appropriation can go into effect. Therefore I think all of the language is necessary, and as I read "such bill" it refers back to the special legislation.

TAVARES: That is correct, and if there is any ambiguity it can either be resolved here by amendment or the Committee on Style can take care of it.

SHIMAMURA: I would suggest the insertion of the word "special" after the first word, "No special appropriation bill." And also in the fourth line from the bottom, "immediate passage of such special appropriations bill," to clarify the situation.

TAVARES: I'm not quite sure that would do. That is a suggestion that might be considered and I would suggest that if this section otherwise finds approval that we tentatively approve it and I will try to prepare an amendment before we are through going over this article to try to bring that out.

SILVA: I assume that the intent here is provided that we are going to meet annually, and we have not decided yet as to the membership of the House nor the Senate and the apportionment. This proviso, I believe, was with the intent that we were going to meet annually, and we could probably work it this way. I think we should defer action until the Legislative Committee comes out with the picture, whether we're going to meet annually or we're not going to meet annually and how big or how small our Senate is going to be. I move that we defer action on this section till later on.

WHITE: May I answer that, Mr. Chairman. That provision would apply whether you have annual or semi-annual, I mean biennial sessions.

SILVA: I don't know, I think that some of the members of this committee, if we were not to meet annually, we probably wouldn't act favorably on this section. If we were to meet annually, there may be a different story.

NIELSEN: It seems to me this is going to make it very difficult to move things along in the House, and if we have a 40 day session it's going to create further difficulty because it says here that, "No appropriation bill," and then you can skip the next few words, "shall be passed on final reading by either house until the general appropriations bill is passed." Well, that means that if the House passes the appropriation bill and sends it over to the Senate, then their Finance Committee and the entire delegation have to stand by on all appropriation bills until that has gone to the governor from the Senate. They could waste two or three weeks in that way. There would be conferences and everything else before it gets to the governor and meantime the Finance Committee and the House couldn't pass any appropriations or do anything about them.

WHITE: The purpose of this is, of course, Mr. Nielsen, to speed the enactment of the general appropriations bill before you consider other appropriations. Now the legislature can provide to accelerate that any way that they want, to be considered simultaneous by both houses if necessary, and then meet in conference.

HAYES: There's a question I want to ask. Point of information.

CHAIRMAN: State your point of information.

HAYES: That supposing it came from the House, the appropriation bill, then went over to the Senate, and after it passed the Senate it went to governor, and then, if the House is not satisfied with it after it has gone to the Senate and up to the governor, can they still override the governor's veto?

CHAIRMAN: Are you referring to the general appropriations bill or the special?

HAYES: Yes, to the general appropriations.

CHAIRMAN: The general appropriations bill?

HAYES: Yes.

CHAIRMAN: Will you answer the question, Mr. White?

WHITE: There's nothing to prevent the - - otherwise it goes through the regular course. If the House or the Senate aren't satisfied with it, they can override the governor's veto.

CROSSLEY: I read nothing in this section that would prohibit the Finance Committee of the House or the Ways and Means of the Senate from doing their work and acting on other appropriation bills. There's nothing to foreclose them from continuing the consideration. It simply sets up a priority in getting the appropriations bill out, and to that point I think it has a great deal of merit. But there's nothing in here that would stop the work of either of those two committees except in their final enactment of such legislation.

CHAIRMAN: Mr. Crossley, may I direct your attention to the fact that unless a special appropriation bill has been recommended by the governor, doesn't the language there prohibit the legislature from considering any special appropriation bill?

CROSSLEY: As I read—and perhaps the chairman or one of the members of the committee should answer—but as I read that, if the governor disapproves of the appropriations bill as it comes up to him through the machinery that has already been set up, the House or the legislature can override any recommendations or veto that he might make and continue on from that point. If they override his veto, then I would say that there is no question because he has no further

consideration of it after they have gone over his veto, and it would have been an appropriation bill that would have passed. That's correct, Mr. Tavares?

TAVARES: Yes, that's correct. I'd like to point out that words used in this section are that "No appropriation bill, other than bills to cover the expenses of the legislature, shall be passed on final reading by either house." The way I read that word "final reading," it means what we call the sixth reading; that is, whatever reading in either house makes the bill final shall not be done until the general appropriations bill passes, so that a house could pass the bill on third reading and it wouldn't be final reading. But when it gets to the second house, it might be third reading in that house, or if it was amended, it would be the final reading in the house in which it originated which would be the final reading. That's the way I interpret that section, and therefore the word "final" does not prevent either house from passing a bill. It prevents either house from making the final passage of a bill.

WIRTZ: I'd like to call to the last speaker's attention the language that "No appropriation shall be passed on final reading by either house."

TAVARES: That is correct, but either house might have the particular final reading. In case the bill originates in the House, it goes to the Senate, is amended, it comes back to the House, the final reading is in the House. But in case it isn't amended, the final reading is in the Senate. There is your definition of "either," as I understand it.

HEEN: My point is this, though. Supposing a bill, a deficiency appropriation bill is introduced by the House and the governor approves the immediate passage of that bill and it provides for the payment of various claims, now the language here used is that that act or that bill if enacted shall not continue in force -- shall continue in force only until the general appropriations bill becomes effective. That's correct, is it not, as far as I've gone?

WHITE: Yes.

HEEN: Then these claims are not paid by the end of June 30, or before July 1 when the general appropriations generally goes into effect, then those claims that are not presented before that time can never be paid because that appropriation bill is no longer in force.

WHITE: If there is no commitment against the funds at that time, then they would lapse, but they will be covered by the new general appropriations bill.

HEEN: I don't think that's true. The new appropriations bill is supposed to take care of all operating expenses starting from July 1, and is not intended to take care of any past claims. What I have in mind is this. If you say that the bill which has become law is no longer in effect on June 30 of the particular year, then claims which have not been paid or supposed to have been paid under that deficiency act cannot be paid because the act has gone out of effect. What I think they have in mind is this, that the funds available under the deficiency bill shall be available only up to the time the general appropriations bill goes into effect. The law remains in force nevertheless.

MAU: As I read this section, it is rather restrictive. It does not give the opportunity to the legislature to pass emergency appropriations. Say that along the Hamakua coast they would have a plague and we have to wait a month for the general appropriation bill to pass, I don't think the legislature could appropriate emergency money to take care of that area. Likewise, if we have another eruption of Mauna Loa and the legislature wants to do something about it, it wouldn't be able to do so until this general appropriation bill is passed.

I want to call the attention of the delegates to the situation which faced Wyoming in 1949 in January. They had a snowstorm which killed thousands of cattle. Senator O'Mahoney got an appropriation for Wyoming in two days of three million dollars for the State of Wyoming. Now if they had a restrictive section like that, Congress could not have made the money available.

WHITE: There is provision in there. The latter part of the provision takes care of that very thing. The governor can recommend the passage of a special bill.

HEEN: The trouble with that is if they appropriated, say, three million dollars to take care of the cattle on Parker Ranch and it takes about six months to take care of that situation there, but that money will not be available to the full amount if under the terms of this bill the special bill goes out of effect on June 30.

WHITE: That's true, unless it is encumbered.

C. RICE: The legislature is meeting in February until sometime in the end of April or first of May and that's when the current appropriation bill is in effect, and they make an additional appropriation for a deficiency. It runs to June 30, and all items that are not contracted for expire as of June 30 and the money lapses to the treasury. But anything that's contracted for and if some of the bills in the last legislature -- the additional appropriation bills lapsed last June 30 but they've been contracted for and not paid, but the budget officer finds out they are contracted for, they are still in effect. The claims bill was always a different bill, I think the senator will remember, than the additional appropriation bill. I see nothing wrong with this for the additional appropriation bill.

WHITE: It seems to me on that particular thing, that you are bringing up a very unusual type of situation which could be handled by a bill, a special bill that would lapse on June 30th, but while the legislature is still in session, they could consider this subject, and if it wasn't necessary to appropriate additional funds, that could be done after the general appropriation bill is passed. This is only to accelerate or expedite the passage of the general appropriation bill, and would not prevent the legislature from taking care of the situation that Judge Heen brings up.

CROSSLEY: I would like to point out to the previous speaker from the fifth district that these are State funds that we are talking about. The funds that Senator O'Mahoney got on the cattle relief—O'Mahoney—got on the cattle relief were federal funds for the most part because I followed along about that time trying to get a few hundred thousand dollars of fruit fly funds. We found it very difficult, whereas Wyoming, because it already was a state, had no particular problem in getting federal funds for quick relief from that, whereas we had an invasion of fruit fly here and found it very difficult to get federal aid because we weren't a state, but these funds that he refers to were primarily federal funds.

MAU: That's correct. I was just using that as an example. If the Congress itself had a restrictive clause like that they couldn't make emergency appropriations. Now the answer to that as I understand it is that the governor must consent to it. As I read the whole proposal it makes the governor the most powerful individual in the State. It will create him and his commissar of finance dictator. They could, in my judgment, throttle the whole State if they wanted to. I've never seen any provision like that in any constitution in which the governor is given so much power over the finances. Now, historically speaking, finances are always in the hands of the legislature, and that's where it should rest. I think we should go back to fundamental principles and leave the financing of the State to the State legislature.

H. RICE: I reply to the last speaker. I'm in great sympathy with the appropriations bill [being] passed before any other bill up to the governor, but I agree with Mr. Anthony that probably we should have a period after "transmitted to the governor" period.

TAVARES: I think that is a matter of policy for this Convention to decide. I disagreed with Mr. Anthony because I didn't think it had the same meaning if you cut that out. That is where I disagreed. Now it is true, and I think there will be nobody here, not even the members of the legislature, who will deny that there have been great abuses in holding up the general appropriations bill until the last day sometimes, and we want to prevent that. And if it is the sense of this Convention that we've gone too far in providing that a special bill, if enacted with the approval of the governor, shall cease to be effective when the general appropriations bill become effective, why that seems to me a matter of policy which might well be decided adversely to our committee. But I do believe that the rest of the section is necessary in the light of past proven and frequent abuses by the legislature.

HEEN: Following that expression, I would suggest that we put a period after the word "bill" in the third line from the end of that section. "Unless the governor has recommended immediate passage of such appropriation bill," period, and then delete the rest. That would take care of deficiency appropriations and emergency appropriations which may take more than a year to carry out.

LOPER: If that is made as an amendment, I'll be glad to second it.

HEEN: I so move.

LOPER: I second it.

CHAIRMAN: In other words the motion is, as the Chair understands it, that a period be put after the word "such appropriation bill" at the end of line five. Is that correct?

HEEN: That's correct, Mr. Chairman.

ANTHONY: Do I understand it that we are adopting these sections tentatively, or is this the final vote on each one?

CHAIRMAN: That's the understanding of the Chair. Although the motion has been to adopt, the procedure in the other Committees of the Whole has been to tentatively agree in principle to the provisions.

ANTHONY: Thank you, Mr. Chairman.

CHAIRMAN: All in favor of the amendment please signify by saying "aye." Opposed. Carried.

NIELSEN: One other thing regarding that first sentence, and that is the fact that sometimes the University budget and other budgets ask for 32 specialists instead of 20 as the legislature agrees to, and unless you know what bills both houses are more or less agreed on are important bills, why they can't give really fair thought to the general appropriations bill. Now, I think this matter ought to be deferred for further study because we are going to tie them down to where they, after they pass the general appropriations bill and the deficiency bill, then a lot of important bills that should be passed and maybe cut down the number of extra specialists at the University, why there's no money for them, for these special appropriations for vital things throughout the territory. So I don't see how you can pass the budget bill without considering all the other appropriation bills that are introduced. I move for deferment.

CHAIRMAN: Well, if the - -

CROSSLEY: I move now that we tentatively adopt Section 2 as amended.

WHITE: I'll second it.

CHAIRMAN: Any discussion? If not, all those in favor of Section 2 as amended please signify by saying "aye." Opposed. Carried.

LAI: I move for the adoption of Section 3.

WHITE: I'll second that.

SAKAKIHARA: I move that Section 3 be deleted.

DOI: I second the motion.

CHAIRMAN: Any discussion?

SAKAKIHARA: May I speak on my motion to delete?

CHAIRMAN: Proceed.

SAKAKIHARA: Section 3 as drafted by the Committee on Taxation and Finance provides thus: "Power of legislature to amend the general appropriations bill." I believe that the policy-making body of our government should be free to determine the appropriations, being responsible to the people to provide revenue adequate for the appropriations. I don't see why the governor should have this tremendous power. I am in accord with the statement made earlier by the delegate from the fifth district, the honorable Chuck Mau. The power of taxation, power to make appropriations, is vested in the legislature and under the provisions of Section 3 of the proposal you are hamstringing your legislature. Now, I'm against it.

DOI: I would also like to speak in favor of the motion. I believe appropriations are the basis of the legislative power. In this section here we are giving too much power to the executive body. By doing so we presuppose this fact, that the executive, which is one man, can be trusted more than the legislative body which is composed of many men. I think we have to admit that there are honest and fair-minded men in the legislature. The question is shall we take our chances with one man or with a number of men, and I am willing to take my chances to rest with many men.

For another reason also. The executive has been given much power and we have to admit that it is much easier for the executive to build up a political machine through the spoils system than it is for the legislature because it is composed of many men. For example, we have given the executive the power of appointing judges. Now, to subject the judiciary again to the whim or the will of the executive by going to the executive and bowing and begging him to give so much money so the judiciary can efficiently function, I think is going a little too far. And therefore I would like to urge that we vote in favor of the motion to delete.

MAU: Speaking in favor of the motion. I want to ask where are those who in all of the Convention said that they want a concise Constitution? Where are those who say that legislative matters should be left to the legislature? Aren't we cluttering up this Constitution with a lot of legislative matters? Go to each of the sections; they've got a section on purchasing methods, they've got a section on uniformity of taxation, they've got a section on expenditure of funds. Aren't they all legislative matters? Why can't we have a simple provision like that of the New Jersey Constitution. I speak in favor of this motion to delete because I think that many other sections ought to be deleted. I think we ought to come to our senses and realize that we're writing a Constitution, not passing legislation in this Convention.

LOPER: I believe the purpose back of this and some of these other provisions is perfectly worthy and that is to come out of the legislative session with a balanced budget, so that we have enough money in the treasury to cover our expenditures. However, if I understand the matter correctly the appropriation of funds is a legislative function. One of the provisions here that the appropriation - - the general appropriations bill shall pass before other special appropriation acts will help bring the legislature to carry its

proper responsibility. Another provision that may come in from another committee for an annual session of the legislature will be another step in that direction. Still a third would be to call a special session of the legislature if the revenues are not sufficient to cover the appropriations. I'm speaking then in favor of the motion, although I'm in sympathy with what I understand to be the basic purpose back of it, namely that we shall have a budget that is balanced but balanced by the legislature rather than by the executive by [inaudible] funds.

SHIMAMURA: I agree with the sentiments expressed by the gentleman from Hawaii. However, if you delete the entire portion of Section 3, it may be the legislature won't have any power of amendment of any of the general appropriations bills because as we have passed the first section, as I read that section, the first section there the governor has the authority and the power and the function to introduce a general appropriations bill, and I think that Section 3 is to take care of the situation where the executive, the chief executive, submits the appropriation bill, and Section 3 restricts that somewhat by giving the legislature the power to amend. But if you delete the entire Section 3 the legislature in effect won't have any power to amend the bill. I think, therefore, if that reading is correct—I've just read it now, Mr. Chairman—Section 3 should be amended only to the extent of putting a period after the words "appropriations bill" in the second line, to conserve the power of the legislature to have power to amend the appropriations bill submitted by the governor.

WHITE: I'd like to speak in opposition to this motion. I don't think that they've read this thing correctly if they say it restricts the power of the legislature. It doesn't restrict the power of the legislature. The legislature can by separate bill appropriate additional amounts and there is nothing unusual about this procedure. In fact, 19 states now have a constitutional provision requiring appropriations supplementing the general appropriations bill be made in separate bill for a single object and purpose. And that's all that 3 and 4 does in this particular instance. I don't see where you are taking away any power from the legislature at all.

SAKAKIHARA: Mr. Chairman, I - -

CHAIRMAN: Just a moment, I believe Delegate Kellerman wished to be recognized. Unless you waive your right - -

SAKAKIHARA: I yield to Delegate Kellerman.

KELLERMAN: Thank you. I agree with the last speaker, Mr. White, that this only requires the legislature to enact additional appropriations by special bill. But because I am rather concerned with the priorities against revenues which those additional bills are going to carry with relation to the to the general appropriation bill, it seems to me that we can effectuate the same result of preserving - - As I gathered it, the proponents of this proposal had in mind the executive responsibility for tax program and the executive responsibility for an appropriations bill. The legislature may vary either, but insofar as the proposals of the governor, the appropriations bill and the proposals for revenue to be derived should be allowed to remain co-terminus. But if the governor's revenue bill is to go through and he is to be responsible for that, then the appropriations made against that revenue bill should be left intact. Conversely, if the appropriation bill is to be increased, the revenues would have to be increased. But since the executive is to assume the responsibility for the initial proposal of balancing a revenue tax proposal with a general appropriations proposal and leaving it to the legislature if it varies one to necessarily vary the other, it seems to me that we could arrive at that result by adding this language to Section 3. It reads as follows: "The legislature may make any amendments to the general appropriations bill, provided such amendment shall not result in increasing the total amount in the bill as recommended by the governor unless it also makes provisions for such additional revenues that may be necessary to fund such expenditures."

Now, it seems to me that is what we are trying to drive at. What we want to have is if the governor proposes a revenue bill and proposes an appropriation to match those revenues, those two are to be studied and regarded by the legislature as a unit proposal. If the legislature wishes to increase expenditures, then it's the legislature's responsibility to increase the taxes which the governor has proposed. It seems to me that we are saving the governor's function, we are saving the degree of his responsibility to the people —and remember he is an elected governor. His responsibility to the people is being protected, if we provide that the legislature can increase the appropriation bill, but if it does it has got to provide right then and there for such additional revenues as shall be necessary to meet and fund these additional expenditures. On that basis I see no reason why the general appropriations bill could not be increased by the legislature and we'd get away from this idea of all these extra or special appropriations bills subsequent to the general bill, which we may run into trouble on which one shall have priority in case there are not sufficient revenues to fund them all.

If it is agreeable I would propose as an amendment to the amendment introduced by the gentleman from the second district that in lieu of deleting Section 3 we add the following language. After the word "governor," change the period to a comma and add: "unless it makes provisions for such additional revenues as may be necessary to fund such additional expenditures."

HEEN: I think in reading that Section 3, we ought to read also Section 4. If I understand 4 correctly, instead of increasing the items in the general appropriations bill so as to increase the total in that bill, you may make those increases by way of separate bills. Is that correct?

WHITE: That's correct.

HEEN: All right. Then, but in introducing separate bills, appropriation bills, those bills must specify one object or purpose. Is that also correct?

WHITE: That's correct.

HEEN: All right. Then supposing the legislature passes a bill with the purpose or object of augmenting the appropriations made for the various departments of the State, augmenting the appropriations made in the general appropriations bill to take care of several of these same departments. Would that be one object or purpose?

WHITE: No, they would have to be done by separate bills under this wording.

HEEN: But it seems to me that the one purpose of such a bill is to augment the appropriations for various departments, that's the one purpose. Otherwise you'd have to have separate bills that you have in mind, one department at a time.

ASHFORD: Speaking to Mrs. Kellerman's remarks, may I say that that brings us right back to the question that I asked the chairman before lunch. Wouldn't the legislature in that case have to accept the predetermination of the anticipated revenue even though their own figures and experience determined it to be larger or less?

CROSSLEY: I would like to speak against the deletion of this section, but recognizing fully that the power should rest with the legislature. But inasmuch as the legislature has

that power, it should also have the full responsibility along with it, and that full responsibility is better spelled out I think in an amendment to that section as proposed by the delegate from the fourth district than it is by Section 4.

In other words, we have had a great deal of deficiency spending. Now, deficiency spending doesn't go on so much in times of increasing prosperity as it does during the time of decreasing revenues, and at that time it's a favorite stunt to make estimates knowing that they can't be met and go into deficiency spending. The idea of this section, as I read it, is to stop deficiency spending of government, which is certainly a bad practice. It's a thing that we all wish could be stopped in our federal government. Therefore, it would seem to me that rather than delete this section that it should be amended, and I would like at this time to second the amendment proposed by Delegate Kellerman.

CHAIRMAN: Will the Clerk please read the amendment offered by Delegate Kellerman—just a moment, Delegate Fong—in order to understand what the amendment is.

CLERK: "Unless it makes provisions for such additional revenues as may be necessary to fund such additional expenditures."

FONG: The amendment proposed by Delegate Kellerman is meaningless. When I say meaningless, I want to point to the fact that there has always been divergent opinion as to how much we will receive in revenue. Now, in the time that I have been in the legislature the Budget Bureau director always tells us that we will be three to five million dollars in the hole. In 1947 session they told us that we were in the hole three million dollars. When we ended, we were ten million dollars above.

Now the question comes up, who has the last word as to how much revenue we can expect? The budget director, the members of the legislature, the governor, each has his own idea -- have their own ideas as to how much money can be realized. If you put that amendment to this section here, I think it's meaningless. The legislature will say, "As far as we are concerned, we will be three or four million dollars above deck," and the budget director will naturally hold hue and cry in all of these budget meetings that we will not meet the expenditure. In all the years that I have been in the legislature I have found that the budget director has been off at least five million dollars; he was ten million dollars off in 1947. How many million dollars will he be off in next session of the legislature? Now who is going to tell us that we can only expect the revenue-producing measures to bring in 100 million dollars a biennium? Who is going to tell us that the revenue will not exceed 100 million dollars in the biennium?

So I say that where you have guesswork—of course it is intelligent guesswork, guesswork by people who are supposed to know and they differ so widely—then you won't have a yardstick by which you can gauge these things, and the legislature can very well say, "We have provided for the appropriation and the money is available, the only thing is that the budget director is too pessimistic." I would like to leave that forethought here and I think that is one of the very serious things we have in the legislature now, the difference of opinion as to how much could be raised.

WHITE: Could I talk to that, too? I think it has one further disadvantage if you have that provision in. The legislature would be recommending the passage or making additional tax laws when it didn't know what the over-all needs were because we are only talking about the general appropriations bill. Before the legislature could be in a position to know what the financial needs were, you'd have to wait until you get through with the capital budget and other appropriations in the session.

To speak to the point that Mr. Delegate Fong made on this, on the difference of opinion on what the revenue may be, I feel that will in large measure be corrected when you have the type of auditor setup that we are proposing under this setup, because the auditor then will be under the direction of the legislature and he will be in a position to pass and to advise the legislature on the validity of the figures used by the executive department, so that you will have a check and balance in that regard.

HEEN: I rise to the point of information. I would like to have that amendment proposed by Delegate Kellerman read again. Read it slowly.

CLERK: "That we add the following language: after the word 'governor,' change the period to comma and add, 'unless it makes provision for such additional revenues as may be necessary to fund such additional expenditure.' "

HEEN: Now according to that language, in order to increase the amount of the general appropriations bill, the legislature would have to enact legislation to produce additional revenue. I think that is wrong because the legislature might find that the over-all estimated revenue may be sufficient without any additional taxation law to take care of any additional amount to be added to the general appropriations bill.

TAVARES: May I point out, simply for the information of the delegates, what I think induced our committee to suggest Section 3? Whether that reasoning is right or wrong is up to the members of the delegation to decide. But I think it was felt that by eliminating increases over the total over-all amount of the governor's budget, there would be a tendency to minimize some of the points of difference so that it would help them to get through a little earlier than otherwise with the general appropriations bill. In other words, by cutting down somewhat the area of disagreement by the legislators, it was thought you would expedite. Now that may or may not be sound in the opinion of the delegates, but it did have an influence on the members of the committee

I feel this way very strongly. I would rather see this section deleted than the amendment proposed go through. I think that a provision like that has a tendency to force throug hasty, ill considered tax measures, piece-meal tax measure which are always wrong. A tax should be passed only after you have an all-around, all-over view of all of your requirements. And I think it's wrong to do that.

We had before the committee for consideration a proposal that we must balance the budget every time, and we gave it up for several reasons. One was the reason brought out by some legislators to the effect that they never can agree on appropriations. Secondly, it was pointed out that sometimes it's not too unhealthy to go into a legislative session with a deficit, rather than a surplus. It makes the legislators more economy-minded. So on the whole I would rather see the whole section go out than to have it tied down in this manner.

CROSSLEY: I'd like to withdraw my second. As I reread this and listen to the arguments, I think they are valid. As I look at Section 4 again, it's there perhaps where there should be an amendment. I would at this time like to withdraw my second to the previous amendment.

CHAIRMAN: Delegate Wirtz.

WIRTZ: I would be out of order speaking now. I was going to speak against the amendment but the second has been withdrawn.

SILVA: I was going to speak against the section for the reason that, as an example, during the last session of the legislature in which the governor made certain recommendations through the Bureau of the Budget or vice-versa and the appropriations bill was presented to the legislature, in the opinion of the department heads—Department of Public Instruction, the Board of Health—they appeared before the

committee and they asked that certain items be re-inserted into the appropriations bill, as an example, mosquito control and additional kindergarten teachers. In the opinion of the legislators, we felt that during the next biennium there would be sufficient revenues raised throughout the Territory to cover the additions requested by the department heads. We re-inserted mosquito control and plague control for Hawaii, and the Department of Public Instruction requests were inserted again. Now, all of that would have increased the appropriations bill. If it wasn't for the power of the legislature to increase the appropriation bill, then the public of the territory with the whole state would have been deprived of government that they requested themselves. And by doing that, I can't see how you are going to put the power in the hands of the bureau of the Budget and the governor, that rightly belongs to the members of the legislature.

ARASHIRO: I have a question for the chairman of the Taxation and Finance Committee. Doesn't this section limit the power of the legislature of introducing new tax measures?

TAVARES: No.

ARASHIRO: Because I feel this way, that when the governor makes his recommendation or submits his proposed budget, he naturally has all the methods of raising the revenue, and as far as the legislature is concerned, we don't have to think about raising the revenue, because as far as raising the revenues are concerned it has been restricted by the last section of the sentence where it says, "provided such a method shall not result in an increase in the total amount in the bill recommended by the governor." Then naturally if we are not going to increase the revenue, we are not going to think of new methods of taxation.

WHITE: This increases the -- this is a prohibition on increasing the total amount of the expenses provided by the general appropriations bill and has nothing to do with the revenue.

ARASHIRO: Well, if we cannot increase the expenditure, then we don't have to think about raising money and new methods. Is that right?

WHITE: I don't understand your point.

ARASHIRO: If we cannot -- if we do not find the need of increasing the expenditures, then we don't need the necessity of finding, exploring new field of raising revenue.

WHITE: Of course this is only a part, this is only one item of the program that the governor submits at the legislative session. There is also the capital budget that still has to be considered or any other bills that the legislature may introduce that have not cleared through the governor.

KELLERMAN: I want to withdraw my amendment because I think the result that I was trying to achieve can be accomplished better in a further provision -- amendment of a further one that's coming up.

AKAU: I feel we had free and full discussion on this issue and most of us have made up our minds. I move the previous question.

FUKUSHIMA: I'll second the motion.

CHAIRMAN: For the previous question?

FUKUSHIMA: Yes.

CHAIRMAN: All those in favor of the previous question please say "aye." Opposed. Carried.
The question then to be put before this committee is whether or not Section 3 should be deleted. All those in favor say "aye." Opposed. Carried.

FONG: If Section 3 is deleted --

CHAIRMAN: Delegate Fong, Section 3 has been deleted. The only way to have discussion on Section 3 is to move to reconsider.

FONG: I was going to ask you this question, by the time you put it to a vote as to what would be the import of deleting Section 3? Will that mean that the legislature will have the right to amend? Now if that's the understanding, it's perfectly all right.

HEEN: I don't think there is any question about it that the legislature may amend without any restriction because in the first section there's no limitation on the power of the legislature to amend any general appropriations bill. When the governor sends the bill down for introduction in the legislature, that bill is not law until acted upon and passed by the legislature, and the legislature has the power to amend.

FONG: If that is the spirit and the thought, it's fine.

CHAIRMAN: May we proceed to Section 4?

HEEN: I move that that section be deleted. Number 3 has been deleted, number 4 has no place here.

DELEGATE: Second the motion.

CHAIRMAN: Motion has been made to delete Section 4. Any discussion?

LOPER: I wonder if there isn't going to be a provision somewhere else in our Constitution providing that any bill shall deal with only one subject and it shall be reflected in the title, the subject.

HEEN: That provision is in the article relating to the legislature.

TAVARES: Before there's a vote on this section, I think the delegate ought to hear a little of the other side. There is a place, it seems to me, for a provision like this. Although ordinarily we are going to have provision limiting bills to one object or purpose, but you can get one object and purpose by an appropriation bill by just making the title broad enough. You can cover any number of subjects. It seems to me that even though Section 3 has been deleted and the latter part of Section 2, there could be some point to this by amending Section 4 to read: "Appropriation bills other than the general appropriations bill and other than the deficiency appropriation bills shall not appropriate money for more than one object or purpose." I think it might prevent a little too much log-rolling on some of the other types of appropriation. I think general appropriations bills and deficiency appropriation bills need to cover a large number of subjects, but there isn't so much necessity for other bills to do that.

CHAIRMAN: Any other discussion?

TAVARES: I move that the motion to delete be amended to a motion to amend in the manner I have stated.

ROBERTS: I didn't get any specific language on the amendment. I think if the delegate from the fourth would draft some language and present it to us, I think we could consider it at that time. May we have a five minute recess for that?

CHAIRMAN: Shall we defer it, or are you making a motion to recess?

ROBERTS: I move we defer to give the gentleman opportunity to prepare a proper amendment.

DELEGATE: I'll second the motion.

CHAIRMAN: Motion's been made to defer consideration of Section 4. All those in favor please signify by saying "aye." Opposed. Carried.
We will proceed to Section 5.

WOOLAWAY: I move that we approve tentatively Section 5.

RICHARDS: Second the motion.

CHAIRMAN: Any discussion?

SAKAKIHARA: I move to delete Section 5.

CHAIRMAN: Does Delegate Mau second the motion to delete Section 5?

HEEN: I rise to a point of information. May I ask those who are familiar with the enactment of general appropriations bills whether or not there is something in the statutes now which provides for the same thing that is designed here in this particular provision?

WHITE: As I understand it, the governor has this power at the present time.

HEEN: By statute?

WHITE: Yes.

PORTEUS: I think there is a provision in the Organic Act which lets the governor veto items in an appropriation bill, but there is nothing which permits him to reduce appropriations.

TAVARES: That is correct.

CHAIRMAN: May I state that it was Delegate Porteus who spoke without recognition by the Chair.

PORTEUS: I apologize to the Chairman and I withdraw my information.

HEEN: It should be expunged from the record.

CHAIRMAN: Any further discussion?

TAVARES: That is correct about the Organic Act. Section 49 of the Organic Act provides that the governor "may veto any specific item or items in any bill which appropriates money for specific purposes, but shall veto other bills if at all only as a whole." Now that type of provision can be abused and it has been abused. The legislature, by lumping a lot of items together into one big item and then putting a lot of water in it, can force the governor to take it or leave it as a whole. It seems to me it would be a healthy thing to allow the governor to not only veto a whole item but to take some of the water out of an item without eliminating it entirely. And remember that since we have provided here that the legislature -- we have provided means which will give an incentive to the legislature to pass the appropriation bill early, they are now going to have an opportunity to pass on the governor's veto. We are encouraging them to pass it early so that if the governor does wring too much of the water out, they can still put it back.

ANTHONY: I don't think we're adopting exactly the correct procedure. Presumably this committee has done a lot of work on the proposal and I think we ought to hear from the committee chairman before we start to vote on a motion to delete. We have had no discussion of that. The basis of the proposal, as I understand it, is to get away from the difficulty that pertains in the Federal Constitution. As you know, there the appropriation bill, the President must either accept it or veto it, and no President in our entire history has ever had the nerve to veto an appropriation bill, even though he disapproves heartily of some items in it. I should think our appropriate procedure here would have the -- if the movant would withdraw his motion, get this section before the house and let the committee explain it.

CHAIRMAN: May I correct the speaker's last remarks. A motion was made to adopt Section 5 in principle, it was seconded; and then there was a motion made to delete Section 5, that was seconded; and then Mr. Tavares spoke in favor of Section 5. Mr. Tavares and Mr. White represented the committee.

ANTHONY: I'm sorry, I didn't know there was a motion to adopt.

CHAIRMAN: Yes, there was.

HEEN: For the information of the committee I might state this. The Committee on Legislative Powers have tentatively agreed upon this provision: "Every bill which shall have passed the legislature shall be certified by the presiding officers and clerks of both houses and shall thereupon be presented to the governor. If he approves it, he shall sign it and it shall become law. If the governor does not approve such bill, he may return it with his objections to the legislature. He may veto any specific item or items in any bill which appropriates money for specific purposes by striking out or reducing the same but he shall veto other bills, if at all, only as a whole." That is taken from the Organic Act except that we have put in there the power to reduce.

WHITE: Well, I would accept that if you have covered it in the legislative section and I think it's something that should be done. I think the reasons for it are well set forth in the explanation of Section 5 in our report.

HEEN: If that is accepted, I take it there will be no objections to that going into the article on the legislature. Then this committee proposal can be reduced in length.

WHITE: That's right.

CROSSLEY: On that specific understanding, then, I would vote to delete this section with the complete understanding that it is going to be included in the legislative bill which undoubtedly will be the very last bill to be considered by this body—with emphasis on "the very last." We would have no chance to come back in on this one, so I would like to be sure that the gate isn't closed to such an inclusion at some later time.

WHITE: We reserve the right to bring it up at that particular time, particularly as it applies to the reduction of items.

CHAIRMAN: With that understanding, is the committee ready to vote on the motion to delete?

FONG: I think the deletion of Section 5 is a little too drastic. I would like to amend that motion to delete just to delete the words "or reduce" in the first line of the sentence. "The governor may strike out items in the appropriation bills passed by the legislature." This would restore it back to what the Organic Act is at the present time. The reduction is an addition here.

SAKAKIHARA: I was the original movant of the motion to delete Section 5 and precisely because of the fact that we've already taken care of this provision in the legislative committee, I don't see the necessity of duplication of the right of the governor in Section 5 when it's already taken care of by the legislative committee. And that is a question to be taken -- subject matter taken care of by the legislative committee.

ARASHIRO: With the understanding suggested by my colleague from Kauai and the suggestion made by the delegate from the fourth district, I now move to the previous question.

DOI: Before I'm shut off, I would like to say that this Section 5 here is not the same as that just read by Delegate Heen. Section 5 not only includes the power to strike out but also includes the power to reduce, and I think that's better. The power to strike out of the governor is only a right -- his right to suggest to the legislature that this and this should be done. Should we include the power to reduce, I

think we should also include the power to increase. That would suggest to the legislature that this be completely stricken out, reduced or increased, and the legislature could do what they want with it. And should they find that this Section 5 passes here, then when the Legislative Committee proposal comes up to this particular point, we can just incorporate this, and leave it up to the Style Committee.

HEEN: I don't think the last speaker understood the language that I presented at a moment ago. This states that the governor "may veto any specific item or items in any bill which appropriates money for specific purposes by striking out or reducing the same." "Reducing the same" is an addition to what we now have in the Organic Act.

FUKUSHIMA: I second the motion for the previous question.

CHAIRMAN: All those in favor of the previous question, please signify by saying "aye." Opposed. Carried.

All those in favor of deleting Section 5 with the understanding that the subject matter will be covered by the legislative proposal please signify by saying "aye." Opposed. Carried.

RICHARDS: I now move that we approve tentatively Section 6.

WOOLAWAY: I second the motion.

CHAIRMAN: Any discussion?

TAVARES: I think some explanation should go into the record here. The blank section, the section blank of article - - Section 5 of Article blank is intended to refer to the section of the Bill of Rights which provides for the separation of church and state. I don't know whether it's still Section 5, but I should like to have that understanding so that when we vote on it, the proper section can be inserted.

CHAIRMAN: Are you through, Delegate Tavares?

SAKAKIHARA: At this time I move that we defer action on Section 6 until we have disposed of the proposal as a whole - - defer action on Section 6 until we have acted on the rest of the proposal, so we may make proper reference to the section, due to the fact that Section 5 was deleted.

WHITE: As I recall, the Style Committee had already given article numbers to these things and we could refer to the article numbers that the Style Committee has provided for that section.

CHAIRMAN: If there is no further discussion, are we ready for the question? All those in favor of the adoption in principle of Section 6, please signify by saying "aye." Opposed. Carried.

Section 7.

WOOLAWAY: I move that we now adopt Section 7 tentatively.

RICHARDS: Second the motion.

SAKAKIHARA: At this time I wish to move to amend Section 7 by deleting the first clause so as to read, "The governor shall have the authority through allotments or otherwise, to control the rate at which appropriations are expended."

CHAIRMAN: I didn't understand the motion. Will you please repeat it in clear and unmistakable language.

SAKAKIHARA: Delete the first clause, so as to read - -

CHAIRMAN: While we're having time out, do you want to have Mr. White explain this section?

SAKAKIHARA: All right.

WHITE: As previously stated, the committee believes that means should be provided for preserving financial stability by authorizing the governor to reduce expenditures when conditions warrant such action. This would not be construed as an encroachment by the governor on the power of the legislature since the appropriations made were based on estimated revenues submitted by him. Such a delegation of power must be provided in the Constitution in order to be effective. You will note that it is only in situations where anticipated revenues fall below the estimates upon which the appropriations were based or whenever the governor is authorized by law to affect economy that he has the power to reduce expenditures below the amounts appropriated.

It is the belief of your committee that any statute granting such power to the governor should stipulate that any reductions in appropriations should be limited to lump sums by departments, thus leaving to the discretion of the department head the means of effecting such reductions.

The governor is also authorized to make periodic allocation of funds to take care of operations programmed by each of the departments which are submitted to him for approval.

LOPER: May I ask the chairman of the committee if the second word in that section should not be eliminated, "anticipated" revenues? Aren't you referring to the actual revenues falling below estimates?

CHAIRMAN: I believe Delegate Loper addressed his question to the chairman of the committee.

WHITE: I think the difficulty there is that you may - - it isn't always actual because on the basis of receipts up to a particular time, it may develop that your anticipated revenues for the future are still not adequate. And so I think the word "anticipated" should stay in.

LOPER: Then I would like to speak again on that. It seems to me that when the government is actually going in the red because the revenues are not adequate, certainly then the power must be somewhere to balance the budget and keep expenditures below income. But to do that in advance seems to be unnecessary.

CHAIRMAN: Delegate Fong sought to be recognized, I believe.

FONG: I'd like to ask a question. In the latter part of the section, "that the legislature, by resolution concurred in by a majority of the members of each house, may exempt specific appropriations" from this legislative - - this executive reduction. Now do I understand that this resolution must be concurred in by majority of members of the House and the Senate at a session?

WHITE: What was the question now, Mr. Fong?

FONG: The question is, the resolution, must it be adopted during the session or shall it be adopted or may be adopted outside of the session?

WHITE: It would have to be adopted at the session.

FONG: At the session?

WHITE: Yes.

FONG: Then when the legislature anticipates that there may be a drop in the revenues, they may by resolution exempt certain provisions from this governor's veto?

WHITE: The purpose of this would be that if the legislature wanted to set up some special legislative committee to operate in between sessions of the legislature that they could appropriate the money for that purpose and the governor wouldn't have any power to cut it down as he would in the case of other departments.

FONG: And that is by special resolution, accompanying the appropriation probably?

WHITE: That's right.

HEEN: I rise to a point of information.

CHAIRMAN: Is Delegate Fong through? Delegate Heen.

HEEN: Point of information. Is there not some statute on the books now that is similar to what is written here in this section, so far as the general appropriations bill is concerned?

WHITE: We'll look that up. I think there is in creating the Budget Bureau.

HEEN: If that is the case, why have it written into the Constitution and have it a fixed basic law when in the future you might want to have to change some of the provisions that are written here?

FONG: I could anticipate - -

CHAIRMAN: Just a moment, Delegate Loper desires to speak.

FONG: I was just yielding to Senator Heen a little while ago.

CHAIRMAN: Well, this Chair when it rules—when you yield you yield for all purposes contrary - -

FONG: I bow to the ruling of the Chair.

CHAIRMAN: However, I'll call - - since Delegate Loper has asked you to speak, I'll call on Delegate Fong to speak.

LOPER: I wish to ask another question about the second line in this Section 7. It reads as follows: "revenue estimates upon which appropriations were based." Are those estimates the ones made by the commissioner of finance and the governor, or are they the estimates made by the legislature in passing the appropriations bill?

WHITE: They are the ones made by the governor and submitted to the legislature. Assuming - - I can imagine the situation might arise where there might be some adjustment of those after conference.

LOPER: It seems to me then that the revenues might well drop below the estimates made prior to the legislative session and still be well within the appropriations. In other words, if the tax returns are higher than anticipated, the government would not in any sense be heading into the red, and yet the revenues would be less than the original estimates.

WHITE: If you run into a situation where revenues are running ahead of it, then you don't have - - the governor has no power to reduce expenses.

KELLERMAN: I am not particularly in favor of Section 7, but in case the majority of this body is in favor of putting it in, I should like in the interim to propose an amendment, which I think would clarify one picture.

We've heard much about the executive department cutting appropriations during the period of anticipated deficiency of revenues, and cutting them using discretion which rightly belongs to the legislature and interfering with the activities of the executive department, that it made it very difficult for them to carry on the work which apparently the legislature had intended them to carry on. It seems to me that it would be a very logical solution to such an impasse if this next to the last line were amended. Where it says "provided, that legislature, by resolution concurred in by a majority of the members of each house, may exempt specific appropriations," delete "for the legislative department" and insert in lieu thereof "in whole or in part." That would give the legislature the power to state in the appropriation bill as errata that such appropriations are not to be reduced at all, and if so, only to what percentage.

It seems to me it's quite logical to assume that we have certain departments of governmental function that are very much more essential to the carrying of the State, the general welfare, than other departments. It would be much more logical to refuse the less necessary departments than to reduce the more essential departments. This would make it possible for the legislature, if we're going to have such provision as this in the Constitution, to designate the certain departments which - - the functions of which it considers so vital that they are not to be reduced at all, or others to be reduced only in part, and then it is the legislative discretion being exercised and not the executive in cutting in to general appropriations.

SAKAKIHARA: I rise to a point of order. The lady Kellerman wanted to offer an amendment to the motion to delete, that being a proper motion to talk on. I think there is a motion before the Committee of the Whole to delete this section, isn't it?

CHAIRMAN: The only motion before the committee at the present time is to adopt Section 7.

SAKAKIHARA: I make a motion at this time to delete Section 7.

ANTHONY: I would like to ask a question of the chairman of the committee. Under this Section 7, would it be possible for the governor to eliminate from the funds allocated to the judicial department of the government the necessary funds that had been appropriated by the legislature for the running of the courts? Would it be possible under any circumstance?

WHITE: You mean to cut them out entirely? Well, I don't think that - - Under the provision here he'd be permitted to make reductions. I can't imagine any executive ever taking such action. It would permit the governor to specify, say, that the judicial department had to cut down their expenses by $50,000, and enable the judicial department to work within that reduced appropriation.

HEEN: I second the motion to delete this section. It contains a lot of legislative material which should not be written into basic law.

CHAIRMAN: A motion has been made to delete Section 7.

TAVARES: A question was asked a few mintues ago by Delegate Heen and I simply rise to answer it. Section 1634 of our Revised Laws now gives very drastic powers to the governor. "No head of a department shall expend or be allowed to expend any sum for any purpose whatsoever not specifically authorized by the legislature, and where distribution or expenditures are made under lump sum appropriations the head of each department shall be governed in making such distribution or expenditures by any authority of the legislature, and in the absence of such legislative authority shall be governed by the authority and approval of the governor." Under that section it has been customary for the governor through the budget officer many, many times to refuse to expend the appropriations made by the legislature.

RICHARDS: I think there is one point that this Convention is overlooking in its discussion. We hear from a great many of the legislators regarding the difficulty they have had with an appointed governor. We are now talking about an elected governor and I think you will find that the elected governor will be a lot more in sympathy with the legislature than, necessarily, an appointed governor.

WOOLAWAY: I haven't spoken on this matter yet. I'd like to speak in the affirmative before we take a vote on it. Such a system has been in effect in Hawaii since 1925. It has been the means of carrying the territory through the periods of financial conditions. Dr. Harley Lutz of Princeton University cites some of the advantages of the allotment system. (1) It establishes the responsibility for efficient

administrative operation of departments definitely on the governor and provides him with definite executive control over the performances of services and the expenditure of public funds. (2) It affords the means of maintaining budgetary balance. If revenues are declining, allotments can be correspondingly reduced to avert a deficit. (3) Through the allotment system, the executive may exert pressure to obtain increase in efficiency—which we certainly need—in the administration of government functions and services. The territory has used the allotment system for the control of expenditures for several years. The proposed provision neither adds to nor detracts from the authority now exercised by the governor. I would vote against deleting this provision.

ASHFORD: I call attention of the delegates to the fact that this section gives the governor power to act by allotment or otherwise.

CHAIRMAN: Are we ready for the question?

DELEGATE: Question.

CHAIRMAN: The motion is to delete Section 7. All those in favor of deleting Section 7 please signify by saying "aye." Opposed. Carried.

That removes the motion for adoption, so we proceed to Section 8.

RICHARDS: I move for the tentative adoption of Section 8.

YAMAMOTO: Second the motion.

CHAIRMAN: Any discussion?

DELEGATE: Question.

CHAIRMAN: All those in favor of adopting Section 8 in principle, please signify by saying "aye." Opposed. Carried.

LAI: I move for the adoption of Section 9 tentatively.

WOOLAWAY: I second the motion.

WHITE: I 'd like to suggest an amendment that that be deleted since it's covered by one of the provisions in the section on ordinances, and I think it really belongs there rather than in this section.

CHAIRMAN: Do you move for that deletion?

WHITE: I move for its deletion.

SHIMAMURA: Second the motion.

CHAIRMAN: A motion has now been made to delete Section 9 from Committee Proposal Number 10. Any discussion?

C. RICE: Is this in H.R. 49?

WHITE: Yes, it is in H.R. 49 and the Committee on Ordinances has drafted an ordinance to take care of it. I think it's better taken care of in that section.

CHAIRMAN: If there's no further discussion - -

ANTHONY: I'm not so sure. I'd like to ask the chairman of either the Finance Committee or the Ordinances, it is my understanding that an ordinance is of an ephemeral nature, and this provision that the Finance Committee has brought in is something permanent, not to disappear after the ordinance has run its course.

CHAIRMAN: Delegate Shimamura, do you care to answer that question?

SHIMAMURA: H.R. 49 provides for two types of ordinances, one that may be included in the Constitution and another type which may be separately submitted to the people. The type of ordinance we have provided for, pursuant to H.R. 49, is of the permanent nature.

ANTHONY: It is on a permanent basis?

SILVA: To be on the safe side, I see nothing wrong about leaving this section in. The Committee on Style can properly place it and I'd like to leave it in in the meantime, anyway, to take care of my friend, Francis Brown, in San Francisco.

HEEN: This article is one on taxation and I believe that this section properly belongs to this article. I would like to point out, in one place it speaks about "citizens" and another place about "residents." Is there any reason for using the two words there?

WHITE: Well, it's not our wording; the wording is taken from H.R. 49, so - -

HEEN: It would seem to me that that ought to read, "The lands"—instead of singular, it should be plural—"The lands and other property belonging to residents of the United States residing without this state shall never be taxed at a higher rate than the lands and other property belonging to the residents thereof."

WHITE: Well, all that we did is to take this out from H.R. 49.

HEEN: Well, that's not a safe thing to do all the time.

TAVARES: In that form, I think it would be unconstitutional. We have United States citizens residing in foreign countries. This is to protect non-resident United States citizens from discrimination against residents. We can't discriminate against residents in taxation inside the territory, so automatically the word "residents" includes both citizens and non-citizens in the territory.

NIELSEN: I want to differ with that because we do discriminate against citizens right here in the territory, and I think this is where possibly an amendment should be made, or adding on to it. At the present time, and I'm one of them.

My placement burnt down a year and half ago and I built a store and my living quarters is in the back of the store building. And I'm assessed full commercial value on the real estate, land and building, although I should have home exemption. But if you have a store and your living quarters are in back of it, why you get no home exemption, and that certainly isn't equal taxation.

So we do have that discrimination right here in the territory. It's contained in the Section 5149 which says, "A person living on premises, a portion of which is used for commercial purposes, shall not be entitled to an exemption with respect to such portion, but shall be entitled to an exemption with respect to the portion thereof used exclusively as a home; provided, however, that this exemption shall not apply to any building or structure, including the land thereunder, a portion of which is used for commercial purposes."

So anyone living in the back of their store is discriminated against in home exemption, and I'd like to see an amendment in this taxation structure that will take care of that so that the part that is used for a home, why I don't know why anyone that is willing to put up with living in back of a store they should really be entitled to an exemption more than a person who has a separate home.

TAVARES: I think that that question has been settled by this Convention in voting against any elimination of the home exemptions. All of these inequalities were pointed out at the time. They are not inequalities of the type that are unconstitutional, they are inequalities of classification. All residents in the same class as the delegate who has just spoken are treated the same way, and that is the kind of uniformity that the Constitution and H.R. 49, this provision requires. All people in the same class must be treated the same way.

WHITE: If somebody would like to move for reconsideration of that home exemption thing, we'd be glad to discuss it again.

CHAIRMAN: The motion before the Committee of the Whole is for the deletion of Section 9 at the present time.

WHITE: In view of the feeling on the part of some of them that it probably belongs in here and that we can leave that to later determination by the Style Committee, I'll withdraw my motion to delete and then the motion to adopt will be the only motion before the house.

CHAIRMAN: The motion has been withdrawn. The second withdraws too.

CROSSLEY: Inasmuch as there is no motion on this section before the house at the present time, the only motion was to delete - -

CHAIRMAN: No, there was a motion to adopt, then there was a motion to amend by deleting Section 9. The motion still stands to adopt Section 9. Any questions? If not, all those in favor of adopting Section 9 in principle please signify by saying "aye." Opposed. Carried.

SAKAKIHARA: Was that as amended?

CHAIRMAN: There has been no amendment.

SAKAKIHARA: Oh yes. Delegate Heen amended by adding "s" to "land" in Section 9.

CHAIRMAN: He may have suggested it, but there was no motion, no second.

SAKAKIHARA: In view of the fact that I voted in the affirmative to adopt Section 9, I offer to add the word - -

CHAIRMAN: Isn't that a matter of style, anyway?

WOOLAWAY: When this body of learned individuals met at 1:30, it was the decision of the body by a majority vote that we rise at 3:30 and go into recess, so that we can convene again at 7 o'clock tonight which will allow the Committee on Legislative Powers to finish their work. It is now 25 after. I would move at this time that we defer Section 10 until 7 o'clock tonight and move on to Section 11. It's been a hot and lengthy matter to discuss.

ANTHONY: I would like to amend that motion to make it 7:30. That's a little early, 7:00.

WOOLAWAY: Is that an order, Mr. Chairman?

CHAIRMAN: Well, Delegate Woolaway, as I understand it your motion is to defer action on Section 10 and to consider action at this time on Section 11. Is that correct?

WOOLAWAY: Correct.

CHAIRMAN: Has that been seconded?

CROSSLEY: Second the motion.

CHAIRMAN: All those in favor of the motion to defer action on Section 10 at this time, please signify by saying "aye." Opposed. Carried.
Section 11 is now before the committee.

WOOLAWAY: I now move that we tentatively approve Section 11.

CROSSLEY: I second the motion.

FUKUSHIMA: I move at this time that Section 11 be deleted.

HEEN: Second the motion.

CHAIRMAN: Motion has been made to delete Section 11. Any discussion?

DELEGATE: Question.

CHAIRMAN: If there's no discussion - -

FONG: May we ask for the reason for deletion of that section? Looks like a pretty good section.

FUKUSHIMA: I believe this is purely statutory and nothing else.

TAVARES: I think the delegation ought to know that in the past we have had counties that had centralized purchases and counties that didn't, or counties that put in centralized purchasing and then took it out again. And this is sort of a finger, at least, pointing the way to the legislature that they ought to make every county have centralized purchasing.
While I was in government service, the residents of one of the counties tried to get action in the courts to stop some of the abuses that were caused by lack of centralized purchasing. In one county, for instance, they were buying from certain people at much higher prices than they could get from somebody else, because they didn't have this centralized purchasing bureau.

SAKAKIHARA: Would you assure the Convention that the subject matter is now under the consideration of the holdover committee of the legislature? That is now being considered by the subcommittee on government efficiency, and it will recommend to the next session of the legislature for purchasing methods, centralized purchasing methods. Purely statutory matter.

CHAIRMAN: Any further discussion? If not, all those in favor of the motion to delete Section 11 from Proposal Number 10, please signify by saying "aye." Opposed. Carried.

WOOLAWAY: I now move that we rise, report progress and ask leave to sit again.

CROSSLEY: I don't think that we have to go through that formality. I think if we can recess for five minutes, we can certainly recess for a couple of hours. Therefore, I move that we recess until 7 o'clock.

APOLIONA: Second the motion.

KING: I agree with Delegate Crossley as to that procedure, but there are some things on the desk that have to be taken up in the Convention, so I hoped we would follow the normal procedure.

CROSSLEY: I respectfully submit to the elder statesman.

APOLIONA: I now move that this committee rise and beg leave to sit again.

CHAIRMAN: You second the motion of Delegate Woolaway? All those in favor of the motion, please signify by saying "aye." Opposed. Carried.

Evening Session

WOOLAWAY: At this time, I'd like to move that we pass tentatively Section 10.

DOI: Second the motion.

WHITE: I'd like to make a few comments on Section 10. First of all, I'd like to - - all of the delegates have been furnished with a new draft to Section 10, and I would like to offer that as an amendment to replace the draft that was attached to the committee proposal or that was incorporated in the committee proposal. Now the substance of this amendment - -

Section 10. Debt Limitations.
No bonds or other instruments of public indebtedness shall be issued except by or on the behalf of the State or a county. All such State bonds and other State instruments of indebtedness must be authorized by the legislature. All such county bonds and other county instruments of indebtedness must be authorized by the governing body

of the county issuing same, and the legislature shall have no control over their authorization or issue; provided that no county bonds or other county instruments of indebtedness shall be deemed to be authorized until the issue thereof is approved by a majority of the registered voters whose votes are tallied on the subject at an election in the county concerned.

Fifty million dollars is hereby established as the limit of State debt at any one time. Bonds and other instruments of indebtedness in excess of this State debt limit may be issued, provided such excess debt of the State is authorized by a two-thirds vote of all the members of each house of the legislature, and such excess debt, at the time of authorization, would not cause the total of State indebtedness to exceed a sum equal to fifteen per cent of the total of assessed values of taxed real property in the State, as determined by the then last tax assessment rolls of the State, pursuant to law.

Bonds or other instruments of indebtedness to fund appropriations for any fiscal period in anticipation of the collection of revenues for such period or to meet casual deficits or failures of revenue, which debts shall be payable within a period of one year, and bonds or other instruments of indebtedness to suppress insurrection, to repel invasion, to defend the State in war, or to meet emergencies caused by disaster or act of God, may be issued by the State under legislative authorization without regard to the limits on debt and excess debt hereinabove provided.

A sum equal to seven and one-half per cent of the total of the assessed values of taxed real property in the county, as determined by the then last tax assessment rolls of the State pursuant to law, is hereby established as the debt limit of such county at any one time.

All bonds or other instruments of indebtedness for a term exceeding one year shall be in serial form maturing in substantially equal annual installments, the first installment to mature not later than five years from the date of the issue of such series, and the last installment not later than thirty-five years from the date of such issue.

Interest and principal payments shall be a first charge on the general revenues of the state or county, as the case may be.

The provisions of this Section shall not be applicable to indebtedness incurred under revenue bond statutes by a public enterprise of the State, county or other political subdivision, or by a public corporation, when the only security for such indebtedness is the revenues of such enterprise or public corporation, or to indebtedness incurred under improvement district statutes when the only security for such indebtedness is the assessments upon properties benefited or improved.

Nothing in this section shall prevent the refunding of any indebtedness at any time.

CHAIRMAN: Just a moment, Mr. White.

NIELSEN: Mr. Chairman, so Mr. White can talk on the amendment, I'll second it.

WHITE: Thank you, Mr. Nielsen.

The substance to the amendment differs primarily from the original in eliminating any dollar limitation on county indebtedness, this being governed solely by the percentage of assessed value of taxed real property. The percentage is recommended, 15 per cent for the State and seven and one-half per cent for the counties compared with ten and five per cent prescribed in the Organic Act. These limits you will note cannot be exceeded except by the State in periods of emergency. All bonds issued under this provision must be in serial form with the requirement that the first installment shall not mature later than five years from the date of issue and the last not later than 35 years. Under this provision, the debt limit will not apply to bonds issued by a public enterprise or a public corporation where the only security is the revenues thereof, or to bonds issued under improvement district statutes when the only security for such indebtedness is the assessment upon benefited or improved property.

I have been in communication with the legal firm of Wood, King and Dawson who have represented the Territory and counties over a period of years and this proposal incorporates changes suggested by that firm. It has also been reviewed by the attorney general and has his approval as to form.

In order to assist the delegates in considering this important subject, the debt limits of the State and the counties, and the situation of each with respect to outstanding bonds as well as those authorized but unissued, is shown on this chart. [Facsimile of chart on following page.] All supporting data are set forth in exhibits attached to the committee report. If you'll look at the chart here, at the top set of figures are shown the assessed value of the Territory as a whole and then for each of the individual counties: 249 million for the City and County of Honolulu, 30 million for Maui, 34 million for Hawaii, and 18 million for Kauai. On the basis of this seven and one-half per cent for those counties, Honolulu would have a debt limit of 18,750,000; Maui 2,275,000; Hawaii 2,600,000; and Kauai 1,400,000.

To give you an idea of how each of the individual counties stand, in the case of the island of Oahu, City and County of Honolulu, their bond limit is now -- I mean their outstanding bonds now amount to $13,982,000. They have bonds that have been authorized but unissued of $6,200,000, so that the total outstanding and authorized but unissued would amount to 20,182,000, which would be in excess of their 18,750,000 bond limit.

In the case of the island of Maui, they had 652,000 outstanding, and they have authorized but unissued 1,150,000, making a total of 1,802,000 which would be well below the debt limit.

In the case of the island of Hawaii, 689,000 outstanding, 795,000 authorized but unissued, or a total of 1,485,000 against the bond limit of 2,600,000.

When we get to the island of Kauai, where we run into some difficulty because their bond limit would be one million four, they already have -- the 725,000 that are shown on the chart here have now been issued, so they would have 1,874,000 outstanding, which would be in excess of their bond limit. On the other hand, if an ordinance were adopted approving of the present borrowings, why the bonds of the County of Kauai would not be effected except that they would not be permitted to make further borrowings until they got down to the debt limit or unless the assessed value, in the case of the County of Kauai, would permit them to increase that figure of one million four.

Now, in the case of the Territory, the Territory at 15 per cent would work out 50,050,000, which is the present bond limit, the present limit on their bonds. In the case of the Territory, they have a 50 million debt limit now, but outstanding and authorized but unissued bonds amount to about 56 million. However there are a number of those issues that I understand that there is not much chance that they will be sold. That's all I have to offer. If there are some questions, why --

LOPER: May I ask the chairman of the committee a question? Is it your intention, Delegate White, to hold on to both the 50 million limit and the 15 per cent limit? Are they both to be written in?

WHITE: Well, in the case of the Territory, it was felt that it would be advisable to have a value limitation because under the provision the legislature by two-thirds vote can increase that up to a limit of 15 per cent. There's nothing so sacred about the 50 million dollars that the limit couldn't

PRESENT DEBT AND PROPOSED BOND LIMITATIONS

		Territory	All Counties	Honolulu	Maui	Hawaii	Kauai
Net assessed valuation Jan. 1, 1950		333,643,899	333,643,899	249,670,074	30,289,609	34,813,295	18,870,921
Territory 15% -		50,050,000					
Counties 7½% -			25,025,000	18,750,000	2,275,000	2,600,000	1,400,000
INDEBTEDNESS							
Outstanding	(2)	14,936,000	17,197,000	13,982,000	652,000	689,000	1,874,000
Authorized but unissued	(3)	41,076,220	8,145,736	6,200,000	1,150,000	795,736	
Total	(1)	56,012,220	25,342,736	20,182,000	1,802,000	1,484,736	1,874,000
Proposed bond limitations		50,000,000					

(1) Authorized territorial debt limitation by Act of Congress set at 50,000,000

(2) Less outstanding territorial bonds as of June 6, 1950 (includes recent issue) 19,393,000

(3) Leaving unissued available for territory 30,607,000

be carried solely to the 15 per cent except you would have a fluctuating figure all the time, and I don't think we will always be in a period where the assessed values are just going to continue to rise. So having a dollar debt limit may actually prove to be an advantage.

WIRTZ: I understand the chairman of the committee has stated that they corresponded with the firm of Wood, King and Dawson. I should like to know if this question was put up to them, and how do they feel?

WHITE: You mean on the question of the percentage?

WIRTZ: That's correct, and also the fixed figure. My experience as city and county attorney in the past has made these firms who underwrite bonds or issue bonds very wary of any problem of fixing out -- determining the debt limitations. And I wondered if this proposition as stated in your proposal had been submitted to this firm for their opinion.

WHITE: Yes, it has been, and while I haven't had any positive opinion from them that they would advise very strongly against a combined debt limit exceeding 22 1/2 per cent, I think their thinking is that way, that they should be. When you go above 20 per cent, why you're getting into a situation where you have to watch it because the people that buy the bonds are interested in the ratio of your debts to your assessed value because while all of the tax revenues of the State or the counties naturally are available for the payment of the debt, it's been customary for bondholders to look to the real property taxes as their real collateral.

CROSSLEY: I'd like to ask the chairman of the Committee on Finance a question. If you tied the debt limit to dollars rather than to percentage in dollars, what would you do in inflationary times? How would you get beyond your 50 million dollar limit then?

WHITE: Well, in the case of the Territory, it's 50 million dollars. The Territory can raise that above 50 million dollars up to 15 per cent of the assessed value, so that the legislature can by two-thirds vote increase the debt limit so long as they don't exceed the 15 per cent. For the county, we've taken out -- if you read the new proposal, there's no dollar debt limit on the county. It's all seven and one-half per cent.

There is one thing that I think we must consider on this too, is that during the war values have increased substantially, and the tax assessments, the assessments on real property are still far below a reasonable value as compared with market values. There was a 20 per cent increase made this year, and I think there is a further increase contemplated for next year, which will tend to narrow the present margin.

NIELSEN: I would like to ask the chairman of the Taxation Committee a question. In the unissued No. 3 [referring to chart] there under Territory, 41 million dollars, isn't a considerable sum of that unissued amount authorized but just hasn't been issued? In the 41,076,220. All of it's been authorized, so that today on this basis we couldn't borrow anything. We couldn't anyway.

WHITE: We couldn't anyway because Congress has authorized an increase in the territorial debt limit to 50 thousand --

NIELSEN: 50 million.

WHITE: -- you've already authorized 56 million, if you issued all of those bonds. But there are lot of those bonds if you go back over--I've got the details here--there are some of the bonds that there is little possibility that they'll be issued, so I think it's safe to say that they will stay within that limit. It's my understanding that since this time five million of that 41 million in the last few days have been sold so that this has gone up to 19 million and this down to 36 million.

NIELSEN: I can't recall the figures because I wasn't on the Finance Committee of the last session, but it seemed to me that we raised or got Congress to raise the authorization to 50 million, but we had already authorized the sale of that many million dollars worth of bonds, so on this basis we couldn't issue any more or authorize the issue of any more bonds. We would be locked at 50 million which we have already authorized.

MIZUHA: I believe there was a significant section written into the education article some time ago, in the past few days, which would transfer to the future State of Hawaii the obligation for the building of our schools. Now in the past, the bulk of the bonds that were issued by the various counties were for building of public schools. If the future State of Hawaii is to assume the obligation for the building of our public schools, then it seems to me there must be some revision in the percentages as far as county obligations are concerned, and perhaps lowering the percentages allowed to the various counties and increasing the percentage for the future State of Hawaii.

WHITE: May I answer that? If you look at the exhibits that are attached to your reports, you will find that the school bonds are territorial bonds. It's true that the interest is charged to the county, but they are territorial bonds and are included in this figure that we have for the Territory. They're not county bonds.

AKAU: In the new Section 10 which has just been submitted this evening, I'm wondering if I understand this correctly. According to the first paragraph, we don't limit but then we go on into the second paragraph which starts "Fifty million," and it seems to me that we establish a limit. Am I correct, to the chairman or Mr. Tavares over there, am I correct in my interpretation or is that -- clarify this statement. I don't know.

WHITE: Well, the first part of the paragraph has nothing to do with the limit. It only has to do with the method of issuance. It says, "No bonds or other instruments of public indebtedness shall be issued except by or on behalf of the State or a county. All such State bonds and other State instruments of indebtedness must be authorized by the legislature. All such county bonds and other county instruments of indebtedness must be authorized by the governing body of the county issuing same, and the legislature shall have no control over their authorization or issue; provided that no county bonds or other county instruments of indebtedness shall be deemed to be authorized until the issue thereof is approved by a majority of the registered voters whose votes are tallied on the subject at an election in the county concerned." That has to do with the method of issuing.

AKAU: Well, where it says, "The legislature," in the first paragraph, "shall have no control over their authorization or issue," that is about issue. Now in the second paragraph, "Fifty million dollars is hereby established as a limit of the state debt." That doesn't have to do with the same thing?

WHITE: The legislature will have nothing to do with the issuance of bonds by the county.

WIRTZ: I noticed from the committee report that you were in communication with Wood, King and Dawson, which is a firm that has for many years financed most of the territorial bonds and most of the municipal bonds, and I'm just wondering whether this proposition of debt limitation was submitted to them, because I do know in the past that they have raised many, many questions on this very question of debt limitation.

WHITE: This provision has -- this last provision was sent back to them again on Thursday or Friday, but this provision incorporates all of the ideas and suggestions that

have been submitted by Wood, King and Dawson, with one possible exception, and that had to do with the payment, where we provide that the serial bonds shall be paid in approximately equal installments. They made some suggestion that the installment in any year would not be more than 50 per cent of the preceding year, but to me it would be a very cumbersome provision and would add nothing to it. But that is only a detail that they don't place too much weight on in any event, but the provisions of this section incorporate all of the suggestions and ideas of Wood, King and Dawson.

WIRTZ: Do I understand that it's the amendment that's now before the house, or the original section?

WHITE: No, the amendment that's now before the house, Number 10.

Well, I don't know whether it might be helpful if we would take this Section 10—there's a lot in it—and take it paragraph by paragraph and act on each paragraph. I think we might get further.

PORTEUS: I think there is some confusion in the minds of some of the delegates on this subject which is very complicated, that of bonded indebtedness. When the committee talks about the number in dollar signs of bonds authorized, the committee does not include what is known usually as revenue bonds. In other words, the Board of Harbor Commissioners might in a proposition issue bonds for certain public improvement of a nature that brings in revenues and from those revenues the interest and the principal would be paid off. I think there is a distinction to be made there and if the delegates will give their minds to that for the moment, that thought, they will find that the 50 million dollar limitation is not the limitation of the total bonded indebtedness of the Territory. It will not include, I believe, improvement district bonds unless the improvement district bonds are an obligation on the general revenues. If they are only out of specified revenues, and being revenue bonds, they won't be in the total of the 50 million.

Now, as I understand the committee, too, the 50 million isn't the top total. The 50 million is the total to which the legislature cannot exceed as far as the State itself is concerned, not counting the counties, until you can get a two-thirds vote in each house. That's to enable something less than a majority of the members of each house to agree that in the future, for instance, that we will need to spend money for school buildings, and that we shouldn't spend all the money we can borrow now and that we ought to wait awhile and keep a little cushion. Now, the fifteen per cent, as I understand it, is to give the cushion between the 50 million dollars and that higher figure, so that if you run into depression days or if you want to schedule out that you write bonds for a program for the school department, for instance, you could schedule out that you were going to support a program that would involve say ten million dollars in bonds for school building spread over a number of years.

There would be the tendency on the part of some legislators to try to spend all the money the session they were in, and let the future take care of itself. But I think the scheme of the committee is sound because it lets less than a majority say to the others, "You can't go beyond this first limit because there may be more needy times ahead of us. There may be other programs we need to support."

Now, there also seems to be some question on the fifteen per cent. I'd like to point out that the fifteen per cent is not the true limitation insofar as these islands are concerned. The fifteen per cent is a limitation on the State. The county has a limitation of seven and a half per cent, so that the real total here could well be, if the counties go up to their seven and a half and the Territory to its fifteen, really twenty-two and a half per cent.

So that you have a number of steps in this proposition. One, this excludes revenue bonds; two, the 50 million dollars is the first limitation of the State; and it does not include county bonds. There is a question about that with the 15 per cent so far as State bonds are concerned. Then the county operates independently on a seven and a half per cent limitation.

CHAIRMAN: Mr. Porteus, the Chair would like to ask a question on a point of clarification on your statement there. You picked out a figure of twenty-two and a half per cent whereby the legislature by two-thirds vote could - -

AKAU: Mr. Chairman, please use the mike. We can't hear your question. I'm sorry.

CHAIRMAN: Is it your meaning that the legislature could raise the assessed values of the real property or merely to say how much shall be derived from the assessments of real property, in that way get around the - - over the 50 million?

PORTEUS: No, what I was pointing out was that this has first a 50 million limitation. You have the 15 per cent of assessed value. It may be very considerably in excess of that. It may go up to 70 million. Now that 20 million cushion, you might call it, if that's the right figure - -

CHAIRMAN: But under that 15 per cent there, you only reach 50 million.

PORTEUS: Well, if the values keep going up—and we know that the Tax Office has put up values this last year and they intend to increase their assessments the following year—if in the next few years we get more money, in order to get into that additional point beyond 50 million, it takes a two-thirds vote. Now my twenty-two and a half per cent that I referred to is a limitation on indebtedness throughout these islands, not on a State basis. Fifteen per cent is your top maximum limit from the point of view of the State operating as a legislature of the State and borrowing in the name of the State.

The counties have a right, if the voters of the particular counties approve, to borrow up to seven and a half per cent. So if every county borrowed its maximum and if the State borrowed its maximum, I'm pointing out that you would have a total maximum of twenty-two and a half per cent. So that those that were saying, "Well, is 15 right, perhaps 20 per cent wouldn't do any harm," that as this has been written by the committee, you have a prospective limit of twenty-two and a half per cent.

WIRTZ: There is one thing that I think that we ought to consider very, very gravely at this point and that is the words "assessed value." We have the same language appearing in the Organic Act, Section 55, where the total indebtedness for the Territory is ten per cent of the assessed value and five per cent for subdivisions. Now, although we use the artificial—and I say artificial because I mean it, it is artificial—50 million dollars or 25 million dollars, and then we provide for the other formula of 15 per cent, we still tie it up to the assessed value. But we've had trouble in the past and we'll have trouble in the future unless we clarify that term as to what is meant by the "assessed value."

TAVARES: I think - - Shall I answer that question?

WIRTZ: I haven't finished yet, I don't know. Do we mean by that term "assessed value," the net assessed value without home exemptions, without other exemptions, or do we mean the total assessed value?

WHITE: Have you got the new Section 10?

WIRTZ: I believe I have.

WHITE: The new Section 10 reads, "The total of assessed values of taxed real property," which would make it the net assessed values.

WIRTZ: Well, that's still not clear in my mind. I think if it's not clarified here, it ought to be clarified in the report. Are we talking about the net or are we talking about the total assessed values?

WHITE: We are talking about net assessed values, which is the taxed value, "the assessed value of taxed real property." If it isn't taxed, why then it wouldn't be included, so that any exemptions under home exemption or for other purposes would not be included.

WIRTZ: I see.

NIELSEN: I'd still like to have an answer to the fact, and I'll change the putting of it, isn't it true right now that under this setup where we specify that the State maximum limits shall be 50 million dollars, that for any future borrowings, we have to get a two-thirds vote of both houses because we are authorized over the 50 million now? So for any further increase we have to get a two-thirds vote of both houses.

WHITE: That's right, because your fifteen per cent would only bring you 50,050,000, so the fifteen per cent just happens to hit the 50 million right on the nose. That was one of the reasons why I was so -- that was one of the reasons I was working on the elimination of the home exemption because that meant a great deal of difference in the borrowing capacity on the basis of these percentages.

NIELSEN: Well, on that basis then we are not to -- our hands are tied by the legislature to two-thirds vote of each house before we can borrow any more money.

WHITE: That's correct.

NIELSEN: I think that is rather a high limitation to place on this. I'd like to hear from some of the others on that.

ASHFORD: I would like to ask the chairman of the committee a question that carries on Delegate Wirtz' question. The language used is the "total of assessed values of taxed real property in the State." Now, suppose there is a $5,000 home which has an exemption but it is still taxed because it runs over the exemption, and that is assessed taxed real property, is it not? And is not the assessment the $5,000?

WHITE: No, I'd say that the taxed value would be the five thousand less whatever the exemption was. In other words, the net value as shown on the tax -- it says as shown on "the assessment rolls of the State, pursuant to law."

BRYAN: I'd like to ask Delegate White if he'd consider changing the wording so that it would read "taxed value instead of "assessed value of taxed property."

WHITE: Well, there's no pride of authorship as far as the words are concerned. This section has been reviewed by the Attorney General's Office, who have to advise the tax people, and this is the language that they suggested as being the clearest language that they could think up to take care of this unless you wanted to write a statute on it to explain what items weren't included in it.

I understand the difficulty there. I'd like to ask Mr. Tavares if he thinks the committee report along with this would be sufficient.

TAVARES: Yes. I think that can and should be clarified by the committee report. It isn't even as simple as it has been said so far. At the beginning of an assessment year, you have two values, the value assessed by the government, and in tax appeal cases the value claimed by the taxpayer. The law now provides that for purposes of fixing the rate we take half the difference and add it. In other words, we take half way between the tax value claimed by the government and the tax value claimed by the taxpayer. In my opinion this means that you will take, as of the date you determine the limit, whatever rule the statute lays down for fixing the tax rate. In other words it is a net assessed value, after deducting exemptions and including the adjustments made under our laws to take care of tax appeals which are pending and not yet determined, and I think our report should so state. That is the way, as I understand it, it is done now and I think we should follow that interpretation.

AKAU: The delegate from the fourth district and Mr. Nielsen from Hawaii mentioned the necessity of both houses passing it by a two-thirds vote. Now, then, I raise the question, is it within the power of the governor to veto such vote after it's been passed by two-thirds of both houses, and if it is within the power, maybe Mr. Porteus could answer, what happens then?

PORTEUS: I would take it that the usual legislative procedure would have to be followed. If you provide that it is necessary to have a two-thirds vote in the first instance, you would have to accumulate that vote in order to get the measure through from a constitutional point of view. It would have to run the gauntlet of regular legislation and go to the governor. If the governor should choose to veto it, if it were in a pocket veto period after the legislature could no longer get at it, it would be dead. If, however, the governor had to act on it within the time, he would have to write a veto message and it well might be that while two-thirds ordinarily would be the vote to override a governor's veto, if his message was well taken, there might be a number of those of the two-thirds that would pay attention to that message and decide that perhaps their earlier opinion had not been correct and refrain from overriding his veto. So that the two-thirds vote in the first instance still doesn't assure -- tell the governor that no matter what he does it will be useless.

WIRTZ: I noticed at the end of the first paragraph of the redraft, "provided that no county bonds or other county instruments of indebtedness shall be deemed to be authorized until the issue thereof is approved by a majority of the registered voters whose votes are tallied on the subject at an election in the county concerned." Now, is that not a—I'm addressing my question now to the chairman of the committee or any member thereof who wishes to answer—is that not a new idea as far as the Territory of Hawaii is concerned? And secondly, is that not placing the referendum on financial matters in the hands of the people?

WHITE: Well, I'd say it is, it's new. In both instances, the answer is yes. This is recommended very strongly by Wood, King and Dawson, and while I don't see a great deal of strength to it, they say it has a lot of psychological value in dealing with the sale of bonds. In other words, people are more inclined to buy bonds where the requirement is that the voters have to vote on the bond issues.

SHIMAMURA: May I ask a question of the chairman of the Finance Committee, please? Doesn't the present statute provide for election of people of the county for issuance of county bonds, requiring a 65 per cent majority?

CHAIRMAN: Say that again.

SHIMAMURA: Under the present Revised Laws, isn't an election required and an approval of 65 per cent of the voters for issuance of county bonds, except where the legislature shall provide otherwise?

WHITE: Let me get that. We'll have to check that. I didn't know there was --

SHIMAMURA: I so understand it. And may I ask another question? Why is it that the authority of the legislature was entirely omitted in the case of the issuance of county bonds, whereas in the present Revised Laws, the legislature is given certain powers concerning issuance of county bonds by counties?

WHITE: Well, under this program, all of your school bonds would be taken care of; that is, the bonds for school buildings would be taken care of as Territorial obligations, and it was felt that it was advisable to leave to the discretion of the people of the respective counties whether or not they wanted to issue additional bonds.

SHIMAMURA: In other words, you have given the counties, the various counties entire autonomy as far as the issuance of county bonds go. There is no control from the legislature. Isn't that right? Was that your purpose?

WHITE: As far as the issuance of the bond, yes, with the approval by the voters.

SHIMAMURA: Whereas, under the present Revised Laws the legislature had certain discretionary powers.

WHITE: To mandate.

TAVARES: Since that is a technical question, I think perhaps I could try to answer it. It is true that under Chapter 117 of our Revised Laws today, the subject of issuance of county bonds is covered by statute, and there are two ways. One is under legislative authorization and the other permitted by the statute is at an election at which 65 per cent of the registered voters of the county vote affirmatively. To my knowledge, as far as I know, that's never been used. I think it's almost a dead letter in use.

I might say that this last amendment, I don't believe came in time for the committee to discuss it fully. Is that correct, Mr. Chairman? And so I may be a little weak on that myself, the last amendment of Section 10. But it is true that we must bear in mind that if this provision is approved, we are departing from the present method of authorizing county bonds because we have at the present time required that the legislature first authorize the county to issue bonds by statute. This allows a county, in spite of the legislature, without any legislation, to issue bonds but only after an election. I think that should be borne in mind so that the delegates understand what the effect will be on county bond issues. In other words, it takes away the power of the legislature to authorize county bonds. They are authorized directly under the Constitution by this proposed article.

SHIMAMURA: There is a point I wish to raise. In the past there was no election necessary for the issuance of county bonds because in most cases the legislature provided otherwise. But the legislature had discretionary power so to provide under our Revised Laws. But under this proposed amendment - - rather proposed constitutional provision, there is no such authority vested in the legislature, and the county boards are entirely autonomous. Furthermore, not only that, the county boards themselves don't have the full authority, but they must rely upon the electorate, and each time you issue a county bond, you must have an election.

WHITE: I think it might be well to hear from Mr. Charles Rice and Mr. Harold Rice. They were very much interested in that particular part of it.

H. RICE: Mr. Chairman, and fellow delegates. It seems to me we've come a long way under the Organic Act the way it is in the Territory. I feel that I'd like to see us on a pay-as-you-go basis but I don't see how it's possible for probably many years under the conditions as they are. There is no question in my mind that they have inflation in the East, and I believe that we ought to follow the Organic Act and make it a percentage basis on the real property, and I'll offer that amendment as it is I've prepared on that but I didn't think that this was the time for me to introduce it. I thought that they were working on this other amendment, but if you'd like to see this amendment, I'll offer it. Where's the messenger?

WHITE: Delegate Rice, what I wanted you to talk on was this question of having the voters of the county approve the bond issue.

H. RICE: Well, personally I feel that we should limit the borrowing of each county for a certain period, but I could see that when we become the State of Hawaii, if you have to go through that procedure the minute we become a State, it will take almost two years before you can float a bond issue. So I think in a way the simpler this is the better. I know that it's going to be a lot harder if you are going to submit these bond improvements to the electorate each time, but say we become a State, the first election - - you will have to wait until the second election before you can approve those bonds, even if the legislature authorizes them. So I don't claim that my amendment would do away with it, but it will do away with the fact that you set up - - I allowed: "Twenty per cent of the total assessed value of real property in the State as determined by the tax assessment rolls of the State is hereby established as a debt limit of the State," and 15 per cent for the counties, and go right along and the provision down there, the large chapter at the bottom allows for the revenue bonds and improvement bonds. This section seems to have worked all right in the Organic Act. As I say, I don't think I'm in order in making this amendment now. It's just getting it before the delegates. But, I was called on to talk.

ASHFORD: I'd like to say that this suggested amendment that is coming afterwards appeals to me more than the first amendment that was passed around. I can just see what would happen to the islands of Molokai and Lanai if the electorate had to pass on bond issues. There would be about $400,000 available on Maui and it would all be spent on Maui, and if anything was for Molokai, it wouldn't be passed.

ROBERTS: I'd like to raise a few questions on the problem that is before us which removes us a little bit from the present consideration of assessed valuations as a basis for the credit of the State. It seems to me that the delegates ought to consider seriously some of the basic problems involved in this question. We are taking bodily a section from the Organic Act which has used assessed valuations and has provided a limitation, a debt limitation.. When we are wards of the Federal government, there is perfectly ample reason why someone should control the child. When we needed something, as we have in the past two sessions, we have gone to Congress and asked Congress to raise our debt limits and the Congress has so done. It seems to me that when we are a State, we've got to stand on our own feet, and in doing so we ought to see to it that our credit is sound, that our finance is adequate, but that credit and that finance is based on the operation of the Territory and its economy.

When we are considering, as we are now, putting a debt limit on the State ourselves and that debt limit, in terms of a fixed amount, is close to being identical or perhaps a little bit smaller than the actual total indebtedness, we are making no provision whatsoever for the possibility of additional increases and issuance of bonds. The proposal suggests that we have some flexibility by providing a base of 15 per cent, or the suggestion perhaps for raising it, which would provide an opportunity for us to meet conditions as they arise. That 15 per cent on the basis of existing evaluation, taxable evaluation or net base, gives us identically the figure that we have as a debt limit, 50 million dollars, so that you have no possibility even within the 15 per cent of providing for any opportunity for expansion along that line.

I'd like to raise questions, too, as to whether or not assessed valuation is a proper base for basing our credit. Now, when we issue bonds we say in fact to the people who buy them that we are going to pay you a rate of interest over a period of years, and at the maturity of that bond, we

are going to give you the actual money that you put in. Now, how do we know whether we are going to pay that or not? In other words, on what grounds do we issue it? What credit do we have? It seems to me that the credit that we have is the income, the earning capacity of the territory, the tax capacity of the territory. What we are planning to do with an assessed valuation, it seems to me, limits the basis of our payments to only a very small portion of the total revenue of the State. If you take a look at the total revenue published last year you'll find in actuality that the total income from property is approximately 13 per cent of the total revenue. That is a relatively small part. As we grant additonal exemptions, of whatever kind, that base becomes constantly narrower, so that actually what you are doing is placing a proposal for the credit of the Territory on an extremely small base. What you pay is in terms of what you have, and what you have is in terms of income from the things that you produce. It seems to me that you ought to provide, if you provide a base limitation, something that goes basically to the revenue of the Territory which covers all of the islands.

Let me give you an illustration as to what I have in mind. If you take a look at the assessed valuation figures from 1930 to 1949, you'll find that in two years, in the year 1932 and in the year 1949—I think the same thing would show for 1950—your assessed valuation has changed by some 16 per cent, in 1950 I understand close to 20 per cent. Now, how do you base your credit on a fluctuation of that type? It doesn't seem to me that sound finances of the Territory can properly be based on a fluctuation as wide as 16 or 20 per cent in one year, and you are basing your bonded indebtedness on that ground. That to me is an awfully slim ground. It seems to me also that if you are going to tie the hands of the future State and if you get individuals who are not terribly concerned about how they are tied, assessed valuations can be changed, and they have been changed very drastically, so if you want to avoid your constitutional limitations, then you get around it by providing a change in the assessment.

It seems to me that that is not basically sound, that if we are going to provide a debt limitation, it should be on actual revenue, actual income that the Territory has year by year. Now I say perhaps one year would not constitute a proper base. I think it ought to be averaged over a period of years, and that base then becomes a proper area in which we can issue bonds and which will give the prospective buyer an idea as to what we can pay. Now I grant that lands look good. That is the basis upon which bonds have been issued in the past, but the lands become a smaller and smaller base in terms of actual income, and I would suggest to the delegates that we give a little additional thought to looking for some other base than assessed valuations.

I recognize, and I don't know in detail, that some correspondence has gone on with regard to that, and that does not apparently satisfy some areas where we may look to get assistance in the issuance of future bonds. The way this section is drafted there are no future bonds unless your assessed valuations increase substantially within the next few years. Even though our present valuations alone—I understand they were 30 per cent a few years ago and perhaps close to 50 per cent now; perhaps they may get up finally to close to what the market value of the properties are—but assessed valuation, I still suggest to the delegates, is not a sound base for future financing of the Territory. And I would suggest that we give a little additional thought to revenue, actual income for a period of time, to more properly base the finances of the Territory and the future State of Hawaii.

HOLROYDE: The delegate from the fourth district suggests revenue as a basis for getting a base or debt limit. I can't think of anything that fluctuates more than revenue to the Territory. It can be upset by so many things that I don't think it is a very sound approach.

Another consideration that we have is the sale of the bonds which we are going to put on the market. At the present time a good part of our bond issues are supported because they are authorized by the Federal government and therefore are tax exempt bonds. For that reason they receive a ready market in many quarters of the United States. I feel, therefore, that as we become a State we may not be afforded that same privilege. I feel, therefore, that we should proceed cautiously and be sure that whatever foundation that we pick as a base for our debt limit should be done soundly and with as much security as we possibly can, if we're going to continue to have a market for these bonds.

MAU: I was just going to -- wanted to ask the delegate from the fourth district if he would include in his base for the debt limit the real property together with revenues over a period of years.

CHAIRMAN: That question was addressed to Delegate Roberts.

ROBERTS: The total revenue obviously has to include revenue which comes from taxes on real property, so that you have as a base for financing the property plus other revenues. Now, the question was suggested previously that this is a fluctuating base. Of course, income is fluctuating, but I suggest that we use a base which is sufficiently broad, a ten year period, a ten year average, which will provide a situation that you do have a more level opportunity to indicate what the total possibilities of financing are of the State. I indicated in my previous statement that a 16 per cent fluctuation in one year certainly doesn't provide a proper base for issuing bonds, and the fluctuations run from one to 16 to 20 per cent. I'm sure that if you take your total revenue over a ten year period, including your property taxes, that you won't find that much variation.

CHAIRMAN: Does that answer your question, Delegate Mau?

MAU: Yes, I have another question. May I ask the other question?

CHAIRMAN: Proceed.

MAU: I wonder if the delegate from the fourth district has any figures as to revenues of the Territory, even a rough estimate. I'd like to compare the amount of revenue he speaks of. I imagine he limits that to revenue of the State. It doesn't include revenues of other kinds, the assets of the community, revenues in private industry for instance. I don't believe he includes that. I want to compare the amount of revenues of the State to the value of the -- rather the assessed value of real property.

CHAIRMAN: I believe a question has been addressed to Delegate Roberts. If it has, he can answer it.

ROBERTS: I don't have the total revenue figures. I had them this afternoon.

CHAIRMAN: Delegate White, can you answer that.

WHITE: I don't have the figures handy. I'd like to --

ROBERTS: I could give you some overall, total overall figures. Well, of course, this is revenue, tax revenue that comes in to the State.

CHAIRMAN: Well, will the speaker address his remarks to the chair? Delegate Roberts, are you through?

ROBERTS: I'm not through. I haven't answered --

CHAIRMAN: Delegate Smith has been seeking recognition.

SMITH: Just to give the clerks a little rest, I move for a five minute recess.

CHAIRMAN: Moved for a five minute recess. Any objections? If not, recess is ordered.

(RECESS)

CHAIRMAN: The meeting please come to order.

WHITE: I'd like to move that we defer action on this section.

CASTRO: I second the motion to defer action on Section 10 to a later date.

WHITE: In order to assist us in giving further consideration to this particular section, in my opinion it would be very helpful if we could get the answer to three questions by the delegates here. Number one, is it their wish that the authority for the issuance of county bonds be retained by the legislature?

BRYAN: I move that it be the consensus of this body for the purpose of committee study that the authority for issuance of county bonds be left with the counties.

CASTRO: I second the motion of Mr. Bryan.

CHAIRMAN: Any discussion?

TAVARES: Just one matter I'd like to call to your attention before the vote and that is that we must bear in mind that this provision limits the issuance of bonds, the general obligation bonds, only to a county or the State. In other words, we are not authorizing any other type of political subdivision to issue bonds. There is one other matter and that is, if you are going to leave it that way, it just occurred to me, maybe it is an oversight, we have the County of Kalawao, which is not a true county. We had better be careful in our explanation or somewhere to make sure that we are not giving them the power to issue bonds.

HEEN: Would it not be better to use the term "political subdivision" instead of county?

WHITE: Well, that was what was intended, whatever is shown on this chart here. Honolulu, Maui, Hawaii and Kauai.

HEEN: I don't quite get the idea of deferring action on this section. If we deferred -- Of course the duty of this Committee of the Whole is to finally determine what should be done in this connection. If it's to be referred to the Committee on Taxation and Finance, then the whole bill will have to be returned to it. That bill now is before this Convention, and in order for that committee, that particular committee to further consider the matter, the whole bill will have to be -- rather the whole proposal will have to be referred back to that committee.

CROSSLEY: It was my understanding in the motion to defer, to defer to the end of the calendar of the Committee of the Whole sitting on this. Is that correct?

CHAIRMAN: That is my understanding.

CROSSLEY: Now, the second question I have, if the movant of the last motion would tell me, that when he moved that the consensus of this group be that the power to issue county bonds be invested in the county, did he mean as proposed by the Committee on Taxation and Finance, that is, with confirmation by the electorate?

H. RICE: I think you ought to defer the whole matter, and if it would expedite matters, I think the whole of Section 10 could be referred to the Taxation Committee.

HEEN: That cannot be done without referring back the whole proposal.

RICHARDS: My understanding of this particular proposal was that the matter of Section 10 be deferred so that the Finance Committee would be able to submit a proper amendment; but meantime, in order to give the Finance Committee and the chairman guidance, that there were certain questions which the Finance Committee would appreciate getting the ideas of this Convention on. Is that not correct?

WHITE: That's right.

RICHARDS: It's similar to the same proposition that the Finance Committee came forward with to ask the ideas of the Convention regarding home exemptions. This is what the Finance Committee is asking. We would like some indication from this Convention as to how they feel on certain specific matters, and then the Finance Committee can draft a proper amendment after having received the guidance of the Convention.

ARASHIRO: In reference to that questioning, did you recognize that motion that was made by the delegate from the fifth district and seconded by the delegate from the fourth district --

CHAIRMAN: As I understand it, Delegate Arashiro --

ARASHIRO: -- in reference to the authorization of issuing bonds that would be approved by the county board of supervisors?

CHAIRMAN: I did recognize the maker of the motion, yes.

ARASHIRO: In reference to that may I ask a question, then. What happens then? There are some times that the Territory may be able to match federal funds but the counties do not have that authority. Now what happens if we should adopt that motion?

CASTRO: Point of order. The motion before the house is to defer Section 10.

CHAIRMAN: I understand that that is the motion. However, on a point of information, there was requested by the chairman of the Taxation and Finance Committee, they wanted an expression from this committee as to their particular questions, before the motion to defer was put.

TAVARES: I think on second thought we ought to just defer this, period, and let the committee work up some alternative proposals. I think we'll save time.

KING: Technically, Delegate Heen is right that the whole proposal is before the Convention and if we defer Section 10, anybody can bring in a proposed amendment that would be acceptable, except for the fact that meanwhile we go on with the rest of the bill. However, the chairman of the Committee on Taxation and Finance did want an expression from the delegates as to their feeling on three matters, and he might propound these questions and then get the answers on them individually or any other way he can. It's a little hard to have a vote on a request for information without going through the parliamentary procedure of referring it back to committee with instructions. So I'd like to move the previous question on the motion to defer action on --

DELEGATE: Before you put that could I --

WOOLAWAY: Point of order.

CHAIRMAN: Just a moment. Delegate King, are you through?

KING: I did not make the motion for the previous question

WOOLAWAY: Point of order.

CHAIRMAN: State your point of order.

WOOLAWAY: Wouldn't it be proper, after getting expressions of this assembly, to recommit Proposal No. 10 back to committee instead of deferring it?

CHAIRMAN: That isn't the motion.

KING: I hope no one makes a motion to recommit the whole proposal because then the rules of our procedure

would delay consideration of this for quite a long time. We can defer action on Section 10, go on to the next section, and bring it up in a Committee of the Whole meeting tomorrow perhaps.

MAU: If I understood President King correctly, after the motion to defer is passed, anyone could bring in an amendment thereafter, even this evening.

CHAIRMAN: That's correct.

MAU: There is no time limit on this deferment. If that is so, I'm wondering whether or not the two possible proposed proposals, one by Delegate Rice and the other by Delegate Roberts, couldn't be taken up at this stage rather than deferment because we've called a special meeting this evening. We ought to meet until 11, 11:30 or 12 o'clock, if necessary, to get through with this proposal.

SILVA: I think the question of counties issuing bonds could be easily settled here. I think the board of supervisors would prefer in any county to have the legislature earmark bonds for certain projects, so that situations like the one pointed out by Miss Ashford could well be taken care of, so that small communities could receive the benefits of bond issues by having them earmarked; but through the legislature for the board of supervisors, rather than have an election every time there's a little school building to be built that an election will be put out for the amoint of bonds to be issued by that county. There is no question in my mind that as far as issuance of bonds for the county, it should be a legislative matter rather than the county.

ARASHIRO: Is the motion for deferment in order now?

CHAIRMAN: The motion for deferment has been made and seconded.

ARASHIRO: I now, therefore, move the previous question.

CROSSLEY: Second the motion.

BRYAN: Point of order. I made a motion which I had not withdrawn. Upon instruction from the chairman of the committee, if he wishes, I will withdraw that motion.

WHITE: I was about to ask him to withdraw the motion and let's defer it, and I want to ask for the expressions on those three points and we'll have an amendment drawn up.

BRYAN: I withdraw.

CHAIRMAN: There's a motion for the previous question. All those in favor of the previous question please say "aye." Opposed.

Now let's put the motion. The motion is to defer action on Section 10. All those in favor of deferring action on Section 10, please signify by saying "aye." Opposed. Carried.

Then we may proceed to Section 12.

RICHARDS: I move that we tentatively approve Section 12.

WOOLAWAY: I second that motion.

WHITE: In support of that motion, I'd like to say that the auditor is one of the most important positions in the field of financial management and government. The combination of a competent state auditor and commissioner of finance can go a long way toward eliminating waste and inefficiency in government operation. It is proposed that the auditor be appointed by the legislature, not because we believe the electorate incompetent but because we believe that they are not afforded the means of investigating the qualifications of an individual who might run for office if it were an elected position.

Furthermore, we are recommending an eight year term because, as in the case of judges, long tenure will attract more competent individuals. Secondly, the government would profit from long tenure since background and experience are indispensable; and, thirdly, it would serve to remove the auditor from undue pressure of any one legislature.

The requirement that he be a certified public accountant is consistent with those governing the eligibility of the attorney general and judges. It is possible that there are others not holding certificates of certified public accountants who might be capable of filling the job, but to eliminate this requirement would increase the hazard of having an incompetent individual appointed. You may be interested to know that at the present time there are approximately 56 known certified public accountants in the territory, so that the ratio on the certified public accountant would be 1 to 56 as compared to 1 to 20 for the judges. Furthermore, there is no reason why a person should not become a certified public accountant for the requirements are not too demanding. If anybody is interested in the requirements of the C. P. A., I could read them to you, but all that it requires is a high school education.

FUKUSHIMA: I have an amendment to offer. The amendment reads as follows: "The auditor shall be elected by the electorate of the State and shall hold office for a term of four years. No person shall be eligible to such office who shall not hold a certificate as a certified public accountant." Following that, the language is the same as Section 12, Committee Proposal No. 10. I'm making this amendment because I feel, as does the chairman of the Committee on Taxation and Finance, that the auditor's position, the auditor's office, is a most important one. Before proceeding, I'd like to move for the adoption of my amendment.

DELEGATE: Second the motion.

FUKUSHIMA: I believe the auditor should be removed not only from the executive whose book the auditor checks. This Section 12, the auditor is not a pre-auditor. It's a post-auditor, and as such, there can be no question that his position should not be one that is appointed by the governor. This proposal here makes his office appointed by the legislature. This same auditor, the post-auditor that we are speaking of, checks the account of the legislature—I believe that is a correct statement—and if he is to check the accounts of the legislature, that officer should not be appointed by the legislature. He should be removed from the executive and from the legislature, and I believe with the safeguard that he be a certified public accountant, that under the elective system you will find you will get an auditor who will be free and independent both of the legislative department and the executive department.

CHAIRMAN: Any further discussion.

ANTHONY: I'm opposed to this amendment. I assume it was seconded. Was it, Mr. Chairman.

CHAIRMAN: It was seconded.

ANTHONY: The purpose of having an auditor for a long term is to follow in line with the federal practice. There, as you know, we have a comptroller who is answerable only to the will of Congress, not to the executive. He holds office for a period of fifteen years, I believe, and he is not subject to reappointment. Now, if we were going to have an elective auditor, you would do just exactly what the purpose of the committee is set out to defeat and avoid. You would have an auditor who would be periodically engaged in political campaigns. We don't want any politically campaigning auditor. We want an auditor who is going to audit and keep the fiscal affairs of this State of Hawaii in good shape. We want him to possess qualifications of the office, and the way to do that is not to subject him to partisan political campaigns. Give him a long tenure, give him security in office, and make him independent of the executive once he is appointed. Therefore, I would vote against this proposed amendment.

AKAU: I will vote for this amendment - - for this motion, yes, the amendment, but I would like to amend further because I feel that after the word in the fourth line, "accountant," that following until the next to the last line is statutory. It's spelling it out quite a bit. I would move to amend, therefore, by striking out from, beginning with "It shall be the duty," as far down as "at such time or times as shall be prescribed by law," because in the last sentence we are saying that, as directed by the legislature, and the middle of that part is all spelled out, which I think is unnecessary. I, therefore, move that we amend it that way by striking out those lines that I've just mentioned, stated, to read as follows: "The auditor shall be elected by the electorate of the State and shall hold office for a term of four years. No person shall be eligible for such office who shall not hold a certificate as a certified public accountant." Then down below. "He shall also make such additional reports and conduct such other investigations of the State or its political subdivisions as may be directed by the legislature."

HOLROYDE: I'd like to ask one of the members of the committee if it's not true that the fundamental job of this post-auditor is to see that the legislation, specifically monies that have been appropriated for a specific item are carried out. In other words, he is the agent of the legislature when they're not in session to see that their appropriations are carried out the way they intended them to be. If that is correct, he should I feel, then, be appointed by the legislature.

TAVARES: I agree with that theory. That's the committee's theory that primarily the legislature makes the laws and therefore the legislature is primarily the one to which the auditor should report to see that the laws had been carried out.

I'd like to say one more thing about this elective proposal. I think that if you have the auditor elected, he will be using this or tempted to use it as a stepping stone to the governorship. You have today a number of jurisdictions where the attorney general is elected. He will run and he will do everything he can, not necessarily to just follow along the lines of duty, but pick everything he can to find fault with, perhaps, the governor, if he wants to run against the governor the next time. Instead of having unification, you are going to have disunity. Whereas if you have him responsible to at least one of the great branches of the government, the legislature, I don't think you will have that disunity. He will at least be kept to his job. I don't think he will be tempted to play politics the way he will when he is independent of everybody and out to make a name for himself.

KING: Point of information. There was no second to the proposed amendment to the amendment?

CHAIRMAN: That's correct.

KING: And there is no amendment to the pending amendment then?

CHAIRMAN: That's correct.

KING: I'd like to speak in opposition to the pending amendment. The whole purpose of it is to get an officer who will be the servant of the legislature. He should carry out the obligations and responsibilities that the legislature laid on him to see that the money they appropriated is properly spent. Now, the Federal Government for many years had no such offices and they finally created the Office of the Comptroller-General. As Delegate Anthony has just told you, he is appointed for 15 years. It is true he is appointed by the President of the United States and confirmed by the Senate of the United States, but once in office, he is independent of the executive, answerable only to the Congress, not eligible for reappointment, and only can be removed for cause. So Congress has made every effort to set him independent above politics and above every other influence except as their representatives to see monies are properly spent. Now, if we elected an auditor, he would be independent of the legislature that he is supposed to serve to a certain extent. He may find opinions and pass on expenditures without any reference to the will of the legislature whom he is supposed to represent in the matter of public expenditures. So I'm opposed to the amendment.

HEEN: I'm opposed to this amendment, also, but there is one feature I like about it, and that is if this auditor is elected, he can check the appropriations made for the expenses of the legislature to see whether or not those appropriations have been properly expended. That's a feature I like about it.

RICHARDS: I can agree with the delegate from the fourth district regarding the appropriations of the legislature, but when one looks over the amount of money appropriated and spent by the legislature for its own use in connection with the amount of money that the legislature appropriates for the balance of the operation of the State, it is comparatively small. The legislature and the members of the legislature so far in the discussion of this particular proposal have been very jealous of the position of the legislature, feeling that certain proposals - - certain sections in this proposal delegate to the governor too much power, and I can agree with certain of those feelings if there were not a proper check. Now, this auditor that is appointed by the legislature will be the proper check to make sure that the governor does not usurp his powers.

NIELSEN: I don't see why every time anything comes up here where the people might elect someone, there's always the same opposition to it, every time. Now, if we would just look over there in Ohio which has been put out as a splendid example. This fall, Auditor Ferguson is going to give Robert Taft a good licking, I think, and I think that maybe it's a good idea to get a good auditor in there, elect him, and then let him run against the governor or run against our senators, and we'll have some real material. But this fellow Ferguson is really red-hot and he's going to go to town against Bob Taft of Ohio. So I think we should start electing some of our people and taking our government to the people where it belongs.

MAU: It seems very, very odd to me that every time an officer of the State is proposed, they fear that the people would contaminate him. They want to remove him far above the poor common mass. I'm wondering whether they really believe in representative government. They argued very, very strenuously on the judiciary. The judiciary is so sanctimonious, you can't touch it with a twenty-foot pole. Then you come to an auditor. He is so sacred you can't give the people the right to choose him. If that is so, we'd better change some of our county government auditors. They should be above suspicion. You should have the mayor appoint him rather than have the people elect him.

I'm wondering whether or not these delegates who have said that the members of the Board of Education should be appointed, the attorney general and all the other officers who are to be appointed, whether they, too, stand in such sacred ground that the people should have nothing to do with their selection. I think that if you are going to have the government belong to the people, the people ought to have some say as to who shall govern them, and if they believe that this auditor should be elected for long tenure, let's have him elected for eight years. If they are afraid that he may be part of a political machine and play politics, so they say, I understand that politics is the science of government. I heard Senator Anderson from New Mexico make the statement in the statehood hearing. He said, "I'm glad to be a politician. I'm glad to be in politics. Every citizen

in the United States should be interested in politics." Why are you afraid of the people? Why are you afraid to allow the auditor to be elected by the people of the State of Hawaii?

MIZUHA: I would like to speak in support of the delegate's amendment, delegate from the fifth district. Every state in the Union from Alabama on down the line of the 48 states in the Union, elects the state auditor. Now, there must be something to it, bringing representative government back to the people, and some of our administrative officers in the future State of Hawaii shouldn't be afraid of going to the people to campaign, not only on this island but on the other islands of the group to tell them what kind of a man they are. If we have a good auditor, surely he will be elected to public office and give the people of Hawaii the kind of protection they need in expenditures of their money.

CASTRO: Point of information.

CHAIRMAN: State your point.

CASTRO: I'd like to know where the delegate from Kauai gets his information.

MIZUHA: It's in the Legislative Reference Manual beginning from 162.

CASTRO: Page 162. Thank you.

CROSSLEY: I would like to speak in opposition to the amendment, and also I would like to answer the delegate from the fifth district who just delivered the fine political address, by saying that if the auditor is selected by the legislature, he then is being selected by the representative choosings of the people. In the new State as now proposed in the legislative section, there are 51 members in the House of Representatives, 25 members of the Senate, a total of 76 people who have gone before the electors, the electorate of the State of Hawaii, and they have said, "One of our jobs, one of the things that we are going to do, is appoint an auditor, a man who will come back and say that the job that we did for the people was properly done; the monies we appropriated were properly spent. The State has carried out the functions, the duties, the mandates that you imposed upon them. All of those things have been done. I am responsible to see that they were carried out. You are responsible to the people; the legislators are responsible to the people. I am simply certifying that the things that you have promised the people would be done are being done properly. My responsibility is simply that of an auditor, a very simple function by a specialized man. All I have to do is, not report to the people as to whether your laws are good or not, [but] all I have to do is to say, were they correctly carried out and do the books balance."

A. TRASK: I'd like to offer an amendment to the amendment offered by Delegate Fukushima, the end of the second line, "for a term of four," to insert therefor, "eight years."

FUKUSHIMA: I second the amendment. I accept the amendment.

CHAIRMAN: You agree to the amendment.

A. TRASK: If you please, speaking briefly for the amendment of Delegate Fukushima, I want to say that I am a member of the committee of Delegate White, but I reserved my right to object to this particular section. I'm in favor of an elected auditor because I feel he should be free. He is a minor officer in the three divisions of government. He is set apart from them all with the right to look after the people's money. I think in line with that, the observation by Delegate Heen that he would like the idea of the audit of the legislative processes, and he probably had reference to the hold-over committee, I think it would be a very good idea that the auditor, particularly with that very, very shrewd observation smilingly made by the able Delegate Heen, that I think we should give more than ordinary heed to his observation, and really if the auditor is going to be subjected to the will of the legislature which has the power of appointment, I say that let's indeed make him an elected officer, elected by all the people and if he should -- and his campaigning will be extensive and probably cost much, it would seem to me that he should have a minimum of eight years and I'm for the amendment.

FONG: May I ask the chairman of the committee a question. Is the Comptroller of the United States a certified public accountant?

WHITE: I don't -- I couldn't answer that question, Mr. Fong.

ANTHONY: No, he's a lawyer.

FONG: Could you answer this question? Did you take into consideration the budget director? Did you put the qualifications of a certified public accountant to that office?

WHITE: No, I didn't.

FONG: Why didn't you?

WHITE: Well, I think that the job is quite different than -- the budget director or the commissioner of finance is an entirely different type of individual than an auditor. There are certain technical requirements, there is certain technical education that you have to have when you are an auditor that you might not have to have when you are a commissioner of finance.

FONG: You feel that the budget director is a man who should have less qualifications than the auditor?

WHITE: No, but I think --

FONG: And he sets up your budget of say, 100 million dollars a biennium.

WHITE: I think that his responsibilities might be even greater, but that doesn't necessarily mean that he would have to be a certified public accountant because his work wouldn't be in that field.

FONG: Now I want to ask the question of Delegate Mizuha as to all the auditors who are elected by the other 48 states. Are they all public accountants?

MIZUHA: I believe there is no qualification listed with reference to being a certified public accountant in each of those states, as far as I can recollect.

FONG: Thank you, Mr. Mizuha. I'd like to say that in the City and County we have a comptroller, and we got a pretty good comptroller in the person of Mr. Keppeler. Mr. Keppeler is sitting in the back here. I understand that he is not a certified public accountant. Is that right? That's correct. And the auditor of City and County is not a certified public accountant and I think that you people will all say that he has been a pretty good auditor.

DELEGATE: What's his name?

FONG: The treasurer of the City and County has to do a lot with finances. He is not a certified public accountant. The auditor of the County of Kauai, the County of Maui, and the County of Hawaii are not certified public accountants, and as I understand, the treasurers of the various counties are not certified public accountants. The budget director of the Territory of Hawaii at the present time, Mr. Thurston, whom we all have a lot of confidence and faith in, is not a public accountant.

Now, if this committee is going to impose a qualification of certified public accountant license to this auditor, I think we should place that definition, that restriction on the budget director because the budget director has a position which I believe is far more serious and more difficult and one that

is more important than the auditor of the Territory of Hawaii.

In speaking for the amendment as proposed by Delegate Fukushima that the auditor should be elected, I have in mind that there are many times that the auditor of the Territory of Hawaii will have to go contrary to the legislature of the Territory. The legislature may at times overstep its bounds in the appropriation of money, and it is the job of the auditor to stop the appropriation if he feels that it is illegal. I know of several instances in which the treasurer and the auditor of the Territory of Hawaii, that is, Auditor Treadway has exercised that power of stopping the legislature in its appropriation of money. The legislature has on many occasion appropriated money for various specific things and treasurer and Auditor Treadway in his position as auditor of the Territory of Hawaii has stopped the appropriations and has held that the law was illegal to the extent that he could not certify to the sufficiency of the bill and the bills at the end. The suit was taken to the Supreme Court and Auditor Treadway was upheld in many instances.

I feel that the auditor of the Territory of Hawaii should be an elected official. He should be entirely divorced from the governor, and he should be entirely divorced from the legislative branch of government. In listening to the debates on this floor, I'm beginning to feel a little bad about the governor. I'm beginning to hate the governor a little because every time we try to do anything, we impose and give more power to the governor. Now, it seems to me we are building a superman in this territory here in the man in the position of the governor. We are giving to him a lot of powers and we are taking it away from the people.

A friend of mine in this territory the other day, high in the office of the government told me, "Hiram" he says, "your Convention is anti-people. Every time there is a chance to vote against the people, your Convention has voted against the people."

Now, this is one time where I feel that we should let the people speak up, the people who will have -- in whom the power rests inherently with, and I feel that the people should have a voice in whom the auditor should be, and I would like to make an amendment to this proposed amendment that the words, "No person shall be eligible to such office who shall not hold a certificate as a certified public accountant" be stricken out. I so move.

DELEGATE: I second that motion.

WOOLAWAY: Mr. Chairman.

CHAIRMAN: A second has been recognized.

WOOLAWAY: I'm speaking against that amendment.

NIELSEN: Point of order. That's two amendments on an amendment. I don't think we can go that far.

CHAIRMAN: The first amendment was agreed to, so actually there was only one amendment that Delegate Fong has sought to amend.

NIELSEN: Don't we have the eight years as an amendment?

CHAIRMAN: That was agreed to by the maker of the motion.

WOOLAWAY: May I be recognized now? First of all, an argument used by Mr. Fong, Delegate Fong, about the wonderful qualifications of Mr. Keppeler, which I don't doubt he has. Everybody realizes that. That's no criterion why anybody else would be of the same quality.

I'd like to state one of the most important positions in the field of financial management is held by the auditor, both in the commercial field and in government. Auditing has been defined as "a systemic examination of the books and records of a business or other organization in order to ascertain or verify and to report upon the facts regarding its financial operations and the results thereof."

Governmental auditing entails duties beyond mere verification of records and subsequent recording of facts connected therewith. It should review all steps which have been taken from the initial preparation of estimates as set forth in the budget to the payment of expenditures, to determine whether they have been legally and regularly followed. In addition, it should be able to provide recommendation as to means and methods for improving financial management. The duties of the governmental officer can never be completely divorced from either budget making, expenditure control, or financial planning. His report must provide the public as well as the legislative body with the assurance that all public funds have been properly accounted for.

The arguments in favor of requiring the state auditor to be a certified public accountant are as follows, gentlemen, I have ten of them. One: a provision in the Constitution requiring that the position of state auditor be filled by a certified public accountant would greatly reduce the opportunity for the appointment of a less qualified individual. The legislative body could be highly political and in consequence the position of auditor might be given to a person politically strong but possessing few or no qualifications for this important post.

Two: restricting appointment to a certified public accountant would materially assist in attaining a fully qualified person. A person who has successfully passed an examination for certified public accountancy would normally be better qualified than a person unable to pass an examination. While there is never a guarantee that a well qualified man will be selected, the chances are that by fixing qualifications some mistakes will be eliminated.

Three: at present there are a number of auditors employed in the public service. Very few are public accountants. An individual other than the certified public accountant may meet the requirements of these positions. Those with an adequate background of experience and training in auditing would be able to take the examination for certified public accountant, and if passed, would be eligible for appointment.

Four: most large businesses employ certified public accountants for final verification of their records and reporting on facts regarding financial operation.

CHAIRMAN: I'd like to remind the speaker that you have two and a half minutes more.

WOOLAWAY: Fine. It is only reasonable therefore that a governmental unit with a volume of business much larger than a majority of commercial firms should also require an individual of the highest caliber of background and training to occupy the position as auditor.

Five: Section 707 of the Model State Constitution states that the auditor should be a certified public accountant.

Six: it may be argued that fixing the qualifications for the auditor infringes upon the power of the legislature. While in a certain sense it may be true, it must be remembered that the legislature is vested with the responsibility of determining state policies as well as what monies are to be spent. Consequently it must be able to rely on the reports and findings of the auditor. The legislature as well as the public must be provided with the true financial picture at all times, and it is believed that a certified public accountant would provide an additional safeguard in the public interest. An audit made by a person not fully qualified may prove to be worse than no audit at all.

If it's all right, I'll continue. Mr. Chairman, can I have more time?

CHAIRMAN: Proceed. You have one minute more.

WOOLAWAY: The present auditor of the Territory is a certified public accountant. It is believed that there is in

the territory an adequate number of certified public accountants interested in this position so that a good auditor could be elected. At present there are approximately 55 certified public accountants licensed in the territory.

Mr. Chairman, I ask for some decorum here, if you don't mind.

CHAIRMAN: Your point is well taken, Delegate Woolaway. Proceed.

WOOLAWAY: If I don't have any more time, I hope that sunk in. Thank you very much.

CROSSLEY: Point of information.

CHAIRMAN: Point of information has been asked by a delegate. Delegate Crossley.

CROSSLEY: The point of information is simply this. I would like to ask the speaker from the fifth district two questions. One is, is it his—I'm asking Delegate Fong—is it his understanding, in hating the governor so, that this was an appointive office of the governor? Because if it is, he's reading a different bill than I have, as mine reads that it is an appointive office of the legislature.

FONG: No, I'm making a point that we are trying to appoint everybody. I understand that this will be appointed by the legislature, the first time that the House of Representatives will have some say in it.

CROSSLEY: I understand. The second question is, he inferred that all of our public officials who deal with finance are not certified public accountants and that is not true in the case of the territorial auditor, as I understand it. Is that correct?

FONG: That I do not know.

CROSSLEY: Well, then, let me inform the Speaker of the House, the delegate from the fifth district, that the auditor of the Territory of Hawaii is a C. P. A.

FONG: Can you swear to that?

WOOLAWAY: Point of personal privilege.

CHAIRMAN: Point of personal privilege has been asked. Delegate Woolaway.

WOOLAWAY: I would like to state that if my colleague from the sixth district was listening, I made that point here. It didn't have to be made again.

CHAIRMAN: The Chair would like to state that he can't see anything about personal privilege in the matter.

A. TRASK: I have another amendment to offer which I understand the movant for this amendment will accept, under this elected amendment provision for the auditor. If you will please direct your attention to the committee's Section 12.

CHAIRMAN: Delegate Trask, I believe in order that we may proceed properly there has been an amendment made to the proposed amendment. I think we should dispense with that before any other amendment be made to the amendment, if you please.

A. TRASK: Pardon me.

WHITE: Just in order to dispell the delegates' fear that this requirement of a C. P. A. is placing an unreasonable requirement and cutting down the selection of people, would you mind if I read the qualifications of a C. P. A. ? It's only four or five paragraphs, short paragraphs.

CHAIRMAN: Well, if the committee desires to hear it, although I believe we all know that the C. P. A. 's qualifications.

RICHARDS: Personally, I do not know and I would appreciate that information.

CHAIRMAN: Very well, Delegate White, will you please state the qualifications of a C. P. A.

WHITE: Well, these are the qualifications and there are six of them.

> Any citizen of the United States or anyone who in good faith has declared his intention to become a citizen, in which case he must become a citizen within two years after time allowed by law or the certificate shall be revoked by the board; (2) Over the age of 21 years; (3) Of good moral character; (4) A graduate of a high school of recognized standing with a four years' course or presenting an education fully equivalent thereto; (5) Who has had at least five years' accounting experience, three of which shall have been in public practice on his own account, or in the office of a public accountant in active practice or its equivalent; (6) And has passed the satisfactory examination; shall receive a certificate of his qualifications to practice as a professional accountant. No other persons and no corporations shall assume or use the title or the abbreviation of C. P. A. or any other words, letters, or figures to indicate that the person is a certified public accountant.

So that you can see the requirements are not very great at all.

CASTRO: I believe that under all of the debate of the last ten minutes is the fundamental point that we are - -

KING: Point of order. If too many of us do that blowing into the mike, which I believe the speaker started a moment ago, we won't have any loudspeaker left.

CHAIRMAN: Yes. Proceed, Delegate Castro, with that reminder.

CASTRO: Your point is well taken, Mr. Chairman.

CHAIRMAN: I'm glad you recognize that.

BRYAN: Mr. Chairman, I don't think it's - -

CASTRO: Mr. Chairman, I believe I have the floor.

CHAIRMAN: That's correct.

CASTRO: I believe the underlying question is the amendment as proposed by Delegate Fukushima as opposed to the committee proposal, in which I find that the question of the certified public accountant is agreed to in both. So I would like to suggest that for the purposes of expediting this argument, we call for the previous question on the last amendment to the proposed amendment having to do with whether or not we want a certified public accountant. As I understand it, the amendment was that we delete the words in the committee proposal in the second line.

CHAIRMAN: In the amendment to the committee proposal?

CASTRO: In the amendment to the committee proposal, " - - who shall not hold a certificate as a certified public accountant." I call for the previous question.

CHAIRMAN: The previous question - -

TAVARES: To correct one point of misinformation. We have been told here on good authority apparently that no state in the union fails to elect its auditor. I want to correct that statement. I've just taken the trouble to go over this book and the States of Maine, New Hampshire, New Jersey, New York, Oregon, Rhode Island, Tennessee and Virginia don't elect their auditors. I want the members of this Convention to know that that statement is not correct.

KING: Point of order. I'd like to raise a point of order that the statement by Delegate Castro is in error. The

amendment offered by Delegate Fong is to the amendment offered by Delegate Fukushima.

CHAIRMAN: The Chair stated that.

KING: So that if we voted on that amendment, we're not deleting it from the original committee proposal but only from Delegate Fukushima's amendment. I wish to speak in favor of the amendment to the amendment. If we are going to elect the auditor, then I believe he should not be a certified public accountant. I'm not even too sure that he ought to be a certified public accountant if he were appointed. I'd like to make three small points.

Delegate Tavares has just called our attention to the fact that Delegate Mizuha was in error when he said that all the auditors were elected. He talked about a different kind of an auditor. The auditor we are talking about it is the man who makes post-audits primarily as the agent of the legislature. His nearest parallel in public life is the Comptroller General of the United States, the man who outlaws illegal expenditures after they have been made, and surcharges the department and the officers who made those expenditures.

Now, two of the gentlemen whom Delegate Fong has praised, and rightly so, are both appointive officers. Mr. Keppeler was an appointive officer or is an appointive officer and so is Mr. Thurston, so that question about election or appointment doesn't seem to affect their excellency and their efficiency.

The business of electing an auditor for the Territory to make post-audits as an agent of the legislature puts the legislature in a difficult position with the man who gets his mandate right from the people and not from the legislature itself. If we want to elect an auditor of the Territory as a member of the executive staff of the government, and not have the governor appoint him, why then we are talking about another officer entirely. So I feel that the amendment to the amendment should carry, but certainly I do not believe the amendment itself should carry.

SILVA: Mr. Chairman.

CHAIRMAN: Delegate Silva.

BRYAN: I have a point of order.

SILVA: Mr. Chairman.

BRYAN: Point of order, Mr. Chairman.

CHAIRMAN: Point of order. State your point.

BRYAN: Yes, Mr. Chairman. I believe there's some confusion here about what the - -

SILVA: Mr. Chairman, I would like to know if the point of order should be directed at me. I have the floor, so if I'm out of order I request that Mr. Bryan address his remarks to me. Am I out of order?

CHAIRMAN: Will you state your point of order?

BRYAN: My point of order is that the amendment offered by Delegate Fukushima - -

SILVA: I have the floor. It's not in effect with me. I still have the floor. I got the floor before you stated your point.

CHAIRMAN: Will the Delegate Silva please let the delegate finish his point before making any further remarks? Delegate Bryan, will you please state your point of order?

BRYAN: The amendment offered by Delegate Fukushima actually only consists of a very small part of the circulated amendment. Actually, the bulk of his amendment is identical to the original proposal. I think that his amendment constitutes only the matter of election and the matter of the term.

SILVA: Mr. Chairman, I rise to a point of order.

BRYAN: And therefore, I think that the second amendment made is amendment to both proposals and not amendment to this amendment alone.

CHAIRMAN: The Chair would like to rule that your point is not well taken.

BRYAN: I appeal.

CHAIRMAN: The amendment before the Committee of the Whole is the amendment offered by Delegate Fong to the amendment proposed by Delegate Fukushima, and if the motion carries, it need not carry if the amendment offered by Delegate Fukushima fails to carry. It would still have to be acted on in the original proposal. Delegate Silva.

SILVA: Thank you, very much. It's the second time I've been recognized without saying anything.

I would like to speak in favor of the auditor being appointe After all, the main purpose of this position is the auditor shall be a servant of the legislature. That is the primary purpose of this auditor. There is a difference between an elective auditor for the entire State - -

NIELSEN: Point of order. Is he speaking on the amendment or something else?

SILVA: I'm speaking against the amendment. I'm trying to speak against the amendment.

NIELSEN: Point. Are you - -

HEEN: I rise to a point of disorder.

NIELSEN: Is he speaking on the amendment to the amendment or the original amendment? It sounds like he's speaking on the original amendment.

CHAIRMAN: That is the understanding of the Chair, and I think, Delegate Silva, you should address your remarks to the amendment proposed by Delegate Fong. That is the only thing before the Committee of the Whole at the present time. You may speak on the amendment in toto after the question is put concerning the certified public accountant.

SILVA: In whom did you say?

CHAIRMAN: The Chair has ruled.

APOLIONA: I second the motion for the previous question

CHAIRMAN: The previous question has been asked. All those in favor of the previous question, please signify by saying "aye." Opposed. Carried.

Now the question to be put before the committee is the deletion of the phrase, "No person shall be eligible to such office who shall not hold a certificate as a certified public accountant" from the amendment proposed by Delegate Fukushima. All those in favor of the amendment, please signify by saying "aye." Opposed. The Chair is in doubt. I ask a standing vote, if that's agreeable. All those in favor of the amendment, please signify by standing. Thirty-one. All those opposed. Twenty-seven. The motion carries. The phrase is deleted.

Now, Mr., Delegate Silva, if you desire to speak to the amendment, you may be recognized.

SILVA: Thank you, thank you very much, sir. The purpose that I pointed out a moment ago, and may I keep my remarks to that point, that this auditor, as I get it, is to be a servant of the legislature so that the legislature can check on the administrative branch of our government. That is the main purpose of having this auditor. Surely if he is to become elected, then half of the legislature, that is the Senate, will lose jurisdiction over this appointee because the Senate will be controlled by the so-called outside islands and the House of Representatives will be controlled by Oahu. If he is elected, then in all probability in 90 per cent of the cases he'll be elected from the electorate of the City and County of Honolulu, having that population. That would not

be the purpose of having the position as a check between the Senate and the House and the administrative branch of our government. And I say that if he is appointed, then all the outside islands will have half to say of this auditor and Oahu will have the other half to say. That was my main purpose that I'm very much for the appointive rather than the elective.

A. TRASK: I'd like to move for an amendment to the amendment of Delegate Fukushima. I'd like to have inserted the second sentence of the original Section 12 which reads as follows, quote, "The legislature by two-thirds majority vote of the members in joint session may remove the auditor from office at any time for cause."

CHAIRMAN: Delegate Trask, you are speaking on the proposal of the committee? That's the one you're referring to?

A. TRASK: Yes, the proposal of the committee, second sentence.

CHAIRMAN: Well, at the present time we are discussing the proposal offered by Delegate Fukushima.

A. TRASK: Well, I haven't concluded, Mr. Chairman.

CHAIRMAN: Excuse me.

A. TRASK: I'm referring to the insertion of the second sentence in the committee's Section 12 proposal to be inserted after the first sentence of Mr. Fukushima's -- Delegate Fukushima's amendment. In other words, after the first sentence which ends "eight years" you would have this sentence, which is the second sentence of Section 12 of the original committee's proposal, "The legislature by two-thirds majority vote of the members in joint session may remove the auditor from office at any time for cause."

FUKUSHIMA: I will agree to the amendment.

A. TRASK: Speaking briefly on that, there is no provision in the proposals from any of the committees, and I've conferred with the chairman, Judge Shimamura, who says there is no provision in ordinances and continuity of law which would have -- some general provision which would take care of the rejection for cause of the auditor. So I think it becomes a necessary provision to insert an amendment [which I] offer at this time.

CHAIRMAN: That amendment has been agreed to by the maker of the motion.

RICHARDS: May I ask the movant and the delegate who made the original motion, assuming that the legislature did remove such an elected auditor, would the State be without an auditor until the next general election, or what is their proposal regarding that?

A. TRASK: Well, I think there would be some general law with reference under suffrage and election to cover such a vacancy. Would there be, Delegate Heen?

HEEN: No, I don't think there is any article now that provides for any such contingency.

TAVARES: There is a general territorial statute that now provides for appointment of acting heads of departments. I don't know whether that covers the exact situation, but I know it has been held under the federal system that the legislature can provide for acting officers where there is a vacancy, even though the Constitution is silent. So I think our legislature would have power to make a special provision for that by statute.

HEEN: Right.

A. TRASK: There seems to be some question here with reference to my amendment that the impeachment provision under the Legislative Committee may be offered whereby this matter may be taken care of, and in view of that provision -- contingency, I would not withdraw my -- or a special election. In view of that consideration, I withdraw my offered amendment.

HEEN: I rise to a point of information. In the proposed amendment, the second sentence provides, "It shall be the duty of the auditor to conduct post-audits of all transactions and of all accounts kept by or for all departments." Would that word "departments" include the legislature?

FUKUSHIMA: That wording was taken directly from the committee proposal and I believe the chairman of the Committee on Taxation can well explain that sentence.

HEEN: As I read it in the original Section 10, or rather Section 12, that was, of course, designed to take care of all departments other than the legislature itself. That was my understanding of it.

WHITE: No, the intent was that he would audit the legislature as well.

CASTRO: It seems to me as an unskilled parliamentarian that the underlying question here is not this last amendment nor the amendment that has gone before, but the question of whether the auditor shall be appointed, as brought out by the committee proposal, or elected, as brought out by the amendment offered by Delegate Fukushima. I would like to ask the aid of the Chair to expedite this matter. Mr. Chairman, as a matter of information, would it be correct to ask for a consensus of the committee as to whether or not the committee prefers the idea of an election or the idea of an appointment by the legislature. Question of the information from the Chair.

CHAIRMAN: Well, since the Chair's been asked, I'd like to state to the delegate that the Chair would do anything to expedite matters but that the proposal you made could be easily answered by putting the question --

DELEGATE: Question.

CHAIRMAN: -- of the amendment, the adoption of the amendment which calls for the election.

CASTRO: I, therefore, call for the previous question.

NIELSEN: I second the motion.

CHAIRMAN: The previous question has been asked.

FONG: Of all the states that have appointive auditors, how many states have appointive auditors?

CASTRO: A point of order. Previous question was called for.

FONG: Just a point of information.

CHAIRMAN: Point of order has been called for. I believe the delegate has a right to ask for a point of information if the information is available.

FONG: How many states?

TAVARES: I think it's eight. I thought it was nine. I counted again leaving out some questions where they call a person a comptroller. I don't know whether that's the auditor or not, but those states that I am certain from the Manual that apparently don't elect their auditor are Maine, page 169; New Hampshire, page 173; New Jersey, page 173; New York, page 174; Oregon, page 177; Rhode Island, page 178; Tennessee, page 179; Virginia, page 180.

MIZUHA: I stand corrected.

FONG: There's only 40, out of 48 states.

DELEGATE: Point of order.

HEEN: Point of information.

CHAIRMAN: Just a moment. Your point of information has been answered, Delegate Fong.

HEEN: Point of information. These auditors that we've been talking about, those who are elected, those who are appointed, are they post-auditors?

TAVARES: It's not clear from this very brief account in the Manual as to what they are. They call some of them comptrollers.

HEEN: Well, is the comptroller a post-comptroller?

CHAIRMAN: Now, are we ready to put the previous question? All those in favor of the previous question, please signify by saying "aye." Opposed. Carried.
Now the question before the committee is this: Shall the amendment offered by Delegate Fukushima to Section 12 as proposed by the committee be adopted? All those in - -

FUKUSHIMA: May I request a roll call.

CHAIRMAN: Roll call has been demanded. All those in favor of the roll call, please raise your right hand. Sufficient number. Roll Call.

DELEGATE: How about repeating that motion?

CHAIRMAN: For the point of information of the committee, the motion is this: Shall the amendment offered by Delegate Fukushima be adopted - -

CROSSLEY: Point of order.

CHAIRMAN: - - as amended.

CROSSLEY: I do not recall that there has been any motion to adopt this amendment as amended.

CHAIRMAN: That's correct.

CROSSLEY: We voted on an amendment and since that time there has been no motion to adopt the section as amended. Is that correct?

CHAIRMAN: That is correct.

FUKUSHIMA: In order to bring this up to date, I move at this time that the amendment which I proposed be adopted as amended.

DELEGATE: Second the motion.

NIELSEN: I move for the previous question.

CHAIRMAN: It's been passed, it's agreed, and a roll call has been demanded. Madam Clerk, please call the roll.

RICHARDS: I rise to a point of information.. Exactly what is the amendment?

CHAIRMAN: May the Chair state the amendment as follows: "The auditor shall be elected by the electorate of the State and shall hold office for a term of eight years. It shall be the duty of the auditors to conduct post-audits of all transactions," etc. down to the end of the page. Madam Clerk, please call the roll.

Ayes, 27. Noes, 33 (Anthony, Ashford, Bryan, Castro, Cockett, Corbett, Crossley, Dowson, Hayes, Heen, Holroyde, Kage, Kanemaru, Kellerman, Larsen, Loper, Lyman, Ohrt, Porteus, C. Rice, H. Rice, Richards, Roberts, Sakai, Shimamura, Silva, Smith, Tavares, White, Wirtz, Wist, Woolaway, King). Absent, 3 (Gilliland, Phillips, St. Sure).

CHAIRMAN: Motion failed.

DOI: I would like to move to amend the Section 12, the first line, by deleting the words at the end of the first line, "all the," and also deleting the word "members" in the beginning of the second line, inserting in lieu thereof two words, "each house." The first clause there would read, after amended, "The legislature shall by a majority vote of each house in joint session."

SERIZAWA: I second that motion.

SAKAKIHARA: I would like to make further amendment to that section, so that it would read, including the amendment just made by Delegate Doi, "The legislature shall by a majority vote of each house in joint session appoint an auditor," and then delete the following, "who shall hold a certificate as a certified public accountant and."

DOI: It is acceptable to the movant of the first motion to amend.

CHAIRMAN: In other words, your proposed amendment would read as follows, "The legislature shall by a majority vote of each house in joint session appoint an auditor who shall serve for a period of eight years and thereafter until a successor shall have been appointed." Is that correct?

SAKAKIHARA: Correct.

CHAIRMAN: Any discussion?

TAVARES: I move an amendment to the amendment. After the words "appoint an auditor" insert, "who shall have passed a civil service examination for said office."

RICHARDS: We seem to be getting into a little bit of difficulty here. We are bringing in two different subjects into an amendment. Let's take one subject up at a time. We first bring up the point of whether it shall be a majority vote of all the members in joint session and the second point involved is to whether or not the auditor shall hold a certificate of a certified public accountant. Let's vote on one point at a time.

CROSSLEY: I'd like to move at this time, inasmuch as a number of us have been toppling over here from exhaustion that we rise, report progress and beg leave to sit again tomorrow.

NIELSEN: Second the motion.

DELEGATES: No.

CHAIRMAN: All those in favor of the motion to rise and report progress and beg leave to sit again please signify by saying "aye." Opposed. The noes have it.

ARASHIRO: Do I understand that now as the motion stands that in joint session that both houses need the majority in order to appoint a - - elect a post-auditor?

CHAIRMAN: The amendment states that "by a majority vote of each house in joint session."

ARASHIRO: That means that they must be separately decided?

CHAIRMAN: That's correct, but sitting in joint session, as the amendment reads.

KING: Following the suggestion made by Delegate Richards, may I suggest the Chair ask those who have made amendments to the amendment to withdraw theirs and let us vote on the amendment offered by Delegate Doi, get that out of the way, and then consider the next one.

CHAIRMAN: That is the suggestion made by Delegate King, However, the Chair has only one motion to put. Unless the person who made the subsequent amendment, which was agreed to by the maker of the first motion, the motion still stands, unless Delegate Sakakihara decides to do that.

KING: May I suggest to Delegate Sakakihara that some who might want to vote for or against him could be involved in this other question. As Delegate Richards pointed out, there are two points there involved, a little bit conflicting.

DOI: I agree with Delegate Richards and President King. Therefore, I would like to refuse to consent.

SAKAKIHARA: I withdraw my amendment.

CHAIRMAN: Thank you, thank you. That clears the air, so the only amendment at this time before the committee is,

"shall by a majority vote of each house in joint session." All those in favor of the amendment, please signify by saying "aye." Opposed. Carried.

SAKAKIHARA: May I offer the amendment by deleting after the word "auditor," "who shall hold a certificate as a public accountant and."

CHAIRMAN: "As a certified public accountant and."

SILVA: I second the motion.

CHAIRMAN: I believe we had enough discussion on it to vote. All those in favor of the amendment, please signify by saying "aye." Opposed. The ayes seem to have it. Roll call has been demanded. All those in favor of -- How about a show of hands. All those in favor of show of hands. Okay. All those in favor of the amendment proposed by Sakakihara please signify by raising your right hand. Please raise your right hand, those who are in favor. That is the one that is proposed by Sakakihara. Thirty-two in favor. Those opposed. Twenty-four. The amendment carried.

Now we are on Section 12.

FUKUSHIMA: I move the adoption of Section 12 as amended.

FONG: Second the motion.

CHAIRMAN: The motion has been made to adopt Section 12 as amended.

HEEN: I move that the whole section be deleted as amended, the section as amended be deleted altogether.

NIELSEN: I second the motion.

CHAIRMAN: Any discussion?

DELEGATE: Can't take a beating.

ROBERTS: I think the section now, the auditor has a very useful purpose, I think we ought to retain it. I don't think that because it has been amended, that is adequate reason for deleting it entirely unless it serves no function; and if it doesn't, I'd like to hear from the chairman of the committee.

HEEN: I withdraw my motion.

CHAIRMAN: The only thing before the committee is the adoption of Section 12 as amended. Any discussion? If not, all those in favor please signify by saying "aye." Opposed. Carried.

ARASHIRO: I now move that the chairman report progress and ask leave to sit again.

CROSSLEY: I'd like to second that motion.

CHAIRMAN: You've heard the motion. All those in favor please signify by saying "aye." Opposed. Carried.

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CHAIRMAN: Will the meeting please come to order. I believe we were discussing Section 10 of Proposal No. 10 regarding debt limitation.

WHITE: That's right. All delegates have been provided with a copy of the new provision which is headed "Final draft." Now the changes that are incorporated in this new draft are that it leaves off the requirements for approval by the voters of the various counties; it increases the debt limit of the state to $60,000,000 with a proviso that it can be increased above that amount provided the increase does not have the effect of increasing the debt limit above 15 per cent of the assessed value used for tax-rate purposes. Now we have used this "tax-rate purposes" because that is the term that is used in the statement that is prepared by the Tax Office to show what the value is, and it doesn't leave the question open then as to what you are talking about when you refer to net assessed value or just plain assessed value. Now in the case of the counties, the debt limit has been increased to 10 per cent and there has been an added proviso that "the aggregate of the debts contracted by or on behalf of any political subdivision during any fiscal year shall not exceed two per cent of the total of such assessed value in said political subdivisions."

I've had the statement corrected to show the new figures, and you can see that the debt limitation of the State has been increased to 60 million. At the present time there are outstanding 14,000,936; unissued 41,076,220; for a total authorized and unissued of 56 million. However, in this 41 million, there are a number of bonds that it is highly questionable whether they actually will be sold. In any event, the difference between the 14 million now outstanding and the 60 million that is authorized as a debt limit would leave plenty of room for the State to go ahead with improvements. It wouldn't hamstring the State in any way.

I think the same applies to all of the counties as well with the possible exception of the County of Kauai, where, you see, with their recent issue of 725,000, they are just about up to their debt limit. There is one thing about the County of Kauai that I think has had an adverse effect on it, and that is in that recent sale of $725,000, there was $300,000 of school bonds. Now if you'll refer to the schedules that are attached to the report, you will find that most of the school bonds are carried as territorial obligations and not as county obligations, and that 300,000, of course, has had a very adverse effect on the County of Kauai. Now in proposing this 10 per cent, even though in the case of Kauai the debt limit is pretty close to what their outstanding bonds are at the present time, we feel that with the trend that is taking place in the assessed values for tax purposes, that it's only a matter of a short period of time before the county will have, the County of Hawaii [sic] will have some leeway there. Because according to the statements that we have reviewed, the assessed value, the territorial assessed value anyway, over a period since 1940 has just about doubled. It's gone from 183 million to 333 million at the present time, and I think with the adjustments that are now under consideration by the tax authority, to try to get the tax value of improvements more in line with their present replacement cost less depreciation, I think it will have the effect of increasing the value. Now we feel that in the case of the Territory, although the present 15 per cent on the 333 would bring a value of only 50 million, within 3 years time the assessed value would probably be up to 400 million, so that the 15 per cent would start to operate above that if the need arose for further borrowing.

I think that's all I have to say, Mr. Chairman, I'd be glad to try to answer any questions that they have. I've got my legal counsel here to help me.

H. RICE: I move for the adoption of the final draft of the amendment proposed by the Committee on Finance.

Section 10. Debt Limitations.

All bonds and other instruments of indebtedness issued by or on behalf of the State or a political subdivision thereof must be authorized by the legislature, provided that bonds and other instruments of indebtedness of a political subdivision must also be authorized by its governing body.

Sixty million dollars is hereby established as the limit of the funded debt of the State at any time outstanding and unpaid. Bonds and other instruments of indebtedness in excess of this State debt limit may be issued, provided such excess debt of the State is authorized by a two-thirds vote of all the members of each house of the legislature, and such excess debt, at the time of authorization, would not cause the total of State indebtedness to exceed a sum

equal to fifteen per cent of the total of assessed values for tax rate purposes of real property in the State, as determined by the then last tax assessment rolls pursuant to law.

Bonds or other instruments of indebtedness to fund appropriations for any fiscal period in anticipation of the collection of revenues for such period or to meet casual deficits or failures of revenue, which debts shall be payable within a period of one year, and bonds or other instruments of indebtedness to suppress insurrection, to repel invasion, to defend the State in war, or to meet emergencies caused by disaster or act of God, may be issued by the State under legislative authorization without regard to the limits on debt and excess debt hereinabove provided.

A sum equal to ten per cent of the total of the assessed values for tax rate purposes of real property in the political subdivision as determined by the then last tax assessment rolls pursuant to law, is hereby established as the limit of the funded debt of such political subdivision at any time outstanding and unpaid; provided that the aggregate of the debts contracted by or on behalf of any political subdivision during any fiscal year shall not exceed two per cent of the total of such assessed values in said political subdivision.

All bonds or other instruments of indebtedness for a term exceeding one year shall be in serial form maturing in substantially equal annual installments, the first installment to mature not later than five years from the date of the issue of such series, and the last installment not later than thirty-five years from the date of such issue.

Interest and principal payments shall be a first charge on the general revenues of the State or political subdivision, as the case may be.

The provisions of this Section shall not be applicable to indebtedness incurred under revenue bond statutes by a public enterprise of the State or political subdivision, or by a public corporation, when the only security for such indebtedness is the revenues of such enterprise or public corporation, or to indebtedness incurred under special improvement statutes when the only security for such indebtedness is the properties benefited or improved or the assessments thereon.

Nothing in this section shall prevent the refunding of any indebtedness at any time.

WOOLAWAY: I second that motion.

CHAIRMAN: Any discussion?

PORTEUS: I would like to hear from the committee. There was a suggestion that was made the other day with respect to discussions that possibly insofar as the third paragraph is concerned that where you are borrowing money in anticipation of collection of revenues for a fiscal period or to meet casual deficits or failures of revenue, and you have to pay these back within a year, you don't have to write a bond to do that, do you? Won't you - -

WHITE: I think that's quite correct, that if we had just "instruments of indebtedness" it would say the same thing. We left the word "bonds" in to make it uniform with what we had up above, but I believe that it could be left out. You want to talk on that?

TAVARES: I was the one that objected to taking the word "bonds" out, because I think the definition of "bonds," one of the definitions, is so broad that it would cover almost any kind of written obligation to pay. So that I don't think there is any harm in leaving it in.

PORTEUS: The only question we had really was that if you have to submit this to various bond attorneys, and you are establishing various limitations, they may want to know what the limitations are with respect to these other bonds which basically are not long-term indentures at all. But this other is really a specialized form of short-term borrowing, just as though it were a note of the Territory for the time being rather than a bond.

TAVARES: Yes, at the present time we fund our indebtedness in anticipation of fiscal, current fiscal revenues by what we call "treasury warrant notes." When we are short of cash, we pay by a check that is entitled "treasury warrant notes" which bears interest, and the people take it down to the bank and the bank takes it over and gives you the money and later on the Territory pays the bank back. That is the usual form now of funding indebtedness for current fiscal needs within the estimated or within the resources or income of the fiscal period, and I didn't think leaving the word "bonds" in would do any harm. "Bonds and other instruments of indebtedness" would include those, but there might be some time in the future where we would change from treasury warrant notes to some other kind of a document, and rather than have a question arise whether it is an instrument of indebtedness as opposed to a bond and a draw a distinction between the two, we thought we would just leave them in.

DOI: I would like to move we amend the proposed final draft in paragraph two on line six after the clause, "of the legislature," and deleting all that follows after that comma to the end of the paragraph.

CHAIRMAN: The Chair would like to inquire of the mover of the motion to adopt the Section 10. In the other discussions of other proposals of committees where there are one or more paragraphs we followed the practice of moving for tentative approval of each paragraph.

H. RICE: I should have made the motion to tentatively approve paragraph one. If the second agrees, I so move.

WOOLAWAY: I accept.

CHAIRMAN: Is there any discussion as to paragraph one first? No further discussion? All those in favor of adopting in principle paragraph one of the Section 10 as amended, please signify by saying "aye." Opposed. Carried.

H. RICE: I make the motion in paragraph two that that tentatively be agreed to.

WOOLAWAY: I second the motion.

CHAIRMAN: You have heard the motion. Now, Delegate Doi, we're considering paragraph two of the Section 10.

DOI: I would like to move to amend paragraph two by deleting all that follows in the sixth line after the phrase, "of the legislature" comma, to the end of the paragraph.

SILVA: Second the motion.

DOI: Period after the word "legislature."

CHAIRMAN: And eliminate - - as I understand your motion would eliminate the phrase beginning "and such excess debt, etc." down to the word "law." Is that right?

DOI: That is correct.

CHAIRMAN: The motion has been seconded. Would you like to explain the reason for your amendment?

DOI: Yes. I moved to delete the last portion of paragraph two. The reason was that the 15 per cent provided, in my opinion, is meaningless and purposeless. In time of depression real estate values go down. The result is, the practical effect of providing 15 per cent is meaningless in that it will also go down and very likely go below the $60,000,000 provided. The 15 per cent, I understand here, is provided for purposes to exceed $60,000,000. Might I add also that during times of depression especially,

we do need money -- we do need to borrow money, and I believe the only time we will resort to using the 15 per cent clause is during time of depression, and that is when this 15 per cent becomes meaningless and there is -- and for that reason there is no purpose for having this particular provision in this Constitution.

Might I also add that the Joint Tax Study Committee had some time ago circulated their findings on the question of whether we should even have a tax -- a debt limit, and their findings show that in the several states, Connecticut, Maryland, Mississippi, New Hampshire, Tennessee, and Vermont, they don't have any debt limitation and that they do not find that their credit has been impaired.

ROBERTS: I spoke the other day on Section 10 on debt limitations, and I indicated that I had some doubts as to the soundness of using assessed values for setting a debt limit. However, I'd like to speak in opposition to the amendment proposed on the ground that you have, by the first part of that paragraph, set a $60,000,000 debt limit. The purpose of the second sentence, I gather, is to provide some flexibility for excess debts above the 60 million. If you delete that section, you provide for no flexibility whatsoever, and you place a top debt limit of $60,000,000, with no possibility whatsoever to change that debt limit, except by a constitutional amendment. I will therefore suggest that that section be retained if we retain a debt limit. I don't favor a debt limit, I don't like assessed valuations, but if you are going to provide some flexibility, and if you have agreed to a debt limit; I think this section ought to stand the way it is.

DOI: In answer to the previous speaker, I believe the portion retained of paragraph two does permit the legislature to go beyond the $60,000,000 debt limit and they could do so by a two-thirds vote of the legislature. At least that is my impression.

BRYAN: I'd like to speak against the proposed amendment. If I had my way, we would have no bonds. I think that this is a very serious question. In my own mind I can visualize putting the State on a pay-as-you-go basis. The money which we would pay as interest on $60,000,000 in a period of 15 years, if that money were put into a sinking fund or if it were invested in bonds of other states, it would provide this Territory with sufficient income from the interest alone to take care of this whole problem. I think for sure we should have a limit, and I would go further.

HOLROYDE: I agree with -- partly with the previous speaker, and I disagree with the amendment. If the amendment carries, you might just as well eliminate any debt limit as far as the Constitution is concerned and leave it up to the legislature, the way it's worded, if that amendment is carried. I am in favor of a debt limit, and I am in favor of the committee proposal.

MAU: Speaking against the amendment because I'm not in favor of paragraph two, I would like to amend by striking out all of paragraph two and inserting in lieu thereof this simple language. "Twenty per cent of the total assessed values of real property in the State as determined by the tax assessment rolls of the State is hereby established as the debt limit of the State." Do I get a second to discuss this?

NIELSEN: I'll second that.

MAU: If we are to place a debt limitation—and I'm not against the idea of a debt limitation, although I would be willing to leave it up to the legislature not to bankrupt the State, and I don't think the legislature will bankrupt the State—but if we are to have a debt limitation, it should not be stated in dollars and cents. It should be on a percentage basis on the assessed value of real property, then you can go up or down according to the circumstances in the times. It seems to me that if we work it under that proposition, even at 20 per cent, that the legislature can be trusted to permit the issuance of bonds only to the extent that will protect the financial position of the State of Hawaii, and that is the reason why I offer that amendment. It would also, I think, in good times, give more money to the State with which to operate the State government.

OHRT: I'd like to speak against the amendment. I think that we get into the very heart of the finances of our municipalities when we begin discussing bond limits. If I were to say anything, I think I would be criticizing the Committee on Finance for setting up too high a limit. I think 60 million is a fixed limit, and you must have the variable limit.

Now, when you begin judging the credit of municipalities, I'd like to just read one paragraph as to what the bond attorneys and the bond buyers think of this subject. "When you find a state with low debt limits, with few if any exceptions from these limits, preferably they are constitutional limits, and a scheme for the issuance of bonds which makes it a little difficult to incur the debt, where there are few if any limits to the taxing power for the payment of the debt once it is incurred, and the laws for the enforcement of those levies are adequate, I would say that those things indicate that in that state the people are focusing their attention upon the necessity of paying the debts which they are going to incur. Also, where the converse is true and where there are high debt limits or no limits and the creation of debt was a matter of great ease, and the provisions for the payment of obligations were restricted by tax limitations, it indicated a desire merely to obtain money. Naturally investors take these things into account."

Now, I think this is very important. The Finance Committee has raised the limit from ten per cent in the case of the Territory to 15 per cent, and I think that that is very liberal. Now, there is a liberalness in that which you may not find now, but you could easily raise assessed values and that will give you higher limits at some future date.

Now the city and county limit has been raised from five per cent to seven and one-half per cent, and I think that's rather high because you can get around that later. That is, all the highway bonds can be put over into revenue bonds and let the gas tax pay for it, and after awhile, we will have very heavy fixed charges against the city and county and our whole credit will be affected. At the present time I think the Territory sold its last issue at the rate of one and six-tenths per cent yield, which is a very low rate, and that is because of the limits that are now in the Organic Act, and I would vote against these two amendments.

SHIMAMURA: I favor the retention of this paragraph as contained in the final draft for various reasons. As the previous speaker pointed out, it specifies and provides for a definite limitation in dollars and cents, which is a good thing. And then in times of prosperity where the assessed valuation of property presumably may be greater than $60,000,000, we may increase the debt to 15 per cent of the assessed values as determined by the assessment rolls. Therefore it will give a greater flexibility, and also it will insure our credit. When a bonding company would wish to underwrite our bonds they know that there is a definite limit of $60,000,000, and yet the limitation is 15 per cent of assessed valuation. I think we would be sustaining our credit under such a provision.

FONG: May I ask the chairman of the committee a question? Your $60,000,000 is what percentage of your assessed value now, Mr. White?

WHITE: Well, it's—I would say it's about 18 per cent.

FONG: Now it's 18 per cent? Sixty million is 18 per cent of your assessed value now?

WHITE: Yes.

FONG: Now your 15 per cent, will that be over your $60,000,000?

WHITE: Well, in other words, I think probably if the -- supposing that the tax -- the assessed values for tax purposes went up to 450 million, within your debt limit you could borrow an additional six and a half million dollars or six and three-quarters million dollars.

FONG: You said $60,000,000 is 18 per cent.

WHITE: Yes, it happens to work out 18 per cent as of the present time, and the purpose of putting in the sixty million at this time is not to freeze the Territory.

FONG: Now, if you had 15 per cent of your assessed value over $60,000,000, would that give you around another $50,000,000, or is it your intention to limit your borrowing power to 15 per cent?

WHITE: No, your borrowing power would be -- your debt limit would be 60 million at all times, but at such time as the result of taking 15 per cent of the assessed value would produce a higher figure than 60 million, then you would be authorized to incur that additional debt.

FONG: Then why do you set $60,000,000 when it's over 15 per cent now?

WHITE: Well, we set it at $60,000,000 so that we didn't hamstring -- it wouldn't have the effect of hamstringing the Territory in the next two or three years.

FONG: I see, so you anticipate that if the assessed value did not depreciate, then $60,000,000 probably would not be the limit.

WHITE: That's right. We anticipate that the -- on the basis of the trend that there has been in the increase in net assessed values, that within three years time that your assessed values would be up to 400 million, which would then, 15 per cent would give you $60,000,000. Now, if they continue on at that same rate, why then the 15 per cent would also apply to the increase over the 400 million and increase your debt limit by that amount.

FONG: Now, in your report you stated that financial writers feel that that debt limit should be lower in percentage. Could you give us an idea as to what these writers think is a safe percentage.

WHITE: Well, the expressions of the bond attorneys are not altogether clear because they talk about a debt limit not exceeding 18 per cent. Now that in many instances may be influenced by the way in which the county handles its bonded indebtedness. In other words, where the county takes care of all the school bonds and all that type of expenditure and makes the borrowing for those purposes, why they feel that an 18 per cent over-all limit is as high as it should go. Now we have, on the other hand, submitted this proposal back to them, and they do not feel that the way in which we have set it off will impair the credit of the State. They have, on the other hand, cautioned us that the policy now in effect in the Territory of granting exemptions of all kinds can have an effect on the acceptability of the State bonds.

FONG: I feel that this certain amount of $60,000,000—that is a gross figure—is a good thing. Your legislators -- you will find that many legislators come to the legislature with very little experience or very little knowledge of finance, and if you did not set an amount like that, it would be very difficult for them to find out what the taxable -- what the debt limit should be. I know when I first went to the legislature I was quite confused as to what -- how much we could go in the matter of having tax -- debt limit, and I think that $60,000,000 is a pretty generous figure. During the war the Territory was able to cut its debt down to $8,000,000, but within two sessions of the legislature we shoved it up to $56,000,000. Now you will find that when it comes to appropriation of money which is going to be floated by bonds it doesn't get as careful scrutiny as the appropriation of the present money has. I think that some limitation should be placed here, and I think the final draft of the committee is a very good one.

WHITE: I'd just like to add that if you'll notice, we have used the expression in there, "used for tax-rate purposes," so that there's no question about what we're talking about because the Territorial Tax Office makes a compilation showing what all the gross assessments are and the exemptions therefrom. They get down to this figure or this term "valuation for tax-rate purposes" and that is why we have endeavored to tie it to some figure or some term so that there would be no question about it.

I'd like to make one comment on Mr. Mau's motion which I oppose strenuously. It's fine to have some objective and I think that all of us would like to see the State and the counties in a position where they could carry on all the projects that they want to. But I think we have to bear in mind that we can't do all those things without running the risk of prejudicing the credit risk of the Territory, and I think that is something that we have to keep in mind very definitely, and particularly right now. We have a situation in the Terri tory at the present time where the industrial securities of the Territory do not enjoy a very high reputation as evidence by both prices and the interest on the part of mainland purchasers, and if there is one thing that we should guard very jealously, it is the credit of the State because we are going t need it.

MAU: The chairman of the committee has stated that presently percentage-wise, $60,000,000 comes to 18 per cent of the present assessed values. I'm quite agreeable to knocking down that percentage of 20 which I suggested to 18. But the point is this. When you have a dollar and cents limit, that limit stands until the Constitution is amended. We don't know whether this Constitution will be amended in the next 20 or 50 years, and if you don't have a flexibility there, it seems to me that that would not be proper. If 18 per cent does not endanger the credit of the State, then we ought to put it on the percentage basis so that it can go up or down. If that percentage today, 18, reaches $60,000,000 there should be no objection to that because in the county section, the original county section gave it a dollar-and-cents limit. In the amendment, it does not give it a dollar-and-cents limit but says ten per cent of the total assessed value. So in the one instance, on the State you give it a limitation in dollars and cents, in the county one you don't. Now, it seems to me if it doesn't make any difference, we ought to leave it flexible if that is possible through the percentage basis.

WHITE: Can I answer that? I thought I made that clear, Mr. Mau, that as you know during the war period the tax assessments have not been able to keep up with the increases in value, and they are now in process of correcting that differential that exists between present assessed values and what might be considered fair assessed values based on present replacement cost, less depreciation. Now last year they made an adjustment of -- by increasing improvements by 20 per cent. It will probably take two or three years to get those adjustments ironed out, and I am sure that by that time that your assessed values then will, by applying 15 per cent to it, will produce the 60 million. This was to take care of an interim situation which we hoped, after that, would iron itself out.

Now, when we talk about the 18 per cent, that isn't limited to state debt, Mr. Mau. The 18 per cent in many instances, that was supposed to include the combined county and State. In other words some of these states don't have any percentage debts, but they have a low debt limit, and

in those cases the bond attorneys advise that the 18 per cent was a high figure for the counties. Now you take the 15 per cent plus the ten per cent, you are getting up to 25 per cent and you are getting up to a very high percentage of assessed value.

MAU: Mr. Chairman, may I answer that question? If that is so, are you giving preferential treatment to the counties? Because under the county provision their debt limitation is on the percentage basis, ten of the total of the assessed values of the tax rate. Then there is no limitation on the amount of money involved. If seven per cent or seven and a half is enough for the counties, as your studies have shown, you have given the counties ten per cent, which is very generous of you. Then you limit the State to $60,000,000. That might be ten per cent or that might be 15 per cent depending on the assessed values. Are you being niggardly with the State there?

WHITE: There was no intention to be niggardly with the State, but I think that if you think of the county problem as such, you can appreciate the problem that we ran into when we made our first draft. We got onto the assessed values and tried to fix the dollar limit. We would either have to fix it by each particular county in the Constitution or we would have to fix an over-all limit and then provide for a proration over counties, and because it did make a very complicated provision, we went back to the simplified provision of ten per cent.

Now, if you refer to the initial provision, it provided seven and a half per cent for the counties. When we applied the seven and a half though, we found that Kauai then was over their debt limit, and there are some - - there is one thing about that that affected the county of Kauai and that is that she has issued $300,000 worth of bonds for school purposes, which in most instances is a Territorial obligation for the other counties. So it was in an effort to not hamstring the counties at this particular time that we established the ten per cent. But you will notice there that the - - in the initial provision it requires approval by the legislature and also by the county governing board.

MAU: One more question. Do you visualize the possibility of increase in real property values so that, in order to reach the $60,000,000 limitation, the percentage could possibly come up to five or seven and one-half per cent of assessed property in the State to reach that $60,000,000? It could be possible?

WHITE: Do I think that assessed values will increase to a point where you could cut the 15 per cent in half?

MAU: That's right.

WHITE: No. I doubt whether we'd ever reach that thing, and I think that that would be dangerous in that you could have fluctuations for a period of one or two years which might seriously prejudice it. I think the long range trend is going to be upward, but when you do have periods of depression you may have downward adjustments on assessed values to reflect the condition of the real estate market.

MAU: So that it is possible, though, to have a percentage equal to say seven and a half or eight per cent of the real property taxes or assessed value of the property in the State to reach 60 million. It is possible where there is a rising scale in the value of property.

WHITE: I think it's possible, but I don't think it's too probable.

MAU: What, in your judgment, would be a safe percentage to use if we use the percentage, without endangering the credit of the State?

WHITE: Well, I think that the way we've got it set up now should enable the State and the counties to operate and still have the State and the county bonds enjoy a good rating from a credit standpoint.

MAU: That's true, but you have a limitation in dollars. If we use the percentage, what would be a safe percentage to use?

WHITE: Well, you mean looking always to the long-range future?

MAU: Yes.

WHITE: Well, it might get down to a point where you could - - where ten per cent would provide for it. Now, there is another thing that this provision provides, that the bonds are going to be serial bonds. In other words, they are going to be paid off in fairly equal installments over a period of 35 years, so that as you go along you are paying off some of your debt, and you always have that additional borrowing power because this provides that the limit is the limit on the bonds outstanding at any one particular time. In other words, you can exceed these figures on outstanding bonds and authorized but unissued bonds, but they can't actually be sold if it has the effect of exceeding this limit.

MAU: Well, you have a percentage limitation in the last part of that paragraph of 15 per cent. Now, if that is a reasonable limitation upon two-thirds vote of the legislature, would it be a reasonable limitation in the original instance rather than use the dollars and say 60 million is all that you can go?

RICHARDS: May I answer that particular question as I understand it? At present, the authorized debt is approximately 56 million, which is roughly 16.8 per cent of the assessed value of 330 million. Now if the - - under this particular provision, if we leave it at 15 per cent until the present assessed value goes to $400,000,000, the bond limit will be $60,000,000. If that assessed valuation goes up to $500,000,000, then the debt limit will be $75,000,000, but at no time will it go below $60,000,000.

WHITE: Mr. Mau, could I answer that one another way? I think that if we assumed that we knew what the situation was going to be in the next two or three years, why we could eliminate the 60 thousand[sic] and rely on our belief that the assessed value is going to go up to a point where they take care of that. But in fixing the 60 million we were trying to take care of the situation that prevails today where you have a debt limit of 50 thousand [sic] but you've got authorized - - outstanding plus authorized and unissued bonds that bring the total up to 56 million. So in other words we were trying to take care of the situation that exists at the present time until such time as we could catch up with it.

MAU: Well, I'm in agreement with you about taking care of the present day situation. It's good as it is for the present day, but what happens five years, ten years from now, twenty years? When the Constitution is unamended, it remains as is, 60 million.

CHAIRMAN: Well, Mr. Mau, I might recall that I think there has been the point of view expressed by you and Mr. White. I think your point is brought out in the discussion. Are you satisfied that it is brought out?

MAU: Yes. May I amend my own motion to change the 20 per cent to 18 per cent?

H. RICE: I think Delegate Mau from the fifth district would agree, if the 60 million is 18 per cent, why not write 18 per cent down where you have the 15 per cent? Then in any increased valuation you have increased borrowing power, because it shows that you have to go up to 400 million to get to 60 million. So I think that that was - - I had quite a discussion with our Secretary the other day on that point, if in one case it's 60 million.

I want to continue to say that this committee, the Joint Committee on Tax Study has made some - - has got some letters here that would help the Territory. You take on Oahu, you got 1,900,000, Oahu; Maui has 908,000; Hawaii, 1,488,000; and Kauai, 207,000, making a total of four and a half million that the interest and sinking fund is all provided for by gasoline tax. They should form a corporation and have that revenue bond and that would decrease the limits some because this section - - in the following section you will find that revenue bonds stand on their own. But I'd rather think that - - I think Mr. Mau's suggestion may be all right if we write 18 per cent which we have now written in as 60 million, then any increase in valuation - -

Personally I'd like to agree with Delegate Bryan and Holroyde. I'd like to go without any indebtedness. When we got down to eight million, if we could have gotten rid of the whole debt we would have been better off. But the Territory isn't in that condition to be without any bonds because of the employment problem, and it's times like this when you have employment problems that you have to got to borrow. You've got to put the money into work and get projects out to take care of your employment.

CHAIRMAN: Mr. Mau, you made a motion to amend your motion from 20 per cent to 18 per cent. Is that agreeable to the second, whoever seconded it?

NIELSEN: I second it for purposes of debate.

CHAIRMAN: It was agreeable? Now Delegate Bryan has been seeking recognition. I recognize Delegate Bryan.

BRYAN: I'd like to speak against the second amendment of raising that figure from 15 per cent to 18 per cent very much on the basis of what I said a little while ago. I think that the committee proposal is more than generous. I'd like to point out one or two things in that connection. I think one reason for raising it was so that in times of prosperity when the assessed value would increase, the debt limit could increase. Those are not the times when we need an increase in the debt limit.

MAU: I wonder if the gentleman will yield for a second? We might be able to cut out part of the discussion.

CHAIRMAN: Well, if you yield, you yield for all purposes.

BRYAN: I won't yield. Well, I had two or three other points I wanted to speak to, if I could.

The thing that worries me is we are very conscious of our balance of trade here in the territory, and I think the interest on $60,000,000 would actually have an effect on that balance of trade. I don't know what it would be on these bonds that are issued, but I've heard two and a half million to three million a year quoted.

CHAIRMAN: Excuse me a minute. Perhaps the Chair didn't express his mind correctly. When you stood up, Mr. Mau, did you intend to ask Mr. Bryan to yield to a question, or rather to yield to speak?

MAU: Yes, I think I could have covered it in that form.

CHAIRMAN: Do you desire to yield to a question?

MAU: I believe that my amendment will not get the support of this house, and in order to avoid it, I will offer an amendment later to other sections of paragraph two. At this time I withdraw the amendment that I had offered.

CHAIRMAN: You desire to withdraw your amendment?

MAU: That's correct.

BRYAN: Do I understand the amendment before the house now is the amendment to delete the words after "legislature"?

CHAIRMAN: That is correct.

BRYAN: In that case, I'd like to speak to that amendment again. I think that the legislators are in a pretty tough spot on this. They come to the legislature and they are expected by their constituents to bring home the bacon, and it's very hard sometimes for them to vote against a limitation of debt. I think that this would actually, the section as written, be a service to the legislature, and at the same time keep our credit ratings sound. That's all I have to say.

KELLERMAN: May I make a - - I am in favor of the proposal of the committee, but I'd like to have one point brought up for discussion and clarified to the committee. Mr. Ohrt mentioned it indirectly when he referred to the fact that as values rose, the debt limit could increase under the 15 per cent provision. He referred to the fact that there was another open end, so to speak, in a possible increase in the proportion of assessment value to real value. Mr. White, will you answer this question, please? You said that the bond attorneys who had served in the past with respect to bond proceedings of the Territory had approved, as being reasonable or rather not excessive, the present proposal of the committee for a $60,000,000 limit with this 15 per cent additional proviso. Is that correct?

WHITE: That's correct, with the 10 per cent for the counties.

KELLERMAN: Did they not approve that on the basis of our present rather low proportion of assessment value to real value. I understand our present assessment rate is about 50 per cent of market value. Is that true?

WHITE: I would say it was about 40, and I think with the adjustment that they made this year it would be close to 50.

KELLERMAN: Then it seems to me that they have approved your present proposal based upon the present fair or comparatively low assessment proportion to market value. It is within the power of the legislature, after we approve this provision, if it should see fit to increase the base on which that 15 per cent would apply, to simply pass a statute which would increase the rate of assessment to some 60 per cent, 70 per cent or 80 per cent of market value.

WHITE: That's not - - I mean, that's not necessarily so that they've done it, that they've approved this on that with that understanding.

CHAIRMAN: I believe Delegate Tavares might clear that. Delegate Tavares.

TAVARES: I might say that our present law today requires assessment at market value, and even with that law, we are only going 50 per cent. Even in those jurisdictions that actually mandate full value, you will not find them at full value because of the problem of equalization. Tax assessors are afraid to go to a 100 per cent of actual market value on every piece, because they are afraid that because of the differences of opinion between people as to value, they will overvalue one piece of land too much and knock off their tax rate or knock off the assessment, and therefore they always stay below 100 per cent in order to be safe because of that problem of equalization. So I say, I don't think that's a real danger because even today under a law requiring market value, you only have 50 per cent or less.

KELLERMAN: I did not mention the potentiality of going to 100 per cent of market value for the very circumstances that - - facts that Mr. Tavares has mentioned and which I fully realize, but it seems to me it's quite possible that under the direction of the legislature, an assessment is made on a territorial-wide basis under its direction, that assessments could be increased to 80 per cent of market value. Had we had an 80 per cent market value assessment

today, I would like to ask Mr. White if he feels that the bond attorneys would have considered this rate reasonable. It's my feeling that what we are doing is approving only one side of a proposition. We are putting on a $60,000,000 limit, which I consider highly advisable, but we are leaving an open end that the legislature can increase the 15 per cent rate by increasing the rate of assessments. They can revalue the property on a higher ratio and jump it to 450 million, 475 million, 500 million. I think it should be rather the understanding of this group that when we approve 60 million, we are approving it on the assumption that the assessment rate as compared with market value will be around 50 or certainly not to exceed 60 per cent of actual market value.

WHITE: I think there are two replies to that question. In the first place, I don't think that you could get the bond attorneys to rule on that without looking at other factors, and the other factor is, what are the revenues of the Territory, because that in the final analysis determines what supports the bonds. Now, if over a period of years, it looks to the bond attorneys as if you were just raising the assessed values and without any corresponding increase in the taxes that were raised from that, I think that it would have an effect on the credit of the bonds.

Now secondly, when you talk about the assessor just being able to do that willy-nilly, I think you've got a lot of safeguards on that because at the present time you have 15,000 odd taxpayers who are paying little if any taxes in the way of real property taxes, and the minute you get up to an 80 per cent or 85 per cent ratio, you'll drag 15 or 20 thousand people in, and I don't think the legislature would ever run the risk of incurring the wrath of that group.

SMITH: I move that the committee recess till 1:30.

ROBERTS: I'd like to make one statement for the record. Mrs. Kellerman indicated that it be the sense of the Convention or the sense of the committee that the assessed valuations be maintained at the present base. I think that if such a feeling is left unanswered, it might presumably tie the hands of the future legislature. The purpose, I gather, of providing for a percentage figure is to provide for some flexibility and to permit a possible base in excess of $60,000,000 if and when assessed valuations increase. We aren't discussing the desirability or undesirability of increases or changes in assessed valuation. I want it to be understood and made quite clear in the record that there is no such intent in drafting this proposal.

KELLERMAN: I don't think -- either I misunderstand the last speaker or he has misunderstood me. I was not speaking with reference to changing the 15 per cent in the committee proposal, and I know that was put in for flexibility, which I approve. I was wondering if it was the sense of the Finance Committee and of this committee that these figures of the 60 million and the 15 per cent were based upon the assumption that the present tax assessment evaluation of properties in the territory would remain within a 60 per cent limit of market value, certainly which will be higher than we now have, and would not run up to a possible 80 per cent of market value.

GILLILAND: I ask the chairman of the Committee on Finance whether or not the committee has taken into consideration that at the present time under territorial status we are receiving a lot money from the federal government and our salaries and all are being paid by the federal government. When we become a state, we will have all that extra load on our own shoulders, besides a lot more expenses of the government that the United States government won't have to meet. Has the committee taken that fact into consideration on the question of increase assessments of property for taxes?

WHITE: Well, our reason for -- in reply to that, our reason for providing the 60 million was to allow some elbow room in the first three or four years that the State may be in operation before it might attain that 400 million dollar assess value appropriation, I mean assess value figure.

CHAIRMAN: If there is no further discussion, the motion before the house is the --

ROBERTS: I still believe that we have the statement in the record to the effect that the evaluation -- assessed valuation is based on the recommendations of somewhere approximately 60 per cent of actual values.

CHAIRMAN: I do not believe that is so, Delegate Roberts.

ROBERTS: I just want the record to show that.

CHAIRMAN: Delegate Kellerman stated that it was her belief that if that was the intention of the committee, it should be in the record. There was no statement made by the chairman of the committee on that basis.

SHIMAMURA: I believe Delegate Kellerman has a very good point. However, the only danger I see in such a consensus of opinion is that we may run into a constitutional question in the future. If the legislature should otherwise provide and enlarge the assessment rate, I believe that we may run into a constitutional question, that is, the constitutionality of the bond issue which exceeds the 60 per cent basis.

MAU: I wonder if I may ask another question. In the last part of paragraph two, they speak of assessed values for tax-rate purposes of real property in the State. Did the committee consider the possibility that in the future the legislature may tax personal property, and whether or not assessed values on personal property also should be included, and if not, why not?

WHITE: Well, I can only express a personal opinion, and I hope that we never ever get back to the personal property because I think it was the most ridiculous tax we ever had and the most expensive to administer. But regardless of that, this wouldn't -- it wouldn't be included in this because we are tying it back to real property.

MAU: And it is the committee's feeling to limit the assessed value to real property taxes only?

WHITE: That's correct.

CHAIRMAN: That's what it says in the proposal, Mr. Mau.

MAU: Would there be any advantage in including all properties that may be assessed for taxation?

WHITE: Well, there's nothing -- I think it should be understood by this Convention that there is nothing scientific -- there is no scientific way of developing any percentage. All that we can hope to do is to try to select a percentage that is realistic and that is going to take care of the situation that we think might confront the State. There is no scientific way of putting in real property or any other property. This is only a yardstick, only a guide, that's all.

KING: May I ask the chairman of the committee a question? As I understand it, the limit of $60,000,000 does not bar the counties from borrowing up to ten per cent of the assessed value of each county.

WHITE: That is correct.

KING: If every county uses the full limit of their borrowing capacity, that would amount to, at present valuation, about $3,300,000.

WHITE: That's right.

KING: That's on a total assessed value for tax purposes of $330,000,000.

WHITE: No, it will amount to 33 million.

KING: Pardon?

WHITE: Thirty-three million for the counties.

KING: That's right, 33 million. So then the maximum debt of the Territory could conceivably be - - or the State, 60 million plus 33 million, 93 million dollars. Now it seems to me that's a pretty liberal amount of leeway in which to finance the public improvements and to meet emergency needs as time goes on. Now, I'm one of those who believes that the assessed value will go up in the next few years, perhaps not in the next two years, but over a period of five or six years, the total assessed values will go up from 330 million to some figure very close to $400,000,000, so that the 15 per cent on the 60 million will be invalid, and then in a later period, the 15 per cent will exceed $60,000,000, let's say in ten years from now. In the meantime, is it not true that we are paying off a considerable amount of our present bonded indebtedness? Now the total of the bonded indebtedness at this time of the Territory is about 56 million. Is that correct?

WHITE: Total what?

KING: The bonded indebtedness of the Territory at this time.

WHITE: Well, the outstanding is about 15 million and the authorized but unissued 41 million, so that we have a total of 56 million. However, the bond limit of the Territory is 50 million.

KING: Well, what I mean is, what is the leeway that we could borrow immediately in case we had need for a five or six million dollar bond issue within the next two years?

WHITE: Well, I would say that it would probably run from 10 to 15 million, because there are a lot of the bonds that are authorized. It's highly questionable whether they would ever be issued.

KING: In other words, if it were necessary by legislation to meet the problem of unemployment, the legislature could borrow money up to about $15,000,000 within the next two or three years?

WHITE: I would say that there would be 10 or 15 million dollars available.

KING: It seems to me that is a very liberal provision, and I would like to express my opposition to the pending amendment and to express my approval of the paragraph as recommended by the committee.

SHIMAMURA: Do I understand "assessed values" to mean "net assessed values," that is net after deduction of exemptions that may be allowed by law? Then shouldn't we say so?

WHITE: Well, I tried to explain, Delegate Shimamura, that the reason we use this "value used for rate purposes" is that that is the value that produces the taxes. Now, it isn't net value because it's affected to this extent, that any of the amounts that are on appeal in any year, 50 per cent of those amounts are added back. So that's why we are using this as against the net value, because the net value is lower than this.

FUKUSHIMA: I'm one of those that cannot think on an empty stomach. I move that we take a recess until 1:30.

RICHARDS: Second the motion.

CHAIRMAN: All those in favor of recessing say "aye." Opposed. Carried.

Afternoon Session

CHAIRMAN: I believe, Delegate King, you have an announcement to make before we start on the regular order of business.

KING: It's been generally agreed, subject to the Convention's approval, that we would sit in Committee of the Whole until five and then adjourn and not have a night meeting. Then the Committee on Legislative Functions and Powers wants to have an evening meeting after dinner, as I understand it, Delegate Heen. Now when we rise, rather than recess—we have to adjourn anyhow—there is a little business on the Clerk's table that I'd like to complete as soon as the Committee of the Whole rises. If we finish the pending committee report on time, we'll go ahead with the report of the Committee on Agriculture. If not, we'll work right up to five on the report of the Committee on Taxation. I'm very anxious to have a caucus in executive session of the members to discuss our program hereafter, especially after June 30. So that when we do adjourn at five o'clock, if the members will just give me about 15 minutes, we'll go right into the committee room used by the Committee on Legislative Powers and Functions and I'll make our little caucus very brief. That's all I have to say, Mr. Chairman.

HEEN: I'd like to make it clear that there will be a meeting of the Committee on Legislative Powers and Functions at 7:30 this evening. All the members are urged to be present. This may be the final meeting on the report, the final report upon the complete article relating to the legislature.

SAKAKIHARA: May I ask the chairman of the Committee on Legislative Powers and Functions, how long does he expect this meeting to last?

[Answer not on tape.]

CHAIRMAN: The motion before the house is Delegate Doi's motion that all the part from "and such excess debt" to the end of the paragraph, "to law," be deleted from paragraph two of the proposed Section 10. Is that clear? All those in favor of the motion to delete that particular sentence say "aye." Opposed. The noes have it. The motion failed.

The motion before the committee therefore is whether or not paragraph two of Section 10 should be adopted. All those in favor of the adopting tentatively of paragraph two of Section 10 please signify by saying "aye." Opposed. The motion is carried.

HOLROYDE: I move we tentatively adopt paragraph three.

APOLIONA: I second that motion.

WHITE: I would like to propose that we make an amendment to that paragraph by deleting the first three words and changing the "i" in "instrument" to a capital "I," so that the thing would read: "Instruments of indebtedness," leaving off "bonds or other."

CROSSLEY: I second that motion.

CHAIRMAN: The Chair did not fully understand your motion, Mr. White. Would you please repeat it?

WHITE: I moved an amendment to delete the first three words of that paragraph.

CHAIRMAN: Oh, "bonds or other." Your motion is made Any discussion? If not, all those in favor of deleting the words, "bonds or other," will you please - -

KELLERMAN: Does the chairman also want to delete the same words that appear in line five of that paragraph, or was it intended to leave a difference?

WHITE: No, no. This is only to apply to short-term debts.

KELLERMAN: You intended that to be a difference between those two?

WHITE: Yes.

CHAIRMAN: All those in favor of the motion please signify by saying "aye." Opposed. Carried.

MAU: I propose another amendment on the next page, after the word "State" add the words "or its political subdivisions." Second page, top line.

CHAIRMAN: Any second? Delegate Trask seconds the motion. Any discussion?

WHITE: It seems to me that that is unnecessary, and not only unnecessary but dangerous. How many people are you going to have taking care of an emergency within the State? I think that that is something, that when you talk about raising the State debt to take care of emergencies that might be authorized by a political subdivision, you are going pretty far.

H. RICE: The comptroller of the City and County and I spent the lunch studying over this matter and he felt that if it was good for the territory -- the state, it was good for the county. They might be in the same position.

CHAIRMAN: Any further discussion?

TAVARES: May I point out that this a very wide open section. The provisions of this paragraph mean this, that in time -- that for the purposes of suppressing insurrection, repelling invasion, defending the State in time of war or to meet emergencies caused by disaster or act of God, there is no limit on the amount of bonds you can issue. Now as long as the State has that power, I see no reason why you have to give it to the counties too. It's a wide-open power.

LARSEN: I just want to tell Delegate Mau that the County of Honolulu will be part of the State of Hawaii.

MAU: Thank you, Doctor, for the information.
I don't suppose that any county will take care of invasions or defend the State in war. I am sure the State will do that. But up above, it says, "to meet casual deficits or failures of revenue." I think that the counties might well do that. Now, I don't visualize that any counties are going to put the counties into bankruptcy, as I don't visualize the legislature will put the State into bankruptcy.

ARASHIRO: A question directed to the last speaker. By addition of such a phrase, wouldn't that in the future raise some complication by the State trying to pass the buck to the political subdivisions?

CHAIRMAN: I noticed Delegate Mau smiled. Perhaps the point is well taken.

MAU: That point is absolutely well taken. They always do that.

TAVARES: May I point out one more thing. There is nothing in this Constitution, in this article to prevent the legislature by passing a law to have the Territory aid the counties in times of emergency, and today we have a law that allows the Territory to make loans to the counties, so that the legislature has ample power to take care of those emergencies in the counties, and if they are big enough so that isn't enough, then a special session can be called to take care of it.

MAU: If that argument is good. then certainly why put it in for the State, because the legislature by rightful subject of legislation can take care of emergencies like that.

WHITE: I'd like to point out one further thing. That paragraph there, in my opinion, would be inconsistent with the first paragraph.

CHAIRMAN: Is there any further discussion? If not, all those in favor of the adoption --

ARASHIRO: Point of information. A little explanation on this, "which debts shall be payable within a period of one year."

CHAIRMAN: Well, what do you want to know about that?

ARASHIRO: What does that mean?

TAVARES: All that means is this, that if the State borrows money, makes a temporary loan to fund appropriations for a fiscal period in anticipation of collection of revenues, that is, they need the money in advance, they haven't got it yet, but they expect it to be a little later in the fiscal period and they want to borrow to anticipate those revenues, or if they have a casual deficit and they need money temporarily to cover that, or the revenue falls below estimates, which amounts to the same thing as the casual deficit, they can borrow money to the extent necessary to cover those things but the money must be payable back within a period of one year.

CHAIRMAN: If the committee please, then the only thing before the committee is the adoption of the amendment proposed by Delegate Mau inserting the words "or its political subdivision" on page 2 after the word "State." If there is no further discussion, are we ready for the question?

SAKAKIHARA: Did I understand Delegate Mau to have said that he had withdrawn that amendment or does that amendment still stand?

CHAIRMAN: The amendment still stands.

SAKAKIHARA: Question.

CHAIRMAN: All those in favor of the adoption of the proposed amendment, please signify by saying "aye." Opposed. The noes have it. The motion failed.

SAKAKIHARA: I would like to pose a question to the chairman of the committee, if he will kindly define this phrase. What does it mean? "To meet emergencies caused by disasters." What kind of disaster? Economic disaster which brings about unemployment in the State of Hawaii, or what?

CHAIRMAN: Will the chairman answer the question?

WHITE: I think I'd better leave that to one of the attorneys to answer.

SAKAKIHARA: We have a situation now which might continue to be in existence for some time. There is some 25 to 30 thousand unemployed in this territory. Is that an emergency caused by economic disaster or what, or is it an act of God? Will you kindly define that?

TAVARES: In my opinion that would not be either a disaster or act of God within the meaning of this provision. The word "disaster" is not absolutely definite, but I think it implies something more than this type of financial emergency. I would say it would include something like a severe explosion or a tidal wave. They are very similar, the two words. I think they overlap; "disaster" and "act of God" are very similar in their meaning.

SMITH: Wouldn't that be left up to the legislature as to determining whether it should be -- what it should be defined?

TAVARES: I think that within reason that probably is true because there is always a presumption when the legislature acts that it is acting constitutionally, and if there is some doubt, but not too great a doubt, the courts will undoubtedly resolve the doubt in favor of the validity of the legislation if the situation to be covered can come somewhere near the definition of "disaster."

SAKAKIHARA: There are numerous disasters. We have financial disasters, we have economic disasters, and we have an unemployment situation here in the territory. I think we should provide in this provision so as to enable the legislature for the State of Hawaii to have a clear understanding now, in this phrase of the amendment, to take care of such a situation. The proposed amendment merely states, "to meet emergencies caused by disaster or act of God may be issued by the State" in an emergency bond, redeemable within one year. I think it is very important to make it clear so that the future legislature would know what is the purport and intent of that phrase and wording.

CHAIRMAN: Has this been made clear to you yet?

ARASHIRO: Maybe that can be clarified by inserting a comma after "emergency," and then by adding two words -- adding a comma after "emergency," then adding the words "and emergencies caused by disaster."

TAVARES: If a more definite definition is asked for, I suggest we defer and go on to the next paragraph, and I will get the dictionary and try to resolve that question a little more definitely. I've sent for a law dictionary.

SAKAKIHARA: I move, therefore, we defer action on that paragraph.

YAMAMOTO: Second the motion.

CHAIRMAN: Moved and seconded that we defer paragraph three of the proposed Section No. 10. All those in favor of deferring, please say "aye." Opposed. The Chair is in doubt and will call for the raising of hands. All those in favor of deferral, please signify by raising your right hand. All those opposed. The motion is lost.

WHITE: It seemed to me that the representative's -- I mean the delegate's question was directed to the intent of the committee.

CHAIRMAN: That's correct.

WHITE: The intent of the committee was not that it would include such a thing as an unemployment problem or things of that character. That would be taken care of, and that was the reason for providing for the $60,000,000 debt limit.

CHAIRMAN: Are you ready for the question? All those in favor of the motion to pass paragraph three of the proposed Section No. 10 as amended, please signify by saying "aye." Opposed. Carried.

Ready for the next section? The motion is in order.

KAM: I move that Section -- paragraph four of Section 10 be tentatively approved.

HOLROYDE: I second that.

CHAIRMAN: Any discussion? If not, are we ready for the question?

WHITE: I have one amendment I would like to propose to that on the one, two, three, four, five, six, on the seventh line. To delete the words "on behalf of, " so that it would read: "provided that the aggregate of the debts contracted by any political subdivision during any fiscal year shall not exceed two per cent."

CHAIRMAN: Do you make that in the form of a motion?

WHITE: I make that in the form of a motion.

CHAIRMAN: Is there any second?

CROSSLEY: Second the motion.

CHAIRMAN: Any discussion on the proposed amendment to paragraph four? If not, are we ready for the question? All those in favor of the proposed amendment suggested by Delegate White please signify by saying "aye." Opposed. Carried.

CROSSLEY: I move that we adopt the fourth paragraph as amended.

DOWSON: I second the motion.

CHAIRMAN: Any discussion? If not, are we ready for the question? All those in favor of the passage of paragraph four of the proposed Section 3 [sic] please signify by saying "aye." Opposed. Carried.

CROSSLEY: I now move that we adopt paragraph five, Section 10.

CHAIRMAN: Any second?

LAI: I second that motion.

ROBERTS: I have a question to ask the committee. The language in paragraph three provides for instruments of indebtedness to fund appropriations for any fiscal period. That's a short-term proviso to meet needs for a particular period of time, usually one year or less. Paragraph five says that "all bonds or other instruments of indebtedness" -- Oh, excuse me, "for a term exceeding one year." I'll withdraw that question.

CHAIRMAN: Is there any further discussion? If not, are we ready for the question?

DELEGATES: Question.

H. RICE: Just one question. I was wondering if -- as you know, in the Organic Act, we were allowed to float bonds and so forth—I address this to Mr. Tavares—and we changed from regular long-term bonds to serial bonds, and I was wondering if this paragraph could be left out altogether or do you want to tie it in?

TAVARES: It is my recollection that the reason why we changed in the Organic Act from term to serial bonds was that term bonds are bonds which are payable all at once after a long period of time, for instance, if we borrow a million dollars payable 30 years after date. Now in order to build up enough money to pay that back at the end of 30 years, the custom was in the past to build up a sinking fund, the theory being that you put so much money each year into the sinking fund and you invest it, and it will draw interest, and at the end of 30 years, there would be enough money in the sinking fund to pay back. Well, it didn't always work that way. Sometimes you lost money in your investments of the sinking fund, so when the 30 years came up, you didn't have the money anyhow. So it was felt better to require every -- us to pay back in installments, so much a year in substantially equal installments and not build up the sinking fund with its great dangers, because the bigger your sinking fund and the bigger loss you take in some investments, the harder it is to pay it back later. So considering every angle pro and con, it was felt that it was better for the Territory and the counties to try to pay back their debts in annual installments than to try to build up a huge slush fund to pay back at the end of a long period. Have I made myself clear?

H. RICE: That's quite clear, very clear.

CHAIRMAN: Are you ready for the question? All those in favor of the motion, please signify by saying "aye." Opposed. Carried.

CROSSLEY: I now move that we adopt paragraph six of Section 10.

WOOLAWAY: I second that motion.

CHAIRMAN: Any discussion?

DELEGATE: Question.

CHAIRMAN: Are you ready for the question? All those in favor of the motion, please signify by saying "aye." Opposed. Carried.

WOOLAWAY: I move that we tentatively adopt paragraph seven.

CROSSLEY: I second the motion.

CHAIRMAN: Any discussion? Are you ready for the question? All those in favor of the motion please signify by saying "aye." Opposed. Carried.

CROSSLEY: I move for adoption of paragraph eight.

WOOLAWAY: I second that motion.

CHAIRMAN: Any discussion? If not, are you ready for the question?

DELEGATE: Question.

CHAIRMAN: All those in favor of the passage of paragraph eight, please signify by saying "aye." Opposed. Carried.

CROSSLEY: I believe this completes the section. I now move for the adoption of Section 10 in its entirety, as amended.

WOOLAWAY: I second that motion.

CHAIRMAN: Any discussion?

NIELSEN: Before that is moved on, I think we should have in our tax structure something to this effect, that real property shall be assessed for taxation under general laws and by uniform rules. At present, that is not being done.

DELEGATE: Not in this section.

NIELSEN: Well, where would we put it?

DELEGATE: At the first.

NIELSEN: Well, somewhere in this before we adopt this entire setup.

CHAIRMAN: Any further discussion? Are we ready for the question?

DELEGATE: Question.

CHAIRMAN: All those in favor of the motion please signify by saying "aye." Opposed. Carried.

WHITE: I would just like to call attention to one thing. We have made some revisions in the section, so after we cover a couple of other points, I think we would have to go back and renumber this particular section.

CHAIRMAN: Well, that can be done later.

WHITE: All right.

In our action the other night, Section 7 was eliminated. In reviewing the thing further, I am willing to admit that there was a lot in Section 7 which was really statutory in nature, but I do feel that we should make some provision for the allocation of funds and the control of expenditures when the legislature is not in session, and I have discussed this with the chairman of the Legislative Committee, and he agrees. So if I could get some good-hearted soul to move for - -

ANTHONY: Mr. Chairman.

CHAIRMAN: Are you through, Delegate White?

ANTHONY: Will the delegate yield? I move that we reconsider Section 7 in order for the chairman of the committee to present his problem.

CROSSLEY: I second it.

CHAIRMAN: All those in favor of the motion to reconsider our action taken on Section 7, please signify by saying "aye." Opposed. Carried. Section 7 is now before the committee.

WHITE: I've furnished all of the delegates with a copy of the proposed Section 7, and I would like to move the adoption of it.

CROSSLEY: I believe the proper procedure would be to adopt the original Section 7 first and then offer an amendment.

CHAIRMAN: That's correct.

CROSSLEY: I so move.

ANTHONY: Second the motion.

CHAIRMAN: And now you, Delegate White.

WHITE: Then I move to adopt it - - I move to amend it so that it reads as per this copy.

DELEGATE: I second that motion.

CHAIRMAN: Any discussion?

ANTHONY: Perhaps the section as amended should be read by the chairman of the committee.

CHAIRMAN: I believe it should be done; yes, Mr. White, will you please read that?

WHITE: Well it reads here, "Section 7, Expenditure of money. The legislature shall provide means for the control of the rate of expenditures of appropriated State moneys, and for the reduction of such expenditures in such manner and under such conditions as it may prescribe."

SAKAKIHARA: May I ask the chairman a question? I'm in accord with this amendment, but is it necessary to have this section incorporated in this Constitution?

WHITE: We feel that it is, to provide that the legislature will have and should make provision for the control of expenditures during the period when the legislature is not in session, because I feel that that may be a very necessary thing in those periods. All that this permits them to do, Delegate Sakakihara, is what is now done under the present Budget Bureau, only by not spelling it out the way we did in our original thing, it gives the legislature the opportunity to change it from time to time to meet changing conditions.

SAKAKIHARA: I'm in accord with the assumptions set out in your amendment, Delegate White, but I thought it might be within the province of the legislature, rather than to instruct the legislature what to do.

ANTHONY: I think this does not attempt to instruct the legislature. It just sets the framework within which this Convention thinks that the legislature should operate. I think it's a very good amendment.

TAVARES: May I add one other further note of explanation. As we all know, a provision like this is not self-executing until after the legislature has acted. As I interpret this section, if the legislature had not passed a budget law, as it already has, we couldn't force the legislature to do it by mandamus; but once the legislature has passed a budget law, as I interpret this, they could not repeal it without putting a substitute in its place that would reasonably take care of the situation of budgeting, and that is therefore some safeguard against an entire repeal of the budget law someday.

ROBERTS: Would the chairman of the committee please explain the words, "shall provide." I construe that language to be a mandate to the legislature.

WHITE: I thought Mr. Tavares just explained that, that if the legislature didn't take any action to provide for a method of controlling those, there's nothing that could be done to force them to do it. On the other hand, if they once adopted an act, well then it would be necessary for them to always make provision for it.

MAU: As I view it, this is purely legislative. Whenever the legislature makes appropriations, it can say how that money shall be spent and at what rate. This goes to merely a further prescription limiting the power of the legislature.

Just like the original Section 7, it is purely legislative and takes -- usurps part of the legislative powers.

WHITE: As I mentioned in the beginning, I have reviewed this with the chairman of the Legislative Committee, and he thinks that it's very much on order.

CHAIRMAN: Are there any further discussions?

ROBERTS: May I ask a question -- further question? If it's a matter of legislative power, why doesn't it go in the legislative article?

CHAIRMAN: Delegate White.

WHITE: The only reason it is, it ties in with the provisions that we have here on budgetary procedure.

CHAIRMAN: Well, I'd like to ask a question. What difference is there between the Section 7 which was deleted and this section, outside of it being shorter?

HEEN: In the original draft, it spells out the method which is contained in this amendment, and that method should not be spelled out in the Constitution, because the time may come where you want to modify the method, so this one is a broad general provision which can be complied with this way or that way or any other way.

CHAIRMAN: Are we ready for the question or is there further discussion? All those in favor of the motion to adopt the amended Section 7 please signify by saying "aye." Opposed. The motion carries.

CROSSLEY: I now move that we adopt Section 7 as amended.

LAI: Second it.

CHAIRMAN: If there is no further discussion, the Chair will put the question. All those in favor of the motion, please signify by saying "aye." Opposed. Carried.

WHITE: In the meeting the other night, also, we deferred consideration of Section 4. I'd now like to move that Section 4 be deleted in its entirety.

CHAIRMAN: Any second?

CROSSLEY: I second the motion.

TAVARES: As the person who asked for deferment, I also agree to the deletion.

CHAIRMAN: If there is no further discussion, the Chair will put the question. All those in favor of the motion of deletion, please signify by saying "aye." Opposed. Carried.

I believe that takes care of all the sections, but, Delegate White, you wanted to speak concerning 1 and 2?

WHITE: Yes. In the interest of eliminating unnecessary wording in Section 1, that has been redrafted, and I've reviewed that with the chairman of the Legislative Committee, and he believes it's a decided improvement over the Section 1 that was adopted the other night. In the case of Section 2, Section 2 has been worded to be consistent with the new Section 1.

LAI: I move to reconsider Section 1.

CROSSLEY: I second the motion.

CHAIRMAN: All those in favor of the motion to reconsider action taken on Section 1, please signify by saying "aye." Opposed. Carried. Section 1 is now before the committee.

WHITE: I'd like -- now like to move the adoption of the new Section 1.

Section 1. The Budget - Operating and Capital Expenditures.

Within such period of time prior to the opening of each regular session of the legislature as may be prescribed by law, the governor shall submit to the legislature a budget setting forth a complete plan of proposed general fund expenditures and receipts of the State for the next ensuing fiscal period, together with such other information as the legislature may require. The budget shall be compiled in two parts, one of which shall set forth all operating expenditures proposed for the ensuing fiscal period and the other shall set forth all capital improvements expenditures proposed to be undertaken during said period. The governor shall also submit bills to authorize such proposed expenditures and for new or additional revenues or for borrowings by which the proposed expenditures are to be funded, which bills shall be introduced in the legislature as soon as practicable after the opening of each session during which the budget is to be considered.

CHAIRMAN: I think the proper motion --

CROSSLEY: I move the adoption of the original Section 1.

TAVARES: Second the motion.

SAKAKIHARA: May I ask for a recess so that we can intelligently study the amendment, the long amendment.

CHAIRMAN: Before putting the question, I think there should be a motion for the adoption of the amendment. There has been no motion as yet.

CROSSLEY: I move we adopt the amendment as proposed by Mr. White, Delegate White.

NIELSEN: Second that motion.

CHAIRMAN: Now, Delegate Sakakihara, did you make a motion?

SAKAKIHARA: Yes, I ask at this time we take a brief recess subject to the call of the Chair so as to enable the delegates to study the amendments -- the long amendment.

NIELSEN: May I call the attention of the Chair to the fact that we have two amendments now, and during this recess we study both the amendments to 1 and 2.

CHAIRMAN: With that understanding, the Chair will declare a short recess subject to the call of the Chair.

(RECESS)

CHAIRMAN: The amendment before the committee is at your desk. There has been a motion made to amend Section 1 according to the page on your desk. Any discussion?

ROBERTS: An article dealing with the finance and taxation section was submitted yesterday. We had a statement from the committee that full and adequate consideration was given to it. I think the article was well drafted and, as I recall, I supported the committee on the general idea that there ought to be a budget presented by the governor, that it ought to set forth the expenditures as well as developments of a capital budget. I also supported the idea that such appropriation bills shall be acted on first before additional appropriations were to be made. I think the language as we had it originally is good language, with the possible exception of one sentence. That sentence starts with line seven -- eight, "For the preparation of the budget the various departments, offices," and so on to the end of that sentence. I don't think that is necessary. I would therefore suggest that we leave the section as it is, and I would propose an amendment after this substitute proposal is submitted to delete that one sentence. I would therefore suggest that the amendment proposed not be adopted.

CHAIRMAN: Any further discussion?

HEEN: The amendment that has just been offered to Section 1 does that very thing, to eliminate that paragraph that's really not necessary in that section; and then there's been a little refinement of language used there in the rest of the section. I think it is an improvement on the section as it was first drafted.

ROBERTS: I may agree with the senator that it's an improvement. I think if it's an improvement merely in language and style, I think that should be left to the Style Committee. It seems to me, after we have acted on an article which was carefully prepared and presented, which we have given thought and consideration to and studied, to submit an additional changed article on the floor which requires additional time and study and is a matter only of language, it should be left to the Style Committee. I agree that that one sentence "For the preparation of the budget" to the end of that sentence is unnecessary and I think should be deleted. I would favor its deletion and leave it to the Style Committee to see whether the proposed language is or is not preferable.

HOLROYDE: I agree that fundamentally all this does is exclude one sentence, but as the delegate said, it is an improvement in the language and if it's an improvement, let's vote for it.

CHAIRMAN: Any further discussion?

ROBERTS: May I make one further observation? We are dealing with a finance section, a pretty technical proposition. I don't believe that all the delegates are sure that this is merely a matter of style. I agree generally it appears that way. It seems to me a five or ten minute recess on a matter of a finance article is pretty slim time.

DELEGATE: Question.

FONG: I notice that this departs somewhat from the present operations of the legislature. I notice that in this budget there shall be two budgets, one is known as the operating and the other is known as the capital expenditure budget. Now may I ask, why is the capital expenditure budget submitted? For what purpose, may I ask?

WHITE: Is it what?

FONG: Why are you cutting this budget into two?

WHITE: Well, because the purpose of it is to separate the capital from the general appropriations bill so that under Section 2, which was passed the other night, you can act immediately on the general appropriations bill.

FONG: Now, is it for the purpose of probably retarding the legislature from asking for capital expenditures other than that proposed by the governor?

WHITE: Oh, no, not at all.

FONG: Would this tend to deter a legislator from asking for capital expenditures which may not be included in a governor's budget?

WHITE: All that this does is to require the governor to submit an over-all program, the budget being made up in two parts, one your general appropriation budget and the other your capital improvement budget. The purpose of the thing is to have it divided into two parts so that the general appropriations bill will be acted on first.

FONG: And in this capital expenditure budget, the governor will propose as to how that money -- where the money is coming from, whether it's from sale of bonds or whether it is from the revenues of the territory. Is that right?

WHITE: That's right, or whether new taxes will be required in order to fund it. In other words, he submits a program together with the plan of financing it. Now it's up to the legislature to either approve or disapprove of that plan or adopt any other appropriations that they want. It doesn't tie the hands of the legislature in any way.

FONG: Now, could you tell us as to how many jurisdictions have such a budget divided in this manner?

WHITE: No, I can't answer that question offhand, Mr. Fong, but it's a similar type of provision that is incorporated in the Model Constitution. They haven't spelled it out in two parts. They have dealt with the general appropriations bill in the same way and have also dealt with submitting an over-all financing program.

FONG: Then is it the intent of the committee that this budget divided into two parts, the operating budget and a capital expenditure budget, that the bills for these two items shall be passed first before any other expenditure -- any other bill may be passed dealing with appropriations?

WHITE: No, only the general appropriation bill.

FONG: It's all included in one?

WHITE: No. They are separate bills. That is the reason for submitting them in two parts. If you'll read paragraph two, it only refers to the bill covering operating expenses which will be -- to be known as the general appropriations bill.

FONG: Thank you.

ARASHIRO: It is my understanding that the way that the thing is worded here, "The budget shall be compiled in two parts, one of which shall set forth all operating expenditures," and then it continues saying that, as we go down the line it says, "set forth all capital improvements." Does that "all" have something to do with restricting the legislature?

TAVARES: That is in the original section; the wording is changed for that -- the wording is practically identical to what we approved in the original section, that part of it. There is nothing in here to restore any of the provisions which were knocked out in the debate which prohibits the legislature from changing any item in the -- in either -- in any of those bills. There is nothing to restore that. The only purpose was to refine the language a little bit, and not change the sense in any way.

ARASHIRO: What I'm referring to is that -- of course we have the power to change the figure from one fund to the other, but the thing is, when it says "all operating" that means we cannot appropriate new --

TAVARES: The word "all" means all that the governor can think of, but it doesn't mean all that the legislature can think of or that they want to put in. When we eliminated Section 3, which we are not trying to restore, we gave the legislature full power to do what it does today, disregard all or any part of what the governor has recommended and add anything they want to.

ARASHIRO: Will the committee have any objection in deleting the word "all" then?

TAVARES: Don't you want the governor to tell the legislature all of the things he wants to have them authorize spending? That is to give the legislature the information needed. They don't want the governor to send the budget in piecemeal. They want it all in.

HAYES: A point of information. It doesn't mean that the legislature has to pass everything the governor wants to do, does it? I think that is a question, that maybe he is --

WHITE: The governor submits the general appropriations bill and the legislature may amend it in any way that it wants by deleting items or adding items. The only requirement is that it pass the general appropriations bill first.

MAU: Much of this is purely legislative, like most of the proposals and -- but I think my voice is like a voice in the wilderness, but I just want to make that observation.

ROBERTS: I think we acted on this thing yesterday. We indicated our support for a submission of a budget which provides both operating and capital expenditures. We have supported that and I think it was good. There may be some legislative matters in there. I think it's good policy, however, and if we want it in the Constitution, we should have it in, and we so voted. I'm not against the proposal. I'm merely suggesting if it is a matter of style and drafting of language on a technical financial section, we have a number of the members who worked on this thing in the Style Committee. It will give us a little additional time to look it over and see if it is just a matter of style as is claimed, and I have no reason to doubt it. It seems to me, however, that the only action, in substance, is for the deletion of the words, "For the preparation of the budget, various departments, offices, and agencies shall furnish the governor such information in such form as he may require." I believe it should go out of that section.

HEEN: If we adopt this refinement of language here, it will save the Committee on Style a lot of trouble.

CHAIRMAN: Are you ready for the question?

SAKAKIHARA: Question.

CHAIRMAN: The question is the adoption of the proposed amendment to Section 1.

FONG: I notice that in this redraft of Section 1, the redraft does not state specifically that there will be two bills, although it says the budget shall be submitted in two parts. It also -- in Section 2 you will note that it refers to the general appropriations bill. Now, nothing in Section 1 differentiates between the operating budget and the capital expenditure budget. Now, how are you going to tie that in? What is the explanation?

WHITE: Delegate Fong, Section 1 reads that, "The governor shall also submit bills to authorize such proposed expenditures and for new or additional revenues or for borrowings by which the proposed expenditures are to be funded."

FONG: That's very true. Now, in Section 2 you talk about a general appropriations bill.

WHITE: That's because the bill covering all operating expenditures will be known as the general appropriations bill.

FONG: Where do you say that?

WHITE: Well, that's why we put it in Section 2, to make sure. We can insert in here -- you can insert it in Section 1 if you think it's necessary. "The budget shall be compiled in two parts, one of which will set forth all operating expenditures proposed for the ensuing fiscal period to be known as the general appropriations bill."

FONG: Well, I have your amendment to Section 2, I think that explains it all right.

CHAIRMAN: Are you ready for the question?

SAKAKIHARA: I wish to offer an amendment to the amendment. In the first paragraph, ending with line nine, commencing with the paragraph -- sentence, "The budget shall be compiled," I move that the same be deleted right down to "considered."

CHAIRMAN: Down to where, Delegate Sakakihara? Oh, to the end of the sentence, is that it?

SAKAKIHARA: End of the paragraph.

CHAIRMAN: I can't hear you, Delegate Sakakihara.

SAKAKIHARA: End of the paragraph.

CHAIRMAN: End of the paragraph. Is there any second to that motion? The motion is to delete the sentence beginning, "The budget shall be compiled in two parts" until the end of the paragraph. Any second? If not, the only motion before the committee is the adoption of the amendment proposed by Delegate White to Section 1. Are you ready for the question?

MAU: I second the motion.

CHAIRMAN: You second the motion? The motion has been seconded that the phrase beginning, "The budget shall be compiled in two parts" until the end of the sentence be deleted. Is there any discussion? Question? All right. All those in favor --

HOLROYDE: It seems to me the deletion of that eliminates or is ineffective as far as the Section 2 is concerned. The idea for dividing that budget into two parts is so that the appropriation operating expenditure bill can be handled expeditiously. This way you have to combine both of them and it makes it a much more difficult problem.

CHAIRMAN: Are you ready for the question? All those in favor of the proposed amendment to the amendment, please signify by saying "aye." Opposed. The motion failed.

The motion before the committee is the adoption of the amendment. Are we ready for the question?

NEILSEN: I have an amendment that I'd like to introduce at this time. It will probably have to head the section of the proposal, so there might be renumbering necessary or something like that. I'll leave that to someone else. But the amendment is, "Property shall be assessed for taxation under general laws and by uniform rules."

TAVARES: Point of order.

CHAIRMAN: State your point of order.

TAVARES: It's not germane to the subject.

CHAIRMAN: Delegate Nielsen, will you finish reading your proposed amendment.

NIELSEN: "Property shall be assessed for taxation under general laws and by uniform rules. All real property assessed and taxed locally or by the State for allotment and payment to taxing districts shall be assessed according to the same standard of value." I so move.

SAKAKIHARA: Second.

TAVARES: I submit the point of order that the amendment --

CHAIRMAN: Just one moment, Delegate Tavares. Did you make a motion for the adoption of that thing that you read

NIELSEN: Well, I don't want this Section 1 to be adopted and then be told that Section 1 is already adopted and I can't introduce it.

CHAIRMAN: Well, perhaps the point of order may be now stated. What is your point of order?

TAVARES: I submit that this is an entirely new matter and should be submitted as an amendment to the entire proposal at any time before the entire proposal is adopted, and there is perfectly good opportunity after these sections are considered for the gentleman to offer that as amendment to the article.

CHAIRMAN: I believe the point is well taken, Delegate Nielsen. In other words the Chair feels, as stated by Delegate Tavares, that after we have considered the entire proposal, then if you desire to make that as an amendment to the proposal as Section 1—as I understand it, you want it before the beginning of this section—then all remaining sections will be numbered differently should the committee adopt your suggestion.

NIELSEN: All right, I'll withdraw the motion at this time.

CHAIRMAN: Therefore, the only motion before the committee at this time is the adoption of the amendment proposed by Delegate White. Are we ready for the question? All those in favor of the amendment please signify by saying "aye." Opposed. The motion is carried.

HOLROYDE: I move Section 1 be adopted as amended.

WOOLAWAY: I second that motion.

CHAIRMAN: Any discussion?

NIELSEN: I move that Section 1 be amended as follows: "Property shall be assessed for taxation under general laws and by uniform rules. All real property assessed and taxed locally or by the State for allotment and payment to taxing districts shall be assessed according to the same standard of value." I so move.

DELEGATE: Second the motion.

CROSSLEY: Point of order.

CHAIRMAN: Point of order.

CROSSLEY: I believe the same point of order as stated before now applies. This amendment that Delegate Nielsen is trying to make to Section 1 is not germane to that section at all.

CHAIRMAN: Delegate Nielsen, it was the understanding of the Chair that you had withdrawn your amendment and that, pending the final adoption of the proposal, you would make your amendment. This present motion is now to adopt Section 1 as amended. It is still the same section.

NIELSEN: All right, I'll withdraw it at this time.

CHAIRMAN: Then are we ready for the question? All those in favor of the motion please signify by saying "aye." Opposed. Carried.

CROSSLEY: I now move that we reconsider our action on Section 2, Proposal 10.

APOLIONA: I second that motion.

CHAIRMAN: All those in favor of the motion to reconsider action taken on Section 2, please signify by saying "aye." Opposed. Carried.

Section 2 is before the committee.

CROSSLEY: I now move the adoption of Section 2.

YAMAMOTO: I second the motion.

WHITE: I would like to propose an amendment which has been presented to the various delegates reading: "Section 2, Legislative appropriation procedure. No appropriation bill, other than bills to cover the expenses of the legislature, shall be passed on final reading by either house until the bill authorizing operating expenditures for the ensuing fiscal period, to be known as the general appropriations bill, shall have been transmitted to the governor, unless the governor has recommended the immediate passage of such appropriation bill."

CROSSLEY: I second that motion for the adoption of the amendment.

CHAIRMAN: We are discussing this amendment.

FONG: I move that the whole Section 2 be deleted from this proposal.

SAKAKIHARA: I second the motion.

FONG: The reason for asking the deletion of this Section 2 is that I feel that this section encroaches upon the prerogative of your legislature. Now all of you who have been in the legislature know that it takes from 40 to 50 days to pass your general appropriation bill. There is a lot of bickering. There is a lot of work to your general appropriation bill. Your appropriation bill carries a sum of around ninety to a hundred million dollars. I can foresee that within the next biennium probably your appropriation bill will be around a hundred million dollars. Now, you have various departments. You have all these departments. You have to call the department heads before you and the department heads come to the House of Representative and tell the House of Representative one story. The House passes it, it goes -- the same department head may go to the Senate, tell the Senate a story, and the Senate may have a different idea on the whole situation.

Now, in our legislative history we have found that sixty days are insufficient for us to really get down and work on an appropriation bill so that within the sixtieth day we could very well say we all agree to it. We have found out within the past few sessions that the appropriation bill has always been the last measure, and has always been the first measure which has been taken up by the Finance Committee of the House and the Ways and Means Committee of the Senate. Now you will note, for those of you who have been in the legislature, that the Finance Committee as its first project works on the appropriation bill. It keeps on working on the appropriation bill till almost the fortieth day of the session. The members of the Senate Finance Committee also work on their Ways and Means Committee bill, and they consume a lot of time, probably another thirty to forty days. Now that means that for thirty to forty days your whole session will be tied up.

This here, this section is put into the Constitution only for the purpose of holding down appropriations for some other project. The practical working of this section, if enacted, will mean that no other bill will be considered dealing with appropriations. No bill could be passed that carries an appropriation unless the governor says that he wants it. That means that you will only have probably ten days or twenty days out of a sixty day session to consider appropriation bills for other worthwhile projects, and I submit to this Convention that ten or twenty days for the discussion of other bills carrying appropriation for this whole Territory for a biennium is insufficient.

Our Legislative Committee will bring forth a provision stating that the session will be sixty days and that the appropriation session -- that the budget session will be only for thirty days. Now with the sixty day session, I cannot conceive of any legislature having sufficient time to pass other appropriation bills after they get through the appropriation bill of -- the general budget bill. So the only reason why this is put in that I can see in my experience in the legislature is to hog-tie your legislature so that they will not be able to pass any other bill dealing with appropriations. If they are able to pass any bill dealing with appropriations, the bills will be very, very few.

TAVARES: We have been all through this before and it's the same old argument. The argument is not correct, and I think we all understand that. There is nothing to prevent one house passing appropriations of -- other appropriation bills on third reading. The only thing is, whichever house has the final reading can't pass those bills on final reading, as was explained before, until this appropriations bill has gone through. We all know that the big fight on the appropriations bill comes on second reading when the committee reports come out. There is nothing to prevent any house from passing any bill on second reading and even on third reading so long as it is not the final reading. I submit that the reasons given originally for this section, which has not been changed except to add a definition of "appropriations bill" because we took it out of Section 1, the same argument that justified this delegation passing it the first time justifies it passing it this time.

MAU: In addition to the arguments made by the delegate from the fifth district in support of his motion, I repeat my same objections, Your Honor -- Mr. Chairman--

CHAIRMAN: Thank you.

MAU: -- that this is purely legislative; this is an attempt to usurp some of the powers of the legislature; it is dictation to the legislature. It attempts to circumscribe the legislature within the sphere of financing the Territory -- the State. It seems to me that the methods of financing the State should be left entirely in the hands of the legislature.

SAKAKIHARA: As we have stated here the other night in Committee of the Whole and strenuously opposed Section 2 in its original form, Section 2 is a mere duplication of that section. I am strongly in opposition to Section 2 as worded here. We are having the Committee on Legislative Powers and Functions reporting out a committee proposal providing for an annual budgetary session, confining its work primarily to budgetary session. Now comes the Committee on Taxation and Finance and says to the legislative branch of the government, "You shall pass no appropriation bill other than that submitted to you by the governor in two parts."

I [wonder] whether many of the delegates here who have not had experience in the legislature [realize] what hardship it means to the members of the legislature to work on a budget. Oftentimes it takes between 30 and 45 days for the appropriation bill to pass the legislature. And yet the executive branch of the government will tell the legislature, "You shall pass no law pertaining to appropriations unless you have passed and transmitted to this department a general appropriations bill and capital expenditure bill." Who elects the legislature? The people who elected -- the same people who elected the governor of Hawaii. Certainly it is an encroachment upon the privilege and the prerogatives of the legislature.

I wonder, and I am getting very suspicious of the movants, why they are so concerned to see that the general appropriations bill and the capital expenditure bills pass the legislature first. Certainly, the movants must be prompted by some reason unknown to those who stand between centralized government and the people's in this Constitutional Convention. There has been moved here time and again, when the Committee of the Whole tried to elect officers, "No, no, we want you to centralize the power in one man, this great governor, whoever he may be, the governor of the State of Hawaii. We do not trust you to select the department heads or the principal department executives who shall be appointed by the governor with the confirmation of the Senate."

I submit that this Section 2, which encroaches upon the rights of the legislative branch of government, should not be enacted. And I urge upon you, some of you who may be aspiring for legislative offices in the future years to come, when we are a state, you will regret to say that you have taken part in this Convention, that you have taken part in this Convention to incorportate this section, a very vicious section, in your Constitution by mandating your legislature that you shall do this and you cannot do that unless you have first passed the appropriation bills as submitted to you by this great dictator, the governor of Hawaii.

CROSSLEY: I'd like to speak only briefly to this point. I am one of those who has had some experience in the legislature and I am speaking in favor of the amendment. I do not see any place in here a centralization of power. It doesn't say that the governor has any special powers under this section. It simply says that the appropriation bill, as I read this section, will no longer be the political football that it has always been, that is, held up until the last day, the last hours until everything also has been squeezed out that those who want to squeeze can do. It would help a great deal if this bill could be expedited and pushed out ahead.

Now, nor will it hold up the work of the other finance bills. There is nothing at all, as Delegate Tavares pointed out awhile ago, to hold up the work on other finance bills. They can go ahead, they can even pass one house. The only thing they can't do is they can't pass final reading, can't be adopted by both houses, and the work can progress, and as a matter of fact, in my estimation and from my experience, it will progress much faster.

H. RICE: In 1947 we had a House 15-15. It didn't hold back the appropriation bill because we introduced the appropriation bill in the Senate at that time knowing that they were deadlocked in the House and we went along. There is no reason the appropriation bill shouldn't be introduced in both houses at the same time. I think we want to be fair with our new chief executive, whoever he is, as the governor of the fifthieth State of Hawaii. He shouldn't have a lot of bills coming up with cash and have a run against the treasury before the departments are well cared for, and I know from my past experience. In the twenty-four years I was in the Senate I always sat on the Ways and Means Committee, and I want to tell you they could have put that bill out in thirty days if they had put their shoulders to it. And we would have been in better financial shape maybe today if they had done it that way.

CHAIRMAN: Are we ready for the question or is there any further discussion? All those in favor of the motion to delete the proposed amendment please signify by saying "aye." Opposed. I believe the --

FONG: We ask for a show of -- ask for a roll call.

CHAIRMAN: Is there a sufficient number for roll call? It's sufficient. Roll call is demanded. Madam Clerk, please call the roll. The amendment is -- the motion is to delete Section 2 as proposed in this amendment.

Ayes, 22. Noes, 35 (Akau, Anthony, Apoliona, Arashiro, Bryan, Castro, Cockett, Corbett, Crossley, Dowson, Heen, Holroyde, Kage, Kam, Kanemaru, Kawakami, Kellerman, King, Kometani, Lai, Larsen, Mau, Mizuha, Porteus, H. Rice, Richards, Roberts, Shimamura, Smith, Tavares, A. Trask, White, Wist, Woolaway, and Lee). Not voting, 6 (Gilliland, Loper, Phillips, C. Rice, Sakai, Wirtz).

CHAIRMAN: The motion failed.

The question before the committee is the adoption of the amendment. Is there any further discussion? Are you ready for the question? All those in favor of the adoption of Section 2 signify by saying "aye." Opposed. The ayes have it.

CROSSLEY: I now move the adoption of Section 2 as amended.

WOOLAWAY: I second that motion.

CHAIRMAN: The motion is to adopt Section 2 as amended. Is there any further discussion? Are you ready for the question? All those in favor of the motion please signify by saying "aye." Opposed. Motion is carried. Section 2 as amended is now approved.

KING: I would like to make the pro forma motion that we now adopt the proposal as amended and then give Mr. Nielsen an opportunity to make his proposal.

CHAIRMAN: Any second?

KING: I so move.

NIELSEN: I wish to make the following amendment to Section 1 -- no, Section 9 would be a better place for it, I believe, Section 9 "Property shall be assessed for taxation under general laws and by uniform rules. All real property assessed and taxed locally or by the State for allotment and payment to taxing districts shall be assessed ac-

cording to the same standard of values."

May I speak on this?

CHAIRMAN: Wait, there has to be a motion.

SILVA: I second that motion.

CROSSLEY: Point of order.

HOLROYDE: Point of order.

CHAIRMAN: Delegate Crossley, state your point.

CROSSLEY: Section 9 had already been voted upon. Therefore, if this new amendment is to be added to Section 9, I suggest to the movant that we vote on the section, then find the place for it.

NIELSEN: That's all right to do that.

CHAIRMAN: I believe the point is well taken. You could call it 9A if you desire or something along that line, to propose a new section called 9A.

NIELSEN: I agree to that.

CHAIRMAN: It's been moved and seconded that a new section called Section 9A be added to the proposal. Now I'm not sure whether the members of the committee understand the proposed amendment. Have the members received copies of the amendment?

NIELSEN: The amendment is on everyone's desk. May I talk on it for a minute or two?

CHAIRMAN: I'd like to have one of those amendments so that I might follow. The Chair doesn't have a copy. Please proceed, Delegate Nielsen. Go ahead.

NIELSEN: The reason for introducing this is that this is a taxation bill and I don't see anywhere a thing to protect the taxpayer or that the taxation assessments shall be equal or the same standards of values shall be used in making these assessments. I think that that is certainly a constitutional provision that we should have in the Constitution.

TAVARES: When the committee originally was discussing the proposal, it had a tentative provision along the same line. However, it was called to the attention of the committee by the Attorney General's Office that there is no such provision in our Hawaiian Organic Act. And yet I can say, I believe, without fear of successful contradiction that the Territory of Hawaii today has the finest and most equitable state-wide assessment law for real property in the United States without exception, and we didn't have to have it in our Organic Act to make us do that.

In the first place, we have in the United States Constitution and in the Bill of Rights, which we have already adopted, a provision requiring equal protection of the laws, and if any assessment system goes very much out of line -- substantially out of line so as to produce an inequality, it will be knocked out as most -- many tax laws have been knocked out on the basis of violating the equal protection of the laws clause of the Constitution. You can have reasonable classification, but the classification must be backed up by sound grounds which absolutely justify any discrimination, and attempts to unduly discriminate in that respect don't need such a clause other than the equal protection clauses of our own Bill of Rights and the United States Constitution. And, therefore, I consider it unnecessary and it was finally left out for that reason.

ROBERTS: I'd like to suggest that we give very serious consideration to this article. The only argument so far presented against it is that we don't need it, that we have been well taken care of under the Organic Act. We are writing a new Constitution. We are writing a Constitution to protect the State of Hawaii and its people. This section is not a section unfounded in state constitutions. I suggest that the State of New Jersey, which recently revised its Constitution, placed that article as the first paragraph in its article on taxation and finance. They thought it was important. They gave very careful consideration and study to those problems as well. I think we ought to consider this.

Since, however, it is a new idea thrust upon the Convention, I would suggest that we have a little further discussion on this problem and see where the merits lie. On first look at this thing, it conforms fairly well to some other state constitutions. It deals with a very specific problem with regard to the general laws and application by uniform rules which is protected now, which has been the practice. In writing a constitution, you want to put certain good practice, if it is fundamental, into our Constitution. I can personally see no objection to putting it in, unless I hear some further argument to the contrary.

NIELSEN: May I answer? I want to take exception to Delegate Tavares' remark that things have been perfect under the Organic Act. I come from the small district of Kona, but I can show you coffee land where there is simply a street between it or a highway, the same value of land both sides of the highway, and one is assessed at $50 an acre and the other at $100. I can show you plenty of instances where things are not equal and the standard value is not maintained.

TAVARES: In answer to that I have only to say this. Our present laws require equalization, and if those properties are not equalized, the only reason for it is that the owners are too lazy or unwilling to go into the Tax Appeal Court and the court and get justice. The only reason for that is not the defect of the law but the defect of enforcement, which can't be taken care of anyway even under a Constitution unless people are willing to go in and protect their rights.

And furthermore, I'd like to say one more thing. There isn't one state in the United States that has the state-wide system of assessment that we have and that is the real justification of requiring that in the State Constitution. New Jersey has counties, I'm sure, that have separate assessment setups. We have a state-wide setup that comes from the very operation of things. The same group making the assessment must come a lot closer to an equalized assessment that any state can, and that is another reason why it isn't necessary.

H. RICE: I would just like to ask the last speaker a question. Don't you think, Delegate Tavares, if you had something like this it might have helped you get the values of the ranch lands on Hawaii on an equal basis with Maui?

TAVARES: I don't think so because it was just a matter of going into court and getting it settled. And if that had been sufficiently unequal to require such a uniformity, it could have been held unconstitutional under the equal protection of the laws clause.

But actually a clause like this might actually cause trouble between counties. I think if we draw a clause like this, we may have to draw some exceptions to it, and it will take a lot more study, as I think Delegate Roberts pointed out, to study the impact of that on our own laws.

I say this, and as I say I've been associated with the tax laws for some time, I don't contend that they are perfect. I don't contend they operate perfectly. I do contend that the system is a system which can be made to operate more nearly perfectly and does operate more nearly perfectly than any state of the Union because of our state-wide system of assessment by one centralized assessing group which can't be done in the various states because they have an assessor for every county or an assessor for every district under separate control, and they try to get equalization by a state board of equalization which must take appeals up first. But here we do the equalization in the first instance by having the same people do it all over the territory.

WHITE: I would just like to add that the problem that I think Mr. Nielsen - - that Delegate Nielsen raises here is one of administration and there isn't anything that you could put in the Constitution that would correct that. Any provision that you put in here would still require good administration to make sure that you are having equitable assessment.

NIELSEN: May I answer that? This will require that the legislature pass laws regarding taxation that are equitable to all the people.

SHIMAMURA: The only argument so far I've heard against this section is the fact that it's not necessary. Is there any objection to that section itself as such?

FONG: This morning we argued a lot about the general laws. I noticed Mr. Tavares arguing like anything that we should have a general law dealing with public lands. Now here we have the same situation, general laws of taxation. What's the difference?

CHAIRMAN: That's correct. The Chair might say "touche'."

SAKAKIHARA: I don't see any harm in adopting this resolution. It gives a constitutional guarantee to every property owner in the future State of Hawaii.

TAVARES: There is a further defect in this proposition, and that is, "taxed locally" seems to imply that we have a local taxing power, which we don't have, and until and unless we insert that in the county or local government section, I think this might be an implied recognition of taxing power by local jurisdictions. That is why I say we can't adopt this thing. If the delegates here want to adopt it, it calls for little more careful study.

SHIMAMURA: I'm wondering as to the meaning of "taxing districts" and also as to "the same standard of value." I am in favor of this proposed section in principle, but I'm wondering as to the meaning of certain words, as I've said.

WHITE: I would just like to say that I think I express the views of the committee that we wouldn't have any objection to the insertion of a clause that carried out the intent of Delegate Nielsen's amendment here, or proposal, except that I think that it would have to be corrected. We had a provision almost identical with this, but left it out because we were advised that it was unnecessary and we were trying to save some space in the Constitution. If this section were amended to read, "Property shall be assessed for taxation under general laws and by uniform rules. All real property assessed and taxed shall be assessed according to the same standard of value," I would see no objection to including it in the proposal.

NIELSEN: I would be glad to accept - -

CHAIRMAN: You are willing to accept the - -

NIELSEN: I'd be glad to accept that amendment.

ANTHONY: I've got an amendment here which I'd like to suggest, if it's satisfactory to the committee and Delegate Nielsen. The change is to reduce the proposed amendment to one sentence. Insert the word "all" before the word "property," and then at the end of the word "rules" in the first sentence, insert the words "and standards." That sentence would then read as follows: "All property shall be assessed for taxation under general laws and by uniform rules and standards." I don't see how the chairman on taxation would have any objection to it. It seems to me it accomplishes what Delegate Nielsen is talking about and certainly is fair and equitable to everybody.

NIELSEN: Can I ask you a question? Would the "standards" mean "standards of value"?

ANTHONY: That is correct.

NIELSEN: Well, I'd be glad to accept that amendment.

ANTHONY: If that's acceptable to the Convention, I'll make it in the form of a motion, that Committee Proposal No. 1 [i.e. 10], Section 1 be amended to read as follows. Nine, is it 9, Mr. Chairman?

LARSEN: 9A.

CHAIRMAN: It's a new section called 9A.

WHITE: Better call it 9A and let the Style Committee work it out.

ANTHONY: Let Section 9A be added to read as follows: "9A. All property shall be assessed for taxation under general laws and by uniform rules and standards."

CHAIRMAN: Did you make that in the form of a motion, Mr. Anthony? Did you second it, Delegate Nielsen?

NIELSEN: I'll second the motion.

TAVARES: I am sorry that I cannot say that I am satisfied as yet with this provision. It may be that the gentlemen proposing the amendment have in mind the questions in my mind and they are settled in their minds. But unfortunately I am not sure of the effect of this clause on taxing of incomes and various other types of, in a sense, property, and I think it deserves a little study. What effect does a provision like this, without something on income taxes, have on our right to have different rates of income taxes on different amounts of income and various other things?

ANTHONY: May I answer that question? This does not relate to the income tax. This relates to property taxes only.

TAVARES: I'll ask the gentleman if the first income tax law passed by the United States was not thrown out because it wasn't apportioned according to population.

ANTHONY: That is right. That's because of the prohibition in the Federal Constitution, all taxes shall be apportioned among several states. It required the Sixteenth Amendment. We have no such prohibition. This amendment relates only to property taxes. It has nothing to do with either income or gross income.

TAVARES: Well, I can't vote for this without more study. I'm sorry but I can't without looking that provision up myself know whether it means that.

MIZUHA: Under this proposal it is well that several questions be settled in order to avoid litigation in the future. First of all, will the provision for general laws provide for a different system of taxation of the properties of our public utilities? I would like to ask the proponent of that amendment that question. Will the phrase, "general laws" and "uniform rules and standards" permit a different rate of taxation for the properties of our public utilities?

ANTHONY: Under existing law, as the delegate probably knows, property taxes are not assessed against public utility. However, to answer his hypothetical question, there certainly could be a reasonable classification putting all property of a utility in one classification and taxing that upon a particular standard which should apply to every utility in the territory. At the present time, they are not subject to real property taxes. They pay five per cent on the gross income, in lieu of property taxes.

MIZUHA: Under the present taxation laws of this territory, various counties are allotted a certain amount that they could raise from real property taxation. And the value - - assessed valuation of those properties in the various counties may differ, and as a result, the amounts allotted by the Territorial legislature by statute. In order for the various counties to raise the money or the ceiling they are allotted,

when they compute the rate per thousand, some counties have to pay $28 per thousand on assessed valuation, other counties may have to pay $36 per thousand. Will this provision in the Constitution prevent that system of assessment?

CHAIRMAN: Would you care to answer that, Delegate Shimamura?

SHIMAMURA: Well, that's the same query I had. What does the word "standard" exactly mean? Does it include rates?

CHAIRMAN: Well, there was one question that was put by Delegate Mizuha. Perhaps Delegate Anthony might answer that.

ANTHONY: This proposed amendment does not go to the subject of rates. In other words, I think under this proposed amendment, there still could be a general rate established for the Island of Kauai in which the uniform standard and regulation for assessments would be applicable. In other words, they would still have the same degree of flexibility as to rates, in my judgment.

MIZUHA: Then it is contemplated that the phrase "uniform rules and standards" are not applicable to rates for the various counties.

CHAIRMAN: That is correct.

TAVARES: I think the delegates can see that there are questions here. As a matter of fact, other states, I believe, are under the impression—I haven't had time to check it—have declared the income taxes unconstitutional. A note that I read here in one of the books I just hastily looked at says that the first federal income tax law was declared unconstitutional because the Court held that a tax on the income from land was a tax on the land. And I think it's well worth studying, if we are going to take up this new point, before we pass it. I therefore move to defer this section until - -

CHAIRMAN: Later on?

TAVARES: Later on.

ANTHONY: This has nothing to do with income taxes. If the delegate thinks that it does, insert the word, "real property" in front - - "real" in front of "property." The difficulty with the income tax act of 1895 was that it was a direct tax not apportioned among the several states and it ran squarely afoul of the prohibition in the Federal Constitution, thus requiring the Sixteenth Amendment to validate the income tax. Now we needn't get bogged down on whether or not we are dealing with income taxes. We are not, here.

CHAIRMAN: In other words, Delegate Anthony, in order to obviate that possible doubt, you are willing to amend your proposed amendment to read, "All real properties - -"

ANTHONY: "All real properties."

CHAIRMAN: "- - shall be assessed for taxation under general laws and by uniform rules and standards." Is that agreeable to you, Delegate Nielsen? Delegate Nielsen, Delegate Anthony has proposed the amendment to obiviate a possible doubt as to the construction of what "property" means, to add the word "real" before "property."

NIELSEN: Well, that's what I had in mind, was real property.

CHAIRMAN: Well, that's agreeable to you then?

NIELSEN: If you want it spelled out, that's agreeable to me. And I might say further that so far as the rates of the different counties, the rate has nothing to do with this. This is so that the property will be assessed uniformly in the counties and according to rules and standards that are the same regardless of who owns it. The little fellow can't go to the Tax Appeal Court when he owns five acres of coffee land, so he just pays through the nose.

TAVARES: One more statement and I'm going to be silent. I am still not satisfied that what the delegate from the fourth district has said is necessarily correct. I have a great deal of respect for his learning and judgment, but I am not satisfied as to the result of the effect of this provision on real property of a public utility. I am not satisfied that we won't be held to require - - to be required to tax public utilities on an ad valorem basis instead of as we do now on a combined tax which takes care of and is in lieu of property taxes. It's a gross income tax in lieu of property taxes, and real property of utilities is not taxed at all today. I am not satisfied that this amendment won't have some effect on that.

A. TRASK: We also have great respect for the learning of Delegate Tavares and I second his motion for deferment. I think if he, of all people, has any doubt about it, I think we should accede to him.

CHAIRMAN: The motion has been made to defer action on the new section, entitled Section 9A.

KING: I request a short recess of about five minutes or ten minutes.

CHAIRMAN: Before the putting the motion to defer?

ANTHONY: Will the President yield for a moment? I was wondering if we could tentatively agree upon that. Then if the lawyers can settle the question in the meantime, well and good, and if in the meantime we have not agreed upon it, let's all agree that we will move to reconsider it. Would that be satisfactory to the delegate?

KING: If we take a recess then the lawyers could discuss it and withdraw the motion to defer. I request a short recess from five to ten minutes at the order of the Chair.

CHAIRMAN: Short recess, subject to call of the Chair.

(RECESS)

CHAIRMAN: The question before the committee is 9A. There is a motion to adopt 9A.

DELEGATE: Question.

CHAIRMAN: In fairness - - Are we ready? In fairness to Mr. Tavares - -

SAKAKIHARA: Mr. Chairman.

CHAIRMAN: Well, I recognize Mr. Tavares.

TAVARES: One more short statement and I'll be through, and if the gentlemen want to vote on this sight unseen, it's all right with me. There is one provision here. On page 234 of the Legislative Manual, there is this statement: "In Illinois, Michigan, Pennsylvania, Tennessee, and Washington, however, court decisions have prohibited graduated income taxes or classification of property, holding that such measures violated the uniformity clause." Until I have read those decisions and know what this means, I cannot vote for this provision.

SAKAKIHARA: In all fairness to the delegate from the fourth district, I move that we defer action on proposal - - amendment offered by Delegate Nielsen.

DELEGATE: Second the motion.

CHAIRMAN: Motion is made for deferral of this thing. Any discussion? All in favor of the motion please signify by saying "aye." Opposed. Carried.

H. RICE: I move the committee rise now and report progress and ask leave to sit again.

SAKAKIHARA: Second it.

CHAIRMAN: Before putting that motion, I might say to the Committee of the Whole that deciding this question of 9A will probably settle this proposal. You heard the motion. All those in favor of - -

BRYAN: I wonder if it wouldn't be wise to change that motion to authorize the chairman to begin preparation of his Committee of the Whole report.

CHAIRMAN: Well, your chairman will begin working on it without any authorization. All those in favor of the motion please signify by saying "aye." Opposed. Carried.

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CHAIRMAN: Committee of the Whole come to order. I believe we were discussing a proposed amendment offered by Delegate Nielsen entitled Section 9A. Delegate Tavares was discussing the amendment, and I believe the committee had deferred the action on Section 9A, and I wonder whether Delegate Tavares would like to report to the committee at this time on his finding.

TAVARES: While some of the members were enjoying themselves at cocktails yesterday, I spent between two and three hours, which is all the time I had available, looking up as much law on this subject as I could find. This was the result of my studies. I found that there is no unanimity in the state courts as to the meaning of clauses of this type providing for equality in assessment or taxation. I did not have time to do what a lawyer should do to give a final opinion and that is read every decision interpreting the various constitutional provisions. I was only able to read general texts like *Cooley on Taxation,* which all lawyers recognize as a leading authority, and *American Jurisprudence* which is one of the two great law encyclopedias. The result of my study was this.

Under the Federal Constitution, the provision requiring equal protection of the laws, it is uniformly held that taxpayers are protected both against a statute which in its terms unduly discriminates against any class or group of taxpayers without a reasonable ground for classification and against an improper administration of a good law which is so unequally administered as to produce a gross inequality between people in the same class. It seems to me, therefore, that the Federal Constitution, upon which by the way we have built our entire tax structure, is ample to cover both of the angles which Delegate Nielsen wanted covered, namely, an unconstitutional law on its face or an unconstitutional unequal application of a good law, and putting such a provision in our Constitution would not obviate the necessity of going to court anyhow to see that it was properly administered. But I'd like to read, if I may, from two of the texts.

CHAIRMAN: As a point of information, Delegate Tavares, you are pointing to the clause assessing real property, "under general laws." Do you object to the phrase "under general laws" or the phrase, "by uniform rules and standards" or to the entire - -

TAVARES: "According to uniform rules and standards" is a dangerous provision. Here is what *American Jurisprudence* says—I'll give you the citation, Volume 51 of *American Jurisprudence,* pp. 522-523—in Section 520 under the heading, "Equality and uniformity," under the title "Taxation." After saying that it is a universally accepted principle of taxation that taxes should be levied with equality and uniformity and so forth, it goes on to say this, and I quote: "Many of the state constitutions contain express requirements of equality and uniformity or proportionality. In these states, according to one view, the legislature is bound to tax all property within its jurisdiction, and therefore cannot grant any exemptions unless the power to do so is expressly reserved in the constitution, but this rule is not enforced with literal exactness." Then there is another line of state decisions that says you can have limited exemptions and you can classify. But the point I make is that in the textbooks themselves, it indicates the courts are not uniform and one line of decisions actually says that that kind of a provision might prevent you from leaving out of taxation, and I say here it might prevent you from leaving out of assessment for taxation under this provision one class of property, such as, as I pointed out, the public utility lands which are not taxed now under real property tax law because there is a tax in lieu of property taxes on their gross income. And in view of that lack of uniformity, I think it would be very dangerous.

We've got a house here; we have built on the firm rock of the provision of the Federal Constitution requiring equal protection of the laws. The foundation is firm. We are going to now cut that foundation and stick a new foundation under it and we don't know whether it will fit or not.

Now, *Cooley on Taxation* has substantially the same thing. If the gentlemen would like me to read it, I will also read the citation from Cooley. But Cooley again points out this lack of uniformity in the interpretation of this section and the danger that some courts hold. The court might hold that you can't classify.

ANTHONY: I wonder if the speaker would yield to a question.

CHAIRMAN: I believe you will yield to a question, Delegate Tavares?

TAVARES: Certainly.

ANTHONY: Has there been any decision discovered in which the provision of uniformity is clearly designated and refers to real property and the court has held that that prevents a graduated income tax? What I have in mind is, I think those statutes do not differentiate between taxes generally and taxes against real property. I think that is the first thing to clarify here.

TAVARES: That is the trouble, Mr. Chairman. I think, I think, I think, I don't know, so I'm not saying I know. I don't think this committee - - this delegation ought to go on, I think, I think. I haven't had time to go into the decisions, but I do say that under a general tax law, they have held this. And, therefore, I say under a special tax law, you may not be able to have exemptions from the real property tax as you have today, unless you make these specific exemptions in your statutes, which was what we had to start with. And we deleted it because we got so bogged down with exceptions, "except that we can have exemptions for this and exemptions for that." We finally took the whole thing out on the theory, as the Attorney General's Office advised us, that there was ample protection in the Federal Constitution.

CHAIRMAN: Does that answer your question, Delegate Anthony?

ANTHONY: No, that does not. I just wanted an answer to a simple question as to whether that sort of provision applied where there is a constitutional requirement of uniformity relating to assessment of real property taxes.

TAVARES: I have found none that particularly have that specific language. But in two hours I couldn't find it, and I don't know whether there is one or not.

CHAIRMAN: Any questions from the committee? Any further discussion?

ROBERTS: I was one of the individuals yesterday who asked to defer discussion on this. I think there are some doubts as to whether or not the uniformity section might later prevent us from putting in certain types of taxes which

the courts might construe as being improper because they were not uniform in application, such as, possibly an inheritance tax or graduated income tax. I believe unless we feel pretty sure that the article is safe, I would suggest that we not have it in our Constitution.

TAVARES: One more thought. I noticed in the Model Constitution they have no provision whatsoever of this type of uniformity because I think they have had too much trouble with it.

NIELSEN: In the judicial interpretation of this tax clause, which is taken from the New Jersey Constitution, the statement is made [The Governor's Committee on Preparatory Research for the New Jersey Constitution Convention]:

> Even under the present Constitution, class taxation is valid so long as there is compliance with the classification rule that all reasonably within the class are included; that uniformity prevails throughout the whole class; and that the property is taxed at true value.

I think that answers the question of Mr. Anthony. Also I would like to quote this from it:

> But classification must be of property according to its characteristics, or the use to which it is put, and not according to the status of the owner, or the mere incidence of location of the property. Consistent with the right of classification is the Legislature's power to prescribe different rates of tax for different classes of property, provided, always, that there is rate uniformity within each class. Because real and personal property, in legal contemplation, belong to different classes, a tax law may constitutionally affect one without affecting the other.

So it could be very easily interpreted by the legislature, and uniform rules and standards can be maintained. [Tape inaudible. He said he was willing that the provision should apply only to real property, but he wanted to have it included in the taxation structure so that there would be something said about taxation to the effect that it would be fair to all.]

ANTHONY: I don't think that we should arbitrarily reject Mr. Nielsen's amendment because of some general statement by *Cooley on Taxation,* that this might possibly present a constitutional difficulty. We have to see the statute that he refers to and see whether or not it is the kind of a statute that we are talking about here. Now we can make this perfectly clear, that it applies only to real estate. That being so, it cannot apply to the income tax, either gross or net, and the report can so state. It can also be made abundantly clear in the report that there can be reasonable classifications so that when there is a public utilities gross income tax which imposes a five per cent on the net in lieu of property taxes, you will take the public utilities off the tax rolls for purpose of assessment. The principle is perfectly clear. All we have to do is to make up our mind whether or not we want to put a provision in the Constitution for equality of assessment with respect to real property. If we do, let us vote on it. Let's not be fearful about the thing because of some possible state interpretations of statutes whose text we do not have and which it is not the intention of this body to be bound by.

SHIMAMURA: The New Jersey Constitution doesn't have the words "and standards." May I ask the proposer of this amendment, the delegate from Hawaii, if he has any serious objection to the deletion of the words, "and standards" and have it as the New Jersey Constitution has it and end with the words, "general law and uniform rule"?

NIELSEN: No, I accepted that amendment because Mr. White said he would go along with that change. That's the reason for that. It was Mr. Anthony who suggested it, I believe, and I think the interpretation is all right.

SHIMAMURA: I realize what Mr. Anthony feels. Does he mean that he consents to the deletion of the words "and standards"?

CHAIRMAN: No, the answer was that the words "and standards" were added. It was acceptable to him because he didn't see anything wrong with the addition. That was his answer.

SHIMAMURA: If I may speak a few moments longer. I think the deletion of the words "and standards" makes it ambiguous. If you leave it as now approved, I think it makes it less ambiguous.

WHITE: I'd like to ask Mr. Anthony a question, seeing that he favors this amendment. The words, "Real property shall be assessed for taxation under general laws," wouldn't that be mandatory, that the real property of public utilities would have to be assessed unless you specifically exempt it?

ANTHONY: The way that could be handled is to recast this sentence and say:

> Such real property which is assessed for taxation purposes shall be assessed according to general laws.

That would accomplish what Delegate Nielsen has in mind and would very specifically and clearly permit the classification of such real property according to general laws, general classifications such as real estate of charitable institutions, real estate of public utilities. What the delegate is trying to get in the Constitution, and I see no harm in it, is a simple, clear statement that there shall be equality of assessment as to that real property which is in fact being assessed. It certainly poses no difficulty as to net income or gross income tax. I don't feel seriously one way or another about it but apparently the delegate from Hawaii seems to think there has been some abuse and I can see no harm to it.

WHITE: I don't think anybody has any fault with the intention of the thing. Our concern revolves around the question of whether it is going to be possible to operate under it. I had one further question that I wanted to ask Mr. Anthony and that is whether our present system of taxation on real property, under which we use the Somers System where the corner piece of property is taxed at a different rate than the piece right next door, would fall within the definition of the "same standard of value." I think that is a very serious question as to whether that would fall within that.

CHAIRMAN: Well, didn't Delegate Anthony say it was just a question of reasonable classification?

WHITE: No, he said according to uniform rules and according to the same standard of value. My own -- I'd just like to say that this committee started working with this in the first week of April and we struggled with it until about the fifteenth of May and we finally threw up our hands and decided we couldn't write a provision that was going to cover every situation that we had in the territory here today, and that we therefore better leave it out of the Constitution and leave it to our legislature to pass necessary statutory laws.

CHAIRMAN: Delegate Mau has been seeking recognition, unless you are yielding to Delegate Anthony.

MAU: I was just wondering how the amendment now reads.

CHAIRMAN: The amendment as it now stands before the committee reads as follows: "All real property shall be assessed for taxation under general laws and by uniform rules and standards."

MAU: One question as to the amendment. As I understood it, Delegate Anthony interpreted it to read that under that section, the legislature may make reasonable classification.

CHAIRMAN: That's what I - - the Chair understood.

MAU: That's correct.

NIELSEN: Could Mr. Anthony read that suggested change a little slower so I can get it down.

CHAIRMAN: Well, the only thing before the committee is this amendment that has been proposed, and you - - Delegate Anthony did not make it as a motion. All right.

ANTHONY: I think we are wasting a lot of time here. I don't thing that with this proposed amendment the delegate from Hawaii will accomplish anything different than under existing law, and I was wondering if he wouldn't be content to withdraw the proposed amendment so we could go on. I think under existing law the thing he is driving at is mandated under the statutes. It's just a question of enforcement. Apparently the committee feels rather strongly about this. I'm not persuaded that their fears are well-founded, but I would suggest to the delegate, even though I supported him, that he withdraw his amendment.

CHAIRMAN: Well, your point is this that under the equal protection of the laws, that same interpretation of equal protection of the laws would be applied in this section. Is that your point, Delegate Anthony?

ANTHONY: That's correct. [one sentence inaudible] All the objectives can be accomplished under the present Bill of Rights and under the existing statutes.

NIELSEN: The existing statutes are unfair. You take the statute on exemption where part of the building is used to live in, that part is charged to you in taxes the same as the commercial end of your building. I don't think that is fair. If you have home exemption, it shouldn't make any difference whether you live upstairs, downstairs, in back of your store, or where you live. You are entitled to home exemption the same as anyone else. I think that we could get a short sentence included in the Constitution. It would then be up to the tax commissioner and the legislature to maintain uniformly the standard value of tax assessment and also exemptions. That is the reason I would like to see something in the Constitution to this effect.

TAVARES: I want to say that the Attorney General's Office is sincerely disturbed over this proposed provision. Furthermore, I want to say that if the proposed addition by Delegate Nielsen has the effect he claims for it, its effect will be to prevent classification rather than permit it, and actually, all exemptions are likely to go out and all other classifications. If it means what he says it means, then I say let's not have it because the legislature won't even be able to classify the way it does today. It goes too far if that is what it means.

CHAIRMAN: Well, are we ready for the question or ready for discussion? All right. The question before the committee is whether or not Section 9A shall be added to the proposal, Section 9A reading as follows: "All real property shall be assessed for taxation under general laws and by uniform rules and standards." All those in favor of the motion please signify by saying "aye." Opposed. The noes have it. The motion failed.

The matter before the committee is the adoption of the proposal as amended.

WHITE: This isn't an amendment to the proposal, but I think it is something that should go into our committee report and I'd just like to explain it because I think it has some importance. On page 2 of Committee Report No. 24, which is the report of the Committee on Ordinances and Continuity of Laws, Section 4 reads that "The debts and liabilities of the Territory of Hawaii shall be assumed and paid by the State of Hawaii and all debts owed to said Territory of Hawaii shall be collected by said State." Now, it seems to me that that ought to be expanded to include any acts of the legislature of the Territory of Hawaii authorizing the issuance of bonds by the Territory or its several counties also, because there are acts of the legislature that have already been taken and there may be bonds already printed and ready for issuance, and I would like to suggest that this addition be incorporated in the committee report for the purpose of calling it to the attention of the Committee on Ordinances and Continuity of Law. I could turn this over to the Clerk to incorporate in the record or I could read the whole thing.

> Ordinance Regarding Debts. All acts of the legislature of the Territory of Hawaii authorizing the issuance of bonds by the Territory, or its several counties, are hereby approved, subject, however, to amendment or repeal by the legislature, and bonds may be issued by the State of Hawaii and its several counties, pursuant to said acts. Whenever in said acts the approval of the President of the United States or of the Congress of the United States is required, the approval of the governor of the State of Hawaii shall suffice.

DOI: I move that it be incorporated into the record.

CHAIRMAN: If there is no objection, will you turn that over to the messenger to have it incorporated.

Delegate Arashiro, did you seek recognition or didn't you seek recognition? You are recognized if you seek recognition.

ARASHIRO: I move that the committee reconsider the action taken in adopting the amended form of Section 2 of Committee Proposal No. 10.

CHAIRMAN: Your motion is made to reconsider action taken on Section 2 of Committee Proposal No. 10.

SAKAKIHARA: I second the motion.

CHAIRMAN: All those in favor of reconsideration of the action taken on Section 2 say "aye." Opposed. The Chair is in doubt. Perhaps if you might - -

ARASHIRO: The change won't be much except that the last - -

WHITE: Point of order. As I recall, Mr. Arashiro voted in the negative on this.

ARASHIRO: I voted for it. I am for it in principle, and I want this, except that I do not believe in the principle of the last sentence where it reads "unless the governor has recommended the immediate passage of such appropriation bill." I don't think the governor should have this power over the legislature, and that is the reason I want to make a change to that so it will read, "unless the legislature by two-thirds vote of both houses shall recommend such appropriation bills." This will not change the main thinking, only a matter of principle.

H. RICE: I went over this with Delegate Arashiro this morning. If you are the business manager of a concern, you are the one that is supposed to suggest the changes that are necessary, and in this case it is our chief executive who suggests changes, and I think it ought to stand the way it is.

CHAIRMAN: Well, the Chair finds itself in this position. A motion has been made to reconsider and the Chair is in doubt as to the vote, so in order to resolve that doubt, I ask all those in favor of the motion to reconsider, please raise your right hand. Will someone count? Opposed. The motion failed.

I have here Miscellaneous Communication No. 106 which was referred to the Committee of the Whole considering Taxation and Finance. This is a letter from Stanley Miyamoto, Chairman of Joint Tax Study Committee, addressed to Mr. King, which was referred to this committee. "Enclosed please find a statement relative to the debt limitation clause in our proposed Constitution. Your consideration of the enclosed statement will be greatly appreciated. We have made enough copies to be distributed to the Convention delegates." Have all the delegates received the communication?

KING: Copies were delivered at the beginning of the discussion on the amendment to Section 10 of the current proposal, and the communication will be acknowledged and be placed in the files with the discussion on this particular proposal.

CHAIRMAN: If there is no further discussion then, are we ready for the main question? The question is the adoption of Proposal No. 10 as amended. All those in - -

J. TRASK: I have an amendment, and I do not know whether this is an amendment to a section or if it is a new section. I'm inclined to think it is a new section and it's in regard to the retirement system. I believe the delegates - -

DELEGATE: Mr. Chairman, the amendment is on your desk.

CHAIRMAN: Yes, I noticed this, but I didn't notice anyone standing up to propose it.

J. TRASK: Well, I didn't think you were ready to put the question, Mr. Chairman.

CHAIRMAN: You are in order, Delegate Trask.

J. TRASK: I move that we tentatively adopt this amendment. Whether it should be a new section or added to another section, that could be left entirely up to Style.

APOLIONA: I second that motion.

CHAIRMAN: Any discussion?

SAKAKIHARA: What is the amendment?

J. TRASK: An amendment to Committee Proposal No. 10, that, "There shall be a retirement system, subject to regulation by the legislature, for the employees of the State and its political subdivisions."

As it now stands, it's purely a matter of - -

HEEN: Point of order. No second to that motion.

CHAIRMAN: The motion was seconded.

J. TRASK: May I proceed then, Mr. Chairman? I believe that the government employees are entitled to a constitutional protection of a system that has gone a long way in contributing to the welfare of our community. There might be some who might raise the question that is is purely statutory, but I have noticed that all during our deliberations here for the last 60 days we have included quite a few things that I myself consider to be statutory.

HEEN: Point of order. I don't think this subject is germane to the purpose contained in the article on finance and taxation.

J. TRASK: As a matter of fact, I believe a proposal was introduced and I think it was placed on file by the committee.

APOLIONA: That proposal the delegate from the fifth district is referring to is Proposal 129, which was referred to the Committee on Taxation and Finance on May 16, 1950.

HEEN: Therefore, I take it that that has been rejected. I suggest therefore that it is not germane at this time.

WHITE: Mr. Chairman, this - -

CHAIRMAN: Just a moment. You have raised a point of order, did you not?

HEEN: That is correct. What I have in mind is this, that I'm in agreement with this proposal in principle, but I think it ought to be put in as an amendment to - - No, I don't know whether there is going to be an article on general provisions. If there is an article along that line, it could be placed there.

CHAIRMAN: Delegate White sought recognition. By the way, Mr. Trask, you had the floor. The point of order raised by Delegate Heen does not seem to me to be well taken, particularly in view of the fact that that proposal was referred to the committee. However, the Chair, if anyone desires to speak on that point of order, the Chair would like to be enlightened or corrected on this presumption.

MAU: I do.

SAKAKIHARA: Mr. Chairman.

MAU: I do, Mr. Chairman.

CHAIRMAN: Delegate White, were you seeking - -

WHITE: No, no.

CHAIRMAN: Delegate Mau.

MAU: I think it is germane to this subject matter. It deals - - this proposal deals with taxation and finance. Now, under the retirement system, as I understand it, the government has a direct responsibility in its financial obligations to the system, and I see no reason why it can't come under this provision.

CHAIRMAN: Well, Delegate Mau, will you please cease? You have bulwarked the Chair's conviction and, Delegate Trask, if you desire to continue with your arguments, please proceed.

KAM: Point of order.

CHAIRMAN: State your point of order.

J. TRASK: I would yield the floor to Delegate Mau, Mr. Chairman.

KAM: Mr. Chairman, has the Chair put the question to Section 9, to adopt the Section 9 as amended?

CHAIRMAN: No. The section that we have just voted on, Delegate Kam, was a new section entitled Section 9A which was voted down. Section 9 has already passed. So now there is a new amendment proposed by Delegate Trask which is before the committee, and Delegate Trask has finished discussing the proposal. Am I right?

J. TRASK: Yes.

CHAIRMAN: And Delegate Ohrt is now seeking recognition. Delegate Ohrt, you are recognized.

OHRT: I was interested in Proposal 129 which I think is the type of proposal that this Convention should adopt. The retirement system really gives protection to some 16,000 employees and fixes the benefits through a trust fund. That is, the retirement system has been set up as a trust fund, and as I understand it, there is a statutory contractual relationship at the present time, and I think the employees would like to see it as a constitutional contractual relationship.

I was sorry that the Finance Committee commented as they did in their report on the retirement system. You will find that in their report, "It is the opinion of your committee that to include such a provision in the Constitution would be unwise and unsound for it would be committing the State forever, practically speaking, to continue the present benefits and it is conceivable that some adjustments may become necessary at some future time. Further, it appears to be unsound as class legislation. Government

employees are protected by law and it is the belief of your committee that no provision should be placed in the Constitution which would interfere with the free action of the legislature who can take necessary action as times may warrant after they have had an opportunity to complete a capital review and analysis of the system and of the then financial condition of the State."

The present system is patterned on the New York system and the New York Constitution has what is in Proposal No. 129. Now, government employees haven't the right to strike and I think we ought to give them protection such as is incorporated in Proposal No. 129. This proposal that Delegate Trask has submitted, I would like to amend the wording that is in Proposal No. 129, which would read as follows: "Membership in the employees' retirement system, benefits not to be diminished or impaired. Membership in the employees' retirement system of the State shall be a contractual relationship, the benefits of which shall not be diminished or impaired."

ASHFORD: If that is a motion, I would like to second it.

J. TRASK: I'm willing to accept the amendment.

OHRT: Now, speaking to that amendment. It's the benefits in the system that really mean something and here in Hawaii we have a contributory system that really reduces the cost to the taxpayer, and I think the only criticism that you hear of the system is that the benefits are too low. That is the general criticism, but anyone who knows anything about pensions knows that it's a very expensive operation. If a person were to try to provide a pension for an individual and he was in an individual business, in order to furnish the benefits that the retirement system of Hawaii furnishes the employee, if he were to do that on his own he would have to set aside practically 20 per cent of his salary each month. That would more or less assure him of half pay at the age of 60 provided he has had 35 years of service. The contribution that the Territory has to make runs about 7 per cent, so that the retirement system itself is probably one of the cheapest things that the taxpayer pays for.

Now, pensions are in the limelight and they are part -- becoming a part of the personnel. We now have civil service and I myself would like to see the benefits more or less assured. We now have $45,000,000 in the trust fund and it is the trustees who are required now to see that these benefits are paid. That fund is increasing at the rate of about five million a year, and I think this is most important to 16,000 employees who are in a different category from people in other walks of life. They have no right to strike, and accordingly I move that this amendment be adopted.

SAKAKIHARA: I second that.

TAVARES: I am sorry that although I am a member of the retirement system and I am looking forward to the day when I can draw a pension from it for some of my years of past service, I have to oppose this proposed amendment. I want the delegates here before they vote for it to understand what they are getting into. Once upon a time I had the same idea. I made the same proposal and it was pointed out to me that by making it a contractual relationship, we would be sewing up every future legislature to guarantee to put up enough money for this system forever and ever and ever. Gentlemen, if you do that you might as well put in a provision that the salaries shall never be diminished of government employees.

I am for the system. I want to see it continued, but I want to point out that the time may come when our legislature will feel, and sincerely so, that it is too heavy a burden. Insofar as those members who are in the system at that time and who have contributed, there is a contractual relationship. And I want to correct the statement made. The contractual relationship applies only to the money in the system, which means that the legislature at the present time is not by a contract bound to put in money in the future, but if they stop doing it, then the courts can take it over in receivership and liquidate it or administer it for the benefit of those members at that time who have interest in the fund. But at the present time there is no blank check for the system. If you put this through, this amendment by Delegate Ohrt, you are writing a blank check for the system. I want you to understand that, saying that the legislature contracts now always to put up all the money necessary to maintain the present benefits of the system without any change. Now, if you want to tie that kind of millstone around the neck of your legislature, that is your prerogative. For my part, although I am a member of the system, I cannot see how we can for one group of our people tie that kind of a tight millstone around our necks.

One more thing and that is, social security is being extended today. The time may come when either by constitutional amendment or otherwise it will be extended to government employees of the states and territories and so forth. At that time will we still want to be -- if we are compelled to contribute to a federal system, do we still want to be compelled to contribute to the same system with the same benefits at the same rates as we do now? If we put this through we are saying until this and unless this Constitution is amended, we can't do anything else but keep it up.

MAU: Of course, there have been other millstones around the necks of the genteel -- or rather the genteel necks of the legislators. I don't think that is an argument in itself. My distinguished colleague from the fourth district, of course, has come a long way from the time when he was a lowly deputy and so maybe his viewpoint does change.

But I have here a copy of a letter written by Mr. Buck, George B. Buck, the actuary. I understand that he is the advisor of the retirement system. He wrote to a Mr. F. B. Holmes, Director, New York State Employees' Retirement System, and in it he agreed that such a provision should go into the New York Constitution and it was made part of the New York Constitution. Likewise, it was incorporated insofar as the municipal employees were concerned, together with the state employees. I won't take the time to read that, but that is an actual fact. Now, if we do it, we will not be violating any precedents; as a matter of fact, we would be following the great State of New York.

CHAIRMAN: Any further discussion?

HEEN: Point of information.

CHAIRMAN: Point of information. State your point.

HEEN: This language proposed by Delegate Ohrt is similar to the language employed in the New York Constitution?

OHRT: Yes, I think it's taken from the New York Constitution.

HEEN: Verbatim, the same?

OHRT: As far as I know, yes.

CHAIRMAN: Can you answer the question, Delegate --

MAU: No, Mr. Chairman, it is not verbatim. I would like to have an opportunity to read the New York provision. "Membership in a pension or retirement system of the state or civil division thereof shall constitute a contractual relationship, provided however, that in systems which do not have reserves sufficient to cover benefits accrued on account of previous service, members' claim on retirement shall be limited to the benefits which could have been produced from an employer's contribution not exceeding five per cent of the member's salary during such service, and a like contribution from the member. In systems providing

for the accumulation of reserves, such reserves shall be maintained without impairment for the purpose for which created."

NIELSEN: Well, I'm in favor of this, but I think that something should be done so every citizen in this State can come in on the same basis as government employees. I don't know why we are any different than government employees, and if the territory is, or the State is willing to put up seven and a half per cent against our seven and a half per cent, why shouldn't we come in on it? Then we will all get that retirement when we get through.

MAU: Welfare state.

SAKAKIHARA: Mr. Chairman and members of the Convention. I recall some 18 years ago when the legislature of the Territory of Hawaii absolutely defaulted on their share of the contribution towards this obligation. As we all know, the retirement system is a sacred trust by the government of funds entrusted by the employees of this Territory and the counties. Unwise investments were then made by the then trustees of the retirement systems. I remember very, very much, because I was a member of the finance committee of that session of the legislature.

I say to you, that the employees of the county, City and County and the Territory today are by law required to become members of the retirement system as long as they are employed by the government. They have no choice. They have no alternative but to become a member of the retirement system. I feel very strongly that there should be a contractual relationship, there should be between the government, if the government desires to maintain this system in good faith with the employees of the government. As presented here by Delegate Ohrt, there are some 16,000 employees of the county, City and County and the Territory. What protection do these employees have? What assurance do they have after having been employed in the service of the government that this fund will be secure? What assurance do they have that the government will continue to put up its share toward this retirement fund?

I recall the day when the actuary, Mr. Buck, was invited by the legislature and appeared before the legislature in joint session and actually advocated that that security should be given to the employees of this government who are members of the retirement system. This fund has grown to the extent of $45,000,000 and I feel very strongly, ladies and gentlemen, that this amendment should be adopted and that the government should in good faith keep their obligation with the employees of the territory. I am therefore very strongly in favor of incorporating this amendment in the Constitution.

ASHFORD: I think the gentlemen from the legislature will recall that about four years ago someone from Mr. Buck's office, the actuary looking after the system, appeared and recommended further deposits in the fund by the Territory, holding up as a horrible example the complete breakdown of the system of New York, and I have no doubt at all that that constitutional provision was written into the Constitution of New York because it had broken down under the old system.

SAKAKIHARA: For the information of the delegate from Molokai, I wish to state that it was Mr. Buck, the actuary himself, who was invited to appear before the legislature in joint session.

LARSEN: I was rather interested in Mr. Nielsen's comments and it reminded me, and I want to tell all of the delegates about a certain politician who was talking to his crowd and he said, "Ladies and gentlemen, when I get into that legislature, I'm going to do away with all the taxes because I'm going to make the government pay for it."

CHAIRMAN: Are we ready for the question?

MAU: I just want to read the latest provision in the New York Constitution. I read from an old one. This is very much shorter. "After July 1, 1940, membership in any pension or retirement system of the state or a civil division thereof shall be a contractual relationship, the benefits of which shall not be diminished or impaired."

TAVARES: I don't know why I have to stick my neck out all the time, but I am sincerely worried about this. I think there is a difference between benefits of members who are already members at a given time and the reserve they have put in and the changes that can be made for future employees. For instance, it seems to me it ought to be possible for the legislature to say, "O.K., for all those who are now members, we won't change the benefits, but for all new members coming in, we are going to reduce the pension a little bit." I think that ought to be left within the power of the legislature.

Now, if that is what this means and if it doesn't mean that the legislature has to -- is making a contract to put up the necessary money forever and ever and ever in the future, that's one thing. I think that we need an interpretation of that and perhaps Mr. Buck has written one. It may be it doesn't mean as much as I think it does. And if so, I might vote for it. But the way it stands now, if it means fully that the legislature guarantees that no employee in the future will ever be given less benefits proportionately than the employees today and that the legislature guarantees to put up all the money necessary from now to forever to cover whatever the benefits may be, then I think it's a little -- it's rather dangerous. And it seems to me therefore that it is worth looking into as to that meaning. Has Mr. Buck written an interpretation of that section?

CHAIRMAN: Well, the language says, "The benefits of which shall not be diminished or impaired."

TAVARES: Is that benefits of old members or the benefit of members now and any members that may come in in the future? If so, I think that again is a very, very grave restriction.

OHRT: I think it applies to all those that are now members of the system. They have made their contributions and the benefits are a fixed benefit plan. And it's just such a reduction or the impairment of those benefits that the employees should be concerned with. Now, before Congress today or a few days ago, we have the social security bill. That has just been passed and the government employees are exempted from that. I think that is the answer to Delegate Nielsen. If he wants to get in under this, he can get in under social security, probably is there already.

TAVARES: Well, one more question of the very able delegate from the fifth district and that is, does the delegate interpret this provision to mean that it is also a contract by the legislature guaranteeing to put up every bit of money necessary in the future to make good these proposed benefits set forth in the present law?

OHRT: That would be my interpretation of it. Yes, I think the government employees should have that.

NIELSEN: I would like to ask Mr. Ohrt one question. Has the government so far in the Territory put up all the money they should have put up?

OHRT: The answer to that would be yes.

NIELSEN: It seems to me in the '47 session, they didn't want to give you the funds to keep the security sound.

OHRT: Well, that's correct. There was an effort to delete certain funds but the legislature finally appropriated them.

TAVARES: Is it not true that we have some considerable amount yet that we owe that we haven't paid up for the reserves because we started in in 1925 with Territorial employees and had to make up all the back years ourselves without any contributions from the employees?

OHRT: That covers the amount that covers prior service.

TAVARES: Prior service credit?

OHRT: Prior service credit.

TAVARES: What is the balance now?

OHRT: About $4,000,000, but that is funded. The Territory is paying that. I don't recall what the rate is but a certain percentage each year is being paid.

TAVARES: We have extended it once already, haven't we?

OHRT: Yes, and those are just the things that we are trying to avoid.

TAVARES: In other words, we are not up to date then in our obligations.

OHRT: No, insofar as prior service, we are not. That's right.

TAVARES: But the legislature is putting up the money in installments and hopes within a reasonable time to cover that prior service credit.

OHRT: But it's being funded so it's being taken care of, Delegate Tavares.

TAVARES: Well, I wanted the delegates to understand that.

H. RICE: It seems to me that the way the Congress may pass the statehood bill would be to review our Constitution. I think Delegate Ohrt and others here will agree with me the Territory has a fine retirement system, in fact, one of the best of any state, and I think if the Congress is going to review our Constitution that in the section of ordinances somewhere we should have some sentence just like this: "The retirement system of the Territory should be continued under the State." It shows then that we have a good system, we believe in it and it should be carried on. I think that is sufficient.

CHAIRMAN: In other words, you are opposed to the insertion of this in the taxation and finance article.

H. RICE: That's right.

CHAIRMAN: Any other discussion? Are we ready for the question?

HEEN: I noticed that the amendment suggested and accepted by Delegate Trask reads as follows: "Membership in the employees' retirement system of the State shall be a contractual relationship, the benefits of which shall not be diminished or impaired." I believe that this language refers to the retirement system as it exists now. It seems to me that it should be more general. "Membership in any employee retirement system of the State or of any political subdivision" would be much more preferable so that it might take care of any system that the counties may wish to establish.

OHRT: I would be very glad to accept that amendment. I think it's the understanding that the present system is a state system.

HEEN: That is correct, but that means that you would have always under the Constitution a state system. But there would be nothing I suppose to prevent a political subdivision from establishing its own retirement system.

OHRT: That is possible.

HEEN: And if the political subdivision does that it should have the same protection.

OHRT: I'd be very glad to accept that amendment.

J. TRASK: I'm willing to accept the amendment made by Delegate Heen.

CHAIRMAN: In other words, the proposed amendment -- proposal would read as follows: "Membership in any employees' retirement system of the State or a political subdivision thereof shall be a contractual relationship, the benefits of which shall not be diminished or impaired."

HEEN: Correct.

CHAIRMAN: Is that correct?

TAVARES: May I ask one more question? These are very important things because this is going to run into millions of dollars. I would like to ask the proponents of this amendment if this means that if the legislature in the future should raise the benefits, that thereafter they couldn't reduce them? Because that might be a deterrent in the future against your legislature ever, ever raising the benefits, because every benefit they give is a blank check forever for the future. Is that correct? That is my question -- I'd like to ask -- my question as to whether the future benefits will be covered. Will that question be answered, please?

CHAIRMAN: I think Delegate Ohrt understands the question. Are you ready to answer it?

OHRT: I think if the benefits are increased, there will also be an increase in the members' contributions and if the Territory does want to increase the benefits, then the contractual relation would start from then on as to the new benefits.

TAVARES: Well, then one more question, and that is, I think the delegate will agree that if the legislature, for instance, in the future brings in a new class of employees who have not contributed and covers them into the system as they have done several times in the past, that that automatically pledges the funds of the system to cover those new benefits, does it not?

OHRT: I don't think they can bring in any new employees under the present statute without providing the reserves that would go for those particular employees.

TAVARES: Nevertheless, we brought in the counties after we brought in the territory.

OHRT: But when you did that you provided the reserves to cover it.

TAVARES: But is it not true, I'd like to ask the delegate, that under the retirement system law all of the assets of the funds are pledged for every benefit, not divided for a certain amount for each member.

OHRT: Well, they are in one fund, but when a person once retires, then it's set up for that particular individual.

TAVARES: Well, what I'm worried about is that this provision might not prevent the legislature in the future from bringing in new members unless they put up right away a separate fund to cover those new members' benefits, rather than pledging the old assets for the new members.

OHRT: Well, they couldn't touch the old because that would be absolutely wrong.

TAVARES: That might then freeze the legislature's power to bring in to some extent new classes as they do today.

OHRT: No, the legislature brings in -- is bringing in new members, but providing the funds that went with that liability.

TAVARES: That's not my understanding of what has been done. It's my understanding when you join the system and are given membership, all of the assets of the system immediately are pledged to protect you as well as other beneficiaries of the system. The legislature does put up additional money, but it goes into the same pot.

OHRT: If you have no prior service it doesn't make a bit of difference because your obligations start from the day you join the system. So you begin making your contributions at that time.

SHIMAMURA: I am in favor of this amendment in principle, but I see certain legal difficulties. First, does this mean the continuation as a contract of the present membership in the system? If that's true, I think there is no legal difficulty as to that. Continuance of the present membership on a contractual basis. But what about future membership? Are we going to write in at the present time before such a contract is formed that it shall be a contract?

CHAIRMAN: Do you care to answer that, Delegate Ohrt?

OHRT: I would think that every employee that comes in would be given that same contractual right. I see no reason why not.

RICHARDS: I would like to ask one question of Mr. Ohrt, Delegate Ohrt, if I may? Who is at present responsible if there is diminution of the assets? In other words, if one of the companies whose bonds are held by the retirement system fails and the bond becomes worthless, is it incumbent upon the Territory at present to make up that deficit?

OHRT: Yes, it is.

MAU: The discussion on the New York provision throws some light on the questions raised by Delegate Tavares. Part of it reads as follows:

> The bill protects taxpayers because it does not attempt to force them to continue unsound costly systems which never would have been approved if the real cost had been known. On the other hand, it does give members of such system contractual rights to reasonable accrued benefits. Taxpayers are not obligated to assume further burdens under any system because of service not yet rendered, but they cannot take away what the employee may be considered to have earned by reason of his previous service.

And again,

> The amendment should have the support of taxpayers because it clearly defines the contractual rights of employees in sound systems, which definitions add no greater rights than many believe are now possessed by such employees, and it does not give any basis to require the public to assume the unlimited liabilities which some of the unsound pension funds may be assumed to have undertaken with no basis for meeting them.

Now it seems to me that this system is a sound one, particularly for those who pay more taxes that I do. If we didn't have such a system, if we don't protect that system, whenever the government employee ceases employment with the government, somebody is going to have to take care of him, and eventually you may have a welfare state. But it is better that the government employees help themselves by contributing to the retirement system and helping their retirement and their pension for later years.

WHITE: I'd like to ask a couple of questions. Is the New York system administered by individual trustees or by a corporate trustee?

OHRT: By a corporate trustee. That is, they have trustees appointed just as we have.

WHITE: But it's a corporate trustee?

OHRT: Yes, so are we as I understand it. Is that right?

CHAIRMAN: No, you are individual trustees.

WHITE: The trustees are individuals in this case, aren't they?

OHRT: The fund is set up as a trust fund and then the trustees are - -

WHITE: Yes, but it's administered by individuals as trustees of the fund. You made the - - the delegate from the fifth district made the statement that in the event that the value of the fund should shrink five million dollars, it would then be an obligation of the Territory to make up that deficit. Is that right?

OHRT: That is written into the statute today. That is a contract that the Territory has made with the employees. In these days when we are talking about the sanctity of contracts, I hope the Territory lives up to its contract.

WHITE: I think that's quite true, but I think the one difference is that in this particular instance, even though the Territory might have a bad experience and decide that it might be a better thing to give up the retirement system because of the risks involved, this would obligate them to keep it on indefinitely and make up deficits as long as deficits are accrued, which I think is highly unsound.

OHRT: I think that that's unfair to the system. As far as the contract is concerned, if the system earns more than 12 per cent they give the Territory and the taxpayers credit for it. Now, I tried to tell the Convention that this was the cheapest thing that the taxpayers were paying for because you are making the employees pay their own pensions or at least half of them.

ANTHONY: May I ask the proponent of this amendment a question? I'd like to know whether or not he is satisfied with the existing retirement system? And if he is, why does he want to put a piece of legislation into the Constitution?

CHAIRMAN: Would you yield to that question, Delegate Ohrt? I believe it's addressed to you although it was proposed originally by Delegate Trask.

OHRT: I've seen a great deal of work here on the Convention floor. New York State has taken the leadership in this -- in pensions, trying to save the taxpayers some money. This was done in 1938 in New York. It's functioning well and we think that we are entitled to the same protection. Now, our system is practically the same as the New York system. It's based on the same formula, one-seventieth for each year of service. It's a formula plan. It varies with the number of years of service. There is nothing as sound as the Territorial Employees' Retirement System at the present time.

HEEN: Whether or not the system here was the corporation or corporate entity, it is, under this language, the retirement system established and placed "under the management of the Board for the purpose of providing retirement allowances for employees. It shall have the powers and privileges of a corporation."

TAVARES: A point of information. It seems to me that the answers given by Delegate Ohrt and what was just read by Delegate Mau are directly contradictory. As I understand it, Delegate Mau's explanation now, apparently I imagine written by Mr. Buck, is that the taxpayers do not assume liability for service not yet performed, which would seem to me to be that the legislature could cut off benefits for earnings of the future - - for service of the future. As I understood Delegate Ohrt, it meant we had to continue this forever, and I think that ought to be cleared up. I

might go along with Delegate Mau's explanation, but I don't think I would go along with Delegate Ohrt's.

OHRT: That would only apply to those people who become members of the system. As far as those that were not in the system yet, I don't see how you can extend any contractual obligation to them.

TAVARES: I think Mr. Mau ought to read that again. I don't think that's what Mr. Mau said.

OHRT: As I heard that, he is making a comparison between the contributory system which saves the taxpayers millions of dollars, and the non-contributory system where the obligation gets to be such large figures that nobody wants to pay them.

CHAIRMAN: Any further discussion, or does Delegate Mau desire to clarify a confused and muddled situation on this point?

MAU: I was reading a discussion of the measure that was introduced in New York, and the discussion states that the State has no obligation to continue any unsound system. That's what it says. But my view is on the point raised that the State can any time cut out that retirement system, but those who belong to the system before it is terminated, their rights and the benefits accrued to them still remain under this provision.

CHAIRMAN: In other words - -

TAVARES: If that's what this means, I have no objection to it, but I was afraid it wasn't and that's not what Delegate Ohrt says it means. That's why I'm worried about it.

CHAIRMAN: In other words, your point, Delegate Mau, is that the state could abolish the system.

MAU: Yes, but all the rights that have been accrued - -

CHAIRMAN: Vested rights?

MAU: - - by the employees before the termination of the system, remain intact. That's my interpretation of the language.

CHAIRMAN: Any further discussion? Ready for the question?

KELLERMAN: I would move that we defer this then until the language can be worded to mean what we say. Certainly the way it's written it sounds like it's an absolutely open and unqualified statement. Now, I'm perfectly willing also to go along with the explanation as Mr. Mau has given it, but that is not what the language says to me. It seems to me it can be - - if it can be made clear we might better pass upon an amendment that says what we mean.

KING: I hope we do not defer it but settle it this afternoon and perhaps with less discussion.

CHAIRMAN: You expressed the wish of the Chairman.

KING: I'd like to ask Delegate Ohrt a question. Assuming the legislature changes the form of the retirement system for future employees at some date five or ten years from now, sets up what is in effect a different system, then it's not obligated under this provision of the Constitution to retain the same contractual relation, but can establish a new one. Is that so?

OHRT: That is correct.

KING: Well then, that agrees with Mr. Mau. In other words this provision only protects those who are in the system as it now exists, and if the legislature reorganized the system it could apply to all new employees. But the contract would remain in existence for all of those who had entered prior to that change.

CHAIRMAN: Are we ready - -

KING: Under that interpretation I see no particular objection to incorporating it in the Constitution if a substantial number of people feel it protects their equity as employees of the government.

RICHARDS: I still don't think that it's quite clear. At least it isn't clear to me that if the legislature changes the form of their retirement system, does it mean that employees already under the present system may continue along as far as their future earnings are concerned under the old system, or does it merely mean that all the benefits accrued up to the time of change will definitely be a contract' There is a distinct difference.

J. TRASK: I believe Mr. King has just stated that - - reiterated the question that Mr. Richards has just asked. I think we have had enough debate on the matter. We have had any number of explanations on different points. I see no reason why we shouldn't take a vote at this time.

WHITE: I don't agree with the delegate from the fifth district, because I'm more confused than ever as a result of Mr. King's explanation of it. As I understand the explanation that Mr. Mau made, it differentiated between past service and future service. Now if it means that as of the time any retirement system is terminated that there can be no impairment of past benefits but that the future benefits can be changed by the legislature, well then I think that this thing ought to say that. I'd like that question answered. Mr. King's explanation carried the past benefits for the present employees into the future. Now Mr. Mau made it clear-cut between the two.

KING: I wasn't making an explanation. I don't dare to get involved in these legal intricate questions. I was asking a question of Mr. Ohrt. In view of the little confusion, I would like to move for a five minute recess.

CHAIRMAN: The Chair was just going to declare a short recess.

(RECESS)

ANTHONY: I would suggest that the word "accrued" be inserted before the word "benefits."

HEEN: The language in the amendment reads: "Membership in any employees' retirement system of the State or any political subdivision thereof shall be a contractual relationship." Using that as the basis, the amendment proposed by the last speaker is to insert before the word "benefits," the word "accrued."

CHAIRMAN: The Chair understands this to be before the committee, before the amendment was proposed. "Membership in any employees' retirement system of the State or its political subdivisions thereof shall be a contractual relationship, the benefits of which shall not be diminished or impaired." Is it the mover's amendment that the only change would be the word "accrued" before "benefits" or is it to eliminate also the phrases that were formerly proposed?

ANTHONY: I was trying to get rid of the impasse and I think the insertion of the word "accrued" will do it. Now if there has been some other amendment that has been lost on me, I was engaged in conversation when the amendment was made.

CHAIRMAN: Well, the amendment was just changing the word "the," "membership in the system," to "any system," and then adding after the word "State," "or its political subdivisions thereof," and that was accepted by the mover originally.

ANTHONY: Well then, I request the movant of the original amendment, if he will accept the insertion of the word

"accrued" in his amendment before the word "benefits." Then if he will state that, I would be glad to second it.

CHAIRMAN: It's been accepted, so the amendment before the committee reads as follows: "Membership in any employees' retirement system of the State or its political subdivisions thereof shall be a contractual relationship, the accrued benefits of which shall not be diminished or impaired."

HEEN: Mr. Chairman, may I ask what word did you use before "political subdivision"?

CHAIRMAN: "Political."

HEEN: No, "any political subdivision."

CHAIRMAN: "Or any political subdivision "?

HEEN: That is correct.

ANTHONY: The purpose of the amendment will be to preserve the accrued benefits but still leave the legislature free as to the future. In other words, the fears that Delegate White and Delegate Tavares had, I think, are met by this insertion.

DELEGATE: Question.

TAVARES: That is correct, and it agrees with Mr. Mau's interpretation. I accept that and I think that is entirely all right.

CHAIRMAN: All those in favor of the motion to adopt the provision just read by the Chair please signify by saying "aye." Opposed. Carried.

J. TRASK: This particular section that was just carried will be put where the Style Committee sees fit in this proposal?

CHAIRMAN: That was the understanding when the discussion took place.

J. TRASK: So I move at this time that we tentatively approve Committee Proposal No. 10 as amended.

WOOLAWAY: I second the motion.

CHAIRMAN: All those in favor of the motion, please signify by saying "aye." Opposed. Carried.

H. RICE: I move the committee rise and report progress.

WOOLAWAY: I second the motion.

CHAIRMAN: Any objections? If not the Committee of the Whole stands recessed until adjourned.

JULY 6, 1950 • Morning Session

CHAIRMAN: Will the committee please come to order.

RICE: I move that the committee rise and report recommending the passage of Committee Proposal No. 10 on second reading.

LAI: I second the motion.

FONG: As I understand it, there is quite a lot of sentiment now for an elective auditor. I notice that quite a few people have told me that they would now vote for an elective auditor feeling that the auditor shouldn't be appointed. Under those circumstances I would like to ask for a reconsideration of Section 12 at this time of Committee Proposal No. 10.

CHAIRMAN: Well, Delegate Fong, do you recall whether or not you voted against the present proposal?

FONG: I think I did.

CHAIRMAN: You might, if you could, get someone else to move the action.

SILVA: I move to reconsider the action taken on Proposal No. 10.

RICHARDS: I'll second the motion.

CASTRO: Just so that we all know what we are discussing, I think we should have Redraft One in front of us, should we not? In which case, the section on the auditor is numbered Section 8. If we go to the original draft it would be 12, but these redrafts are placed in here in front of the original draft.

CHAIRMAN: Well, you mean you find it in either Proposal 10 or in the -- I suggest that you look at the proposal attached to the Committee of the Whole report, Redraft One.

CASTRO: That is correct.

CHAIRMAN: Well, you heard the motion. As this matter was thoroughly debated, as I recall, and -- What is the pleasure of the body? Are you ready for the question?

DELEGATES: Question.

CORBETT: Mr. Chairman.

CHAIRMAN: The question is whether the auditor shall be elected -- Oh, reconsideration first.

CORBETT: You have already answered my question.

CHAIRMAN: All those in favor of reconsideration, please signify by saying "aye." Opposed. The Chair is in doubt. Roll call is demanded. Madam Clerk, call the roll.

Ayes, 26. Noes, 30 (Anthony, Arashiro, Ashford, Castro, Corbett, Crossley, Doi, Fukushima, Gilliland, Heen, Ihara, Kanemaru, Kawahara, Kellerman, Larsen, Mau, Mizuha, Nielsen, Ohrt, C. Rice, H. Rice, Roberts, Serizawa, Shimamura, Smith, Tavares, J. Trask, Wist, Yamamoto and Lee). Not voting, 7 (Kawakami, Luiz, Phillips, Sakakihara, Sakai, White, Wirtz).

CHAIRMAN: Motion failed. The motion before the Committee is still the adoption of the report. Are you ready for the question?

DELEGATES: Question.

CHAIRMAN: All those in favor of the motion, please signify by saying "aye." Opposed. The motion carried.

Debates in Committee of the Whole on

LOCAL GOVERNMENT

(Article VII)

Chairman: ARTHUR K. TRASK

JUNE 23, 1950 • Afternoon Session

CHAIRMAN: Committee of the Whole meeting on local government, that's Standing Committee Report No. 74, Committee Proposal No. 26. What order does the chairman, Delegate Kauhane, want to follow?

KAUHANE: The first order of procedure as far as the committee and the chairman are concerned is that we take a short recess so that we be prepared to come back and sit until we finish.

CHAIRMAN: If no objections, so ordered. Five minutes.

(RECESS)

CHAIRMAN: The Chair will now recognize the chairman of the Local Government Committee, Delegate Kauhane.

KAUHANE: Mr. Chairman, and members and delegates of this Convention, your Local Government Committee in its honest endeavor tried to put together what we felt was an honest proposal to be submitted for consideration by this Convention on matters relating to local government. We took into consideration the various problems and the different problems that confronted in the matters of local government with respect to the various counties. We have submitted here a proposal which we felt and which, I would say, the committee in all sincerity felt was the best possible provision to be incorporated in the Constitution for the future State of Hawaii relating to local government. The committee feels that if there is any amendment to be made to the proposal as submitted by the committee, that such amendments should be offered now before we go into the proposal either by section, paragraph after paragraph, or sentence after sentence. We -- the committee is now ready to accept any amendments to the proposal that the committee has offered.

SAKAKIHARA: May I offer an amendment?

CHAIRMAN: Delegate Holroyde is recognized.

HOLROYDE: Just a point of information. How can we offer amendments when there's nothing before the Convention?

DOI: We believe that there are two minority reports submitted. and those two minority reports go not to the specific sections of the committee proposal, rather it goes to the amendment of the whole idea of the proposal. Therefore, we felt that it might be little more time saving to first present the idea of the committee as stated in the whole article on local government; and then, if there is any amendment to be offered as to the whole article, then let's have it first before we go into the specific sections.

CHAIRMAN: Is it the desire of the committee to hear, therefore, from Delegate Sakakihara, who has presented a minority report? Please note that there is another minority report filed by Delegate Phillips that is being printed and will be submitted to the committee soon.

RICHARDS: To make the proceedings proper, since there is nothing at present before this committee, I move tentative adoption of Committee Proposal No. 26 in its entirety.

CORBETT: I second the motion.

CHAIRMAN: The motion is made and seconded that we adopt Section 1. Any discussion?

HOLROYDE: I don't think that was the motion.

CHAIRMAN: Pardon me, Delegate Monte Richards, will you please state that again?

RICHARDS: I understood the chairman of the committee, he felt that to speed up proceedings it would be better to discuss the amendments to the proposal as a whole rather than attempt to take it section by section, inasmuch as these amendments cover the whole proposal. Therefore, I made the motion to adopt the whole proposal to permit the amendments of the proposal as a whole.

KAUHANE: That's right.

CHAIRMAN: And that has been seconded by Delegate Corbett.

PHILLIPS: I believe that would be an improper course insofar as local government is -- consists of more than one function and requires sections -- individual sections which would require the individual consideration of the Convention. I don't believe that would accomplish our purpose at all, if we were to accept it in its entirety, because we would still have to go through it item by item. I would be against that motion.

CHAIRMAN: Any further discussion on the motion pending, that is to consider the entire proposal?

RICHARDS: I do not know what the proposal of Delegate Phillips is or what his amendments, but I understand that there is one amendment by Delegate Sakakihara which covers the whole proposal and does not go section by section.

CHAIRMAN: Any further discussion on the motion to consider the entire proposal? Ready for the question? All those in favor of proceeding by considering the entire proposal say "aye." Those opposed. The ayes have it.

HAYES: Not standing up very often, I have a little time trying to plug this [microphone] in.

CHAIRMAN: The committee can stand a lot of charm.

HAYES: Do you mean to tell me that you're going to adopt this Section 1 and Section 2 and Section 3 and Section 4? Is that the motion?

CHAIRMAN: The motion which you voted for—there was no opposition --

HAYES: No, I didn't vote.

CHAIRMAN: -- that we consider the entire proposal.

HAYES: Oh, "consider," thank you. Just a point of information.

CHAIRMAN: So that all the dissidents may come out with their amendments.

KAUHANE: By the motion just adopted, the committee feels that the minority report as submitted by Delegate Sakakihara will be considered together with the committee proposal.

SAKAKIHARA: That is my desire.

KAUHANE: That being the case, Mr. Chairman - -

SAKAKIHARA: I offer the minority's amendment to Committee Proposal 26. I think it has been distributed to the members of the committee.

CHAIRMAN: Have all the members of the committee received copies of Sakakihara's - - Delegate Sakakihara's Standing Committee Report No. 84.

SAKAKIHARA: My minority committee report is No. 84, along with the majority report. I believe the majority report - - committee report is No. 74 and my minority report is Standing Committee Report No. 84.

CHAIRMAN: That is correct.

SAKAKIHARA: My amendment is proposed precisely in the language of the present Organic Act except the opening word, "that," of Section 56 is eliminated; "State" is substituted for "Territory of Hawaii"; the words "governor and" are eliminated from just prior to the last word, "legislature," in the above. The words "of the Territory" are eliminated after the last "legislature." So that the amendment will read:

> Section 1. The legislature may create counties and town and city municipalities within the State and provide for the government thereof, and all officials thereof shall be appointed or elected, as the case may be, in such manner as shall be provided by the legislature.

CHAIRMAN: This amendment that you have just proposed for Section 1 appears on page 5 of your report No. 84?

SAKAKIHARA: Correct.

CHAIRMAN: Proceed.

SAKAKIHARA:

[Reads SCR 84.]

> The report of the majority of your Committee on Local Government states that the committee has been guided by its belief that "the people have the ability and have a right to manage their own affairs" and that is was the consensus of the members that the committee should "allow as much independent local self-government as the welfare of the State would permit." Although the committee's proposal is drafted upon strong "home rule" lines, it does reserve to the legislature the power "to enact laws of state-wide concern."
>
> I am in full accord with the principle of increased self-government.

CHAIRMAN: Delegate Sakakihara, there wasn't a second. Will you yield - -

SAKAKIHARA: I move - - Yes.

CHAIRMAN: Will you yield until that—your motion is seconded?

HOLROYDE: I'll second that.

CHAIRMAN: Seconded by Delegate Holroyde. Proceed.

SAKAKIHARA:

> I am in full accord with the principle of increased local self-government, but unable to agree with the manner in which the majority would achieve this end. The majority report would prohibit the legislature from enacting any law, beneficial or not, respecting the activities of an individual unit of government unless that action has been first requested by the board of supervisors or other governing body of the local unit. Every one of us will recognize that the individual citizen is frequently unable to obtain a satisfactory solution to particular problems presented to his local governing body. It is in recognition of this that the members of your territorial legislature have for many years constituted an agency which not only listens to requests of individual citizens but furnishes in many respects the only solution to such problems. The majority report would have the citizen's only recourse against his local government's failure to take action on the vote that he casts at election time. There are many who would say that this recourse is sufficient. In practice, and without depreciating in the least the intelligence of the voter, it just does not work that way. We feel very strongly that there must be an alternative available to the individual citizen, and I feel equally strongly that the legislature has, as that alternative, efficiently performed that function in the past and should not be limited in the future.
>
> In our territory, which is, after all, substantially a state-type of government (excepting for the presidential appointment of the governor, secretary, and judges) the present division of functions and responsibilities of government between the Territory and the counties is the result of steady development since 1905 when county government was first instituted. Such development by acts of the legislature has given us a system of government in which the details of operation of the following functions and activities which are often considered of a "local government" character are conducted basically under territorial statutes and not under county ordinances: airports, principal highways, libraries, civil service, fixing of public salaries, retirement system, police department, liquor control, public housing, public parks and recreation (City and County of Honolulu), public waterworks (excepting rural Oahu and Kauai), property taxes, schools and public welfare.
>
> Some might even argue that certain of the functions for which the Board of Health and the Board of Commissioners of Agriculture and Forestry are now responsible are properly within the scope of county or town government.
>
> At the time of writing this minority report, the report of the Committee on Legislative Powers and Functions had not been released. The report of the majority of the Committee on Local Government includes a proposal with respect to taxes (to be a state matter) and the reports of other committees have provided, or are understood to provide, for state control of schools and public welfare. Proposals with respect to health and agriculture and forestry activities may or may not be in sufficient detail to fix the functions of those departments so definitely as to leave no question as to whether or not certain of the present activities thereof may, under the Committee on Local Government's proposal, be considered "local" in character.
>
> With respect to most of the functions above listed, it seems to be the present concensus of this Convention that details ought not to be "spelled out" in the Constitution; thus, it seems clear that if the report of the majority of the Committee on Local Government is adopted, there will be a perpetual invitation to local governments to assume control of many of the functions which are now either operated by the territorial government or boards or commissions under territorial statutes, or operated by the county governments or boards or commissions in a manner prescribed by territory statutes.
>
> The Committee's proposal that each political subdivision "shall have power to provide for . . . the form and management of its own affairs" and that the article "shall

not limit the power of the legislature to enact laws of statewide concern" is most impracticable. The indefiniteness of the line that would be established between the constitutional scopes of the State and local governments, respectively, would give the courts and attorneys a perpetual field day.

The Chairman knows that.

It is the belief of the undersigned that the entire section under discussion should be delegated to the legislature which, according to present indications, will be comprised of a House in which the City and County of Honolulu or Island of Oahu will have a majority, and a Senate in which the outer islands would have a majority. Such a plan should assure well-considered legislation because it would mean that fundamental governmental policies and organizations (other than as fully set forth in the Constitution) would be determined by the people of all counties jointly, rather than by the people of Oahu alone. This Convention will be remiss if it adopts a Constitution worded in a manner to make it possible for Oahu alone to bring about drastic changes in presently effective laws under the claim that "its own affairs" include this or that function heretofor within the scope of the territorial government.

The several functions and activities listed herein are actually "of statewide concern." If they were otherwise the laws would not be in effect. The adoption of Committee Proposal No. 26, as presented, however, would result in continuous questioning by chartered areas as to the classification of function - -

DOI: I rise to a point of order.

CHAIRMAN: Delegate Doi on a point of order. Please state it.

DOI: I believe these minority reports and the majority reports were required to be printed and circulated so the members of this Convention could read those reports. I don't see why it's necessary to read those reports verbatim into the recording machine. I understand Mr. Phillips here who has another minority report is anticipating reading the whole report into the record, also.

SAKAKIHARA: My understanding is some of the members of the Committee of Whole have not received this minority report. They have come to me for the report.

CHAIRMAN: I'd like to say to Delegate Doi the observation is made quite late. I think Delegate Sakakihara is down to the last sentence of his report. Under the circumstances, you may proceed.

SAKAKIHARA: That is right.

CHAIRMAN: There might be another question later on.

SAKAKIHARA:

It is recommended that there be substituted for the four sections of Committee Proposal No. 26 the following (one section only).

That's the amendment which I have presented, and I ask the Committee of the Whole to give this amendment your very serious consideration. I'm in fear that under the setup proposed by the majority [Committee] Proposal No. 26 that in the event any area is set aside as a city or a county under separate charter, some of the bond issues now outstanding would be in a serious situation where they may have to be altered or may have to be provided otherwise. I submit that the majority committee report, therefore, is not in line with the best interest under the presumption and the guise that they are advocating strong home-rule for local government.

HOLROYDE: In signing the report of the committee, the majority report of the committee, I stated that I did not concur completely with paragraph 2. The committee worked diligently and hard trying to set up for the local governments of the territory a degree of home rule. However, during the committee hearings and during the progress of the committee, it was never clear to me the full effect that Section 2 would have on the progress that we made in the government locally.

CHAIRMAN: Delegate Holroyde, point of order here. The motion before the committee at this time is directed to amending Section 1, according to Sakakihara's amendment, so would you confine your remarks to the section for amendment, please.

SAKAKIHARA: My amendment - - point of order. My amendment - - When I offered my amendment, I offered it with the understanding that the Committee of the Whole was to consider the entire article of Committee Proposal No. 26, not specifically limiting it in my amendment to Section 1 alone.

KAUHANE: That's right.

HOLROYDE: I'm coming to his amendment. I'm just giving a little background for a suggestion that I'm going to make about this amendment.

CHAIRMAN: Well, with that clarification made by Delegate Sakakihara, proceed.

SAKAKIHARA: May I ask the delegate to allow me one more sentence to make here.

CHAIRMAN: Delegate Holroyde, will you yield?

HOLROYDE: I yield.

SAKAKIHARA: I believe it's a healthy thing to have the legislature in the control of local government. I, as a member of the Committee on Local Government, considered the requests of the residents of Lanai. Oftentimes the legislature is called upon by the residents of Molokai for relief; and that requests or petitions submitted to your legislature by the residents of Molokai is because their requests have been ignored by the Board of Supervisors of the County of Maui. Numerous requests of that nature will come and will continue to come before the legislature if the entire matter of a local nature is left to local government.

CHAIRMAN: I don't think Delegate Holroyde yielded so that you would bring Lanai in at this time. So I think we'll have Delegate Holroyde continue. You might keep it under wrap, however.

HOLROYDE: As I stated, I could not vote for Section 2 until I am fully aware of all the complications and effects that might have on our local government. For that reason I'm inclined at the present time to support the amendment suggested by Delegate Sakakihara. However, before voting on that, I would like to hear the full debate on the floor on Section 2. For that reason, I would like at this time to move deferment on the action on the amendment of Delegate Sakakihara.

SAKAKIHARA: I accept your motion for deferment.

CHAIRMAN: You have heard - -

KAUHANE: You going to put the question?

CHAIRMAN: Do you desire to say anything further?

KAUHANE: No, we'd like - -

DOI: I believe there will be, after all the minority reports are in, there will be three different theories of local government. One that is recommended by Mr. Sakakihara, the other by the committee, the other, the third, by Mr. Phillips. Therefore, we wanted to first get an agreement

from this group here as to what theory we would subscribe to, and after that we can go into the specific sections and work it out. Up to now, Mr. Sakakihara has presented his theory of local government and I believe we should give the chairman of the Local Government Committee a chance to present the theories of the committee report, and maybe after that, Mr. Phillips. It seems that the chairman of the committee wants to yield, to yield first to Mr. Phillips.

PHILLIPS: I would like - -

CHAIRMAN: Pardon me, Delegate Phillips, is your - - do you know, is your minority report circulated as yet?

PHILLIPS: That is what I rose to.

PORTEUS: Just a point of information. The committee seems to be - - the rest of the Convention is able to determine who the members of the committee are, but what I'd like to know is, are they together on this matter? It seems to me the only people we've heard arguing so far are the members of the committee. Is that right?

CHAIRMAN: That is correct.

SAKAKIHARA: We are not in accord. I waited 60 days for this.

CHAIRMAN: The report shows that there are 15 members of this committee, and Delegates Sakakihara and Phillips did not concur with the majority report.

PHILLIPS: I'd like to ask the indulgence of the Chair to permit me to get my report which is now, right now in the Printing Committee. I'd like to have an opportunity to get it out and into the hands of the Convention before I make any statement on it.

J. TRASK: In order to save a lot of time, I believe that both minority reports should be made a part of the Convention, a part of the record, and let the original committee go ahead with their original proposal. Then the members of the - - that have filed minority reports can bring in their arguments against the proposal of the committee. I think that way we will save a lot of time instead of considering individual minority reports.

CHAIRMAN: Well, the question before this committee right now is the adoption of the entire [Committee] Proposal No. 26. So, we can very well proceed with the chairman. Delegate Kauhane can proceed and let's not have any further delay, and when Mr. Roberts [sic] has his report ready it can be circulated.

KAUHANE: The intent of the committee is not to delay deliberation or consideration of the proposals relative to local government. We feel under the republican form of government that those in a minority should be given the right to express their opinions so that the whole Convention may ably consider the matter of the majority report when it comes up for them for consideration and vote, and I'm sure we're just trying to abide by such a form of government. But if the Chair insists, I will now move that Section 1 of Committee Proposal No. 26 be adopted.

J. TRASK: Is that tentatively adopted, Mr. Chairman?

KAUHANE: Everything is tentatively adopted.

J. TRASK: I just wanted to be sure.

HOLROYDE: I'll second the motion.

CHAIRMAN: Is there a second to the motion, which is in the nature more or less of an amendment of the pending motion by Delegate Richards, namely that we consider the entire proposal?

BRYAN: Perhaps that motion should be amended since we have so many minority reports, that Section 1 of the proposal be considered, and when we run down on that, we can consider Section 2; and then after the minorities have had a chance to speak, we can move to either amend or so forth. But I think it should be taken up on a consideration basis. Is the chairman of the committee willing to accept that or answer it?

APOLIONA: I think the reason why this local government has two minority reports is that if you checked the attendance roll that the two majority reports came from - - I mean minority reports came from delegates who did not attend the meetings regularly.

CHAIRMAN: Delegate Apoliona, I think those remarks are on the edge of being out of order. I think you should get down - -

APOLIONA: Well, I just want to show, Mr. Chairman - -

CHAIRMAN: Let's get down to merits. Confine yourself to the immediate thing before us, which I believe is a consideration of the adoption of Section 1, and there's been no second to it.

HOLROYDE: I'll second that.

CHAIRMAN: You may proceed, Delegate Apoliona.

APOLIONA: As I was interrupted by your honor, I mean, Mr. Chairman, the reason I say that we have these two major - - minority reports is that we couldn't get the members of the committee together at all times in our thinking.

J. TRASK: Point of order. The delegate is not confining himself to the question at hand. We are discussing Section 1 and not the minority report.

CHAIRMAN: I am forced to agree with the delegate from the fifth district, Delegate Apoliona.

APOLIONA: Well, then I'll wait for the time to come and argue against the minority report. I'll wait.

KAUHANE: I believe when the motion was put by Delegate Richards, who is also a member of the Committee on Local Government, that we consider the committee proposal in its entirety, it was to allow the minority, or to give the minority a right to support their minority report. And if an amendment made by Delegate Bryan that we accept the amendment that he has offered that we take the proposal section by section, the committee here would be glad to abide by whatever amendment he is making.

ANTHONY: As I understand it, we are discussing the motion which was duly seconded by Delegate Richards to consider this proposal as a whole.

CHAIRMAN: That is correct.

ANTHONY: Possibly, if we could solve the central question whether or not we want true local home rule, and by that I mean with the taxing power in the local units, then we can decide whether we want to go to Delegate Sakakihara's amendment or to the committee proposal. It seems to me in the first order, to get at this logically if we could clear the decks on that central issue, we could then narrow our activities to the difference between the committee's proposal and that of Delegate Sakakihara.

I don't see how under our system of laws, our system of government, we can go ahead and have true local self-government, and by that expression I mean with the taxing power in the several political subdivisions. It would destroy our present uniform system of taxation for one thing and we'd have a series of varied taxing authorities. We'd have school districts, we'd have the great morass of varying taxing units which has plagued the states on the mainland. I think if we could get the sentiment of the body as to that central issue, we could move from there to the question whether or not we should adopt Delegate Sakakihara's simple amendment or the modified form of home rule as recommended by the committee.

CORBETT: I agree with the last speaker. We of the majority group in the committee felt that we could not give taxing power to political subdivisions for the very reasons that he has mentioned, and as you notice, none of us raised any objection to any of the articles in the section on taxation. We feel that our particular form of government, the diversion of our factors and our plantations on the different islands, makes it extremely difficult to have a breakdown in the different counties for tax purposes. We also felt that taxing and collection of taxes is a very expensive procedure and should not be diversified. We state that very particularly in Section 3 of our proposal, that the taxing power shall be reserved to the State and only such portions of it as the legislature feels should be delegated to the political subdivisions may be so delegated. Now, that I think is the stand of the majority group of the committee.

While I'm on my feet, since I seem to find it very difficult to get to my feet in this Convention, I'd like to say a few more things. The committee, of course, in its first deliberations looked at the article in the Organic Act and deliberated as to whether it had contributed to the proper development of the county governments. We find in the history of the community that there have been many objections raised by various counties to the lack of home rule that they have had. We find in 1939 a memorial sent to the Congress of the United States after a meeting of members of the boards of supervisors from the different counties, requesting a change in the Organic Act. This was only one thing we found. More recently we have had letters from the local mayor and board of supervisors requesting this Committee on Local Government to consider very seriously the matter of giving more home rule to local units. We have tried to give as much home rule as we felt was compatible with the local situation. As we say in our report, we tried to tailor our proposal to fit the needs.

Some of us are firm believers in the principle of local government as strengthening all government. At the local level, people can take an interest in their immediate needs. They assume a responsibility and feel an identification with their government which people do not feel for a centralized government. A centralized government which has been developing over the last two decades brings about the feeling that is so current today, that the government is somebody else. He's a rich uncle, let him worry about our problems. But as soon as we ourselves assume the burdens for seeing that things are done and done properly and that the proper people are elected to carry out our wishes, then he is not our rich uncle, he is ourselves. His moneybags are not somebody elses' moneybags, they are the dollars that come out of our pockets. And we would like to see government return to the people, to strengthen their responsibility, to increase their interest, and to educate them in government.

Now that answers in part our objection to adopting in toto the Organic Act clause. We feel that the legislature, interested as it is in territorial government, has done little for county government. We are afraid that the same situation will hold when we become a State. Their duties are primarily to the State. It is for that that they are chosen to sit in their House of Representatives and in the Senate of their State. Their duties and their responsibilities and their burdens should not be for the local unit.

KAUHANE: The Committee on Local Government felt this:

[Reads from Committee Report No. 74]

> The urge for self-government is inherent in every American. This country has been made great by an abiding faith in the principle that the people have the ability and have a right to manage their own affairs. It is the purpose of the committee to give form and life to this urge in the Constitution.
>
> The question before the committee was to determine the kind and extent of such self-government. In arriving at an answer different theories and philosophies of local government were considered.
>
> The committee realized that theories alone were inconclusive. Therefore, careful study was given to pertinent matters as they now exist or may exist in the future in Hawaii. Theories and local conditions were compared and the proposal offered by your committee was tailored to obtain a workable form of local self-government.
>
> The committee felt very strongly that a local government unit should have strong powers of self-government with minimum interference from the legislature. Thus, we find the provision that, once defined, the political subdivision of the State shall have full authority to provide for its form of government and management of its own affairs.
>
> It may fairly be said that the consensus of the committee members was to allow as much independent local self-government as the welfare of the State would permit. For example, it was felt that local taxing power is a desirable feature of self-government, but that in Hawaii, if this were permitted without limitation, it would be injurious to other local governments and to the State. Such being the case, the taxing power was left to the legislature, the legislature to delegate portions of that power to local governments and to apportion State revenues in such manner and in such amounts as the legislature in its discretion might consider proper. Discrimination as to particular locality is consequently prohibited.
>
> The problem of who should be entitled to local government was studied and the legislature was given the power to set up uniform qualifications, and any area or local unit meeting these qualifications would then be entitled to draft and submit to the people a charter for local self-government without further legislative action.

That spells out the intent of the committee in providing the proposal as submitted, Proposal No. 26.

CHAIRMAN: May I state, to remind the committee, that the immediate question before the Convention is Delegate Richard's motion, seconded, to consider the proposal. The mate, Delegate Kauhane's motion, seconded by Delegate Bryan, is that there should be a subdivision of that question by taking up Section 1 and to tentatively approve Section 1. That's the question.

BRYAN: Mr. Chairman.

CHAIRMAN: Delegate Phillips has the floor.

BRYAN: I think you misstated my motion.

CHAIRMAN: The motion was made by Delegate Kauhane, seconded by you, for a consideration of Section 1 tentatively. Is that your understanding? All right, correction.

PHILLIPS: Then I'm to assume that we are now considering Section 1 of Standing Committee Proposal No. 26?

CHAIRMAN: That is correct.

PHILLIPS: Then I would like to have this to say about number 1 that, "The legislature shall define political subdivisions of the State," is at best a very confusing statement. "The political subdivisions of the State" aren't necessarily -- I mean is not a proper designation. In none of the constitutions that I was able -- that came to my hand was I able to find comparable nomenclature, nor was I able to find an actual statement that would support the fact that a political subdivision is necessarily a county.

There is some doubt in my mind now that there is -- that the political subdivision is a county at all because the county

is a primary division of the State, and that the so-called subdivisions are, to call them properly, would be called civil divisions of the State. Now to call them and to say -- to define political subdivisions is to put into the Constitution a simple section, I mean a section which the legislature would not have any alternative but to break the State up into its various lower administrative districts. Now all this section does and all it accomplishes by the word "define" is to mark or limit the boundaries of the various political subdivisions. But a political subdivision, when you really check it over, you find out it's nothing more than a district that has been set off in order to establish a base for representation in the legislature. So if we are only to define political subdivisions, then we are confining ourselves to -- we are confining the legislature, and under the strict construction of the courts of the State we would not be able to break them down into their administrative, their judicial, their election, their military significance. So it's imperative that that wording be worked out.

I believe that in the report that I -- that is coming out, is on the floor now and is coming to the attention of the Convention -- I believe that the section, the first section in there will provide for the incorporation of the various civil divisions of the State, or if they care to call them, the civil subdivisions of the State, or, as would be more proper, the local government of the State; that in permitting them to be incorporated would be to establish them; and in incorporating them, it is essential that in an incorporation charter that you specify the boundaries. Those boundaries would be set by the people who have to live in them. That's where self-government really comes from. To have the legislature define all the political subdivisions or any of the administrative subdivisions which is essentially what a county or a city is for—I shouldn't say a city there, I'll take that back, I mean a city has other functions and more primary functions than just that of administration of the state's affairs, but a county's primary -- its basic function, the reason for it being created at all is contained in the fact that the State has created it for that purpose.

Therefore, now that the committee report is on the floor, if it pleases the chairman, I would like to find out just what the logic is in putting these minority reports out. I have now -- I mean the thing has moved around in such a manner I really am confused myself. I know that I would like to present my minority report, but I feel that it should be presented after the majority report has completely been considered, and then any additions to or subtractions from would be either covered by my minority report or at least would have the proper consideration on the floor. Could you inform me on that, Mr. Chairman.

CHAIRMAN: You are being given every consideration, Delegate Phillips. The immediate motion, of course, is -- the question before us is the adoption tentatively of Section 1 of the Committee Proposal 26. Now the Standing Committee Report No. 91, your minority report, is before the group. You have the floor. You may proceed in whatever legitimate manner you may.

PHILLIPS: Well, that's why I rose to a point of information. Now I am not at all in accord nor do I care to think that there's any necessity for discussing this business of defining political subdivisions. Because of that, I would like to replace Section 1 with -- we'll say Section 1 of the minority report No. 91. But I don't believe that would be proper at this time because it should -- I believe that it would be more courteous and more judicial to have the Committee Proposal No. 26, Section 1, be considered by the Convention. At the same time, I believe that they would have to reconsider the minority report, the first section of the minority report, which I feel establishes or is attempting to establish -- I mean establishes the same thing that is attempting to be established in this first section here, but which there are not either the proper kinds of words or sufficient words to properly define it.

CHAIRMAN: Are you referring to your page 9 of your report, the first section, entitled "Organization of local government"?

DOI: Point of order again. I think Mr. Richards made the motion to consider the proposal as a whole with this in mind, that there are three different theories. Let's consider those three different theories and agree on one and then work out the detailed provision. Otherwise, we'll have to go back and forth, back and forth. I had thought that that motion to adopt Section 1 was out of order because of the previous motion to consider the whole theory. If it's not out of order, I would suggest that we have the mover of that motion withdraw the motion.

CHAIRMAN: The movant for -- It was really a division of the question as proposed by Delegate Richards, namely consider the entire proposal, and the division was moved --

DOI: I don't believe we can divide the question and save time.

NIELSEN: Mr. Chairman.

PHILLIPS: I believe I still have the floor.

CHAIRMAN: Well the committee certainly is disposed to carry the ball and to suggest whatever manner it desires.

KAUHANE: You're right in the exercise of your duties, Mr. Chairman, but Mr. Bryan made a statement. Whether he was amending Richards' motion or not it was not clearly understood by the chairman of the committee, and I felt that he had requested the amendment so that we take up section by section. That being the case, I move to support his amendment, if the statement was to the effect that we were to consider the committee's proposal section by section.

BRYAN: If my request is confusing, I'd be very glad to withdraw it. The intent was that instead of moving the adoption of these sections, since there were sometimes two or three sections covered by one of the minority proposals, I moved that we consider the sections rather than adopt them. Then after they were considered, then the Convention could decide whether they wanted to adopt those sections or to consider the minority proposal. So I'd be very glad to withdraw my request as far as that goes, if you wish.

PHILLIPS: If I'm not mistaken, Mr. Chairman, I still have the floor. I didn't yield the floor when Delegate Doi rose to a point of order.

CHAIRMAN: That is correct.

NIELSEN: Point of order. As long as there has been a move to adopt Section 1, why can't -- wouldn't the next move be for Mr. Phillips to suggest his Section 1 as an amendment to it and then we vote on it?

PHILLIPS: That is what I would like to find out.

KAUHANE: I rise to a point of information. I think it was expressed here that the theory of local government was first to be considered, whether we are delegating the power of taxation to local government or not, as raised by Delegate Anthony and Delegate Doi. If we can settle that question first, I think we can go on with the complete proposal. The main question can be put.

CHAIRMAN: Well, the Chair is faced, and I think the committee is faced with this decision to make. We have before us a concrete proposal by the committee and concrete proposals by the two other members of the committee who have filed minority reports. Now, as far as the chairman can see, we must have something concretely before us. If it is the desire of the committee to talk about the principle of local government as against considering directly

the immediate concrete proposals, the Chair would be naturally faced with the situation, what is the immediate question?

J. TRASK: May we answer it?

CHAIRMAN: What is the inquiry, Delegate Trask?

J. TRASK: There was a motion duly made and seconded by Delegate Richards that the four sections of Proposal No. 26 be adopted. The Chair should have put the motion at that particular time, but did not do so. So the point of order raised by Delegate Doi at this particular time is wholly out of order because the Chair has recognized the motion and a second to consider Section 1 and that has already been carried. And Section 1 is before the committee at this particular time.

DOI: To consider Section 1 properly, we will have to consider the whole theory of government as recommended by the Local Government Committee because that is only a part of the whole theory. And should we also consider the Section 1 of Mr. Phillips', we'll also have to consider the whole theory back of his Section 1. Therefore, I submit we are wasting time if we do that. Why don't we agree on one of the three theories first.

CHAIRMAN: And what is therefore -- Mr. Doi, Delegate Doi, what therefore is your motion or suggestion?

DOI: Then your problem was that we didn't have any concrete matter before us. To get a concrete matter before this group, I submit that they should read the committee report; also that they listen attentively to this discussion.

DOI: I believe the committee chairman will present the theory of the committee in brief; and then let's hear the theory of Mr. Phillips; then let's hear the theory of Mr. Sakakihara; and then let's decide.

CHAIRMAN: I believe the chairman of the committee did read his report in full, Delegate Doi. And Delegate Sakakihara did so also and now we are with Delegate Phillips'.

HOLROYDE: Could I clear this up a little bit? Over here. I'll withdraw my second to Delegate Richards' original motion, so there's nothing before the house.

PHILLIPS: Therefore I move that the majority report -- that we continue with the majority report and proceed to debate on each section, one by one.

CHAIRMAN: There's no second.

MAU: You will notice that there are various groups carrying on conversations, some of them outside of the rails. I'm going to move a bomb shell so that they will be interested. I move that the delegates -- that the Committee of the Whole now consider whether or not the counties shall have the taxing power. That is the crux to the whole thing. If you once vote it down, then we can go into the other details. I so move and I wish I could get a second so we can decide that. That will take it out of the picture and then we can go on.

NIELSEN: I'll second that.

CHAIRMAN: The motion has been made and seconded that we consider the question, are the taxing powers for the counties or for the State?

HOLROYDE: Point of order.

CHAIRMAN: Point of order.

HOLROYDE: I think we'll have to reconsider the taxation and finance section to do that.

MAU: Not necessarily, not necessarily so.

PHILLIPS: I feel that -- I can't understand why these committee reports came out and onto the floor and are covered section by section and then all of a sudden we have one come out and we don't seem to be able to organize ourselves in order to consider it in the same manner that the rest have gone through. I prepared myself. I prepared my report on the basis of the habits that have been carried through on the Convention. Now I come before the Convention and I find out that they aren't going to consider the sections at all, but are going to consider some theory or some hypothesis or some major part of a section. That I believe, Mr. Chairman, is not either fair nor do I believe it would permit of the proper deliberative debate.

Therefore, I asked the Convention to vote against the motion to pull out the taxing power only and to try to spread it out and straighten it out before we settle the basic thing which is involved here, which is local self-government. That is our problem, not taxation. Taxation is something that you append to -- that you give later after you give the people self-government, but first we must consider self-government. The title of the committee was Local Government, and to bring out taxation at this time is only to preclude any individual showing that this would be the best method of taxation at a later time.

I feel that we should continue to handle this report in the same manner that all reports that came out on the floor and section by section. Give us an opportunity. Give the majority report an opportunity to be heard and to be carefully gone through. Then the minority report. We can hold up our action on them and our voting on them until it's through and then the Convention will have an opportunity with clear minds to see what has been presented to them.

CORBETT: I think that we are managing to waste a great deal of very valuable time. The committee seems to have agreed among themselves that there are three different, diverse opinions about home rule. One is that there should be none, that the local government should be entirely dependent upon the legislature; the second is a modified version of home rule without the power of taxation; and the third is total home rule. Now I agree with the committee members that we must decide on one of these three theories and then fit our proposal into the theory that we adopt.

Delegate Mau has proposed, and his suggestion has been seconded, that we give the city and counties the power of taxation. Now that seems to me to go to the heart of total home rule. Possibly we could continue to discuss that and that alone until we have put it to a vote and then go backwards. If that meets with the approval of the body, I would like to suggest that we proceed and don't waste any more time, which our President yesterday urged us not to do.

DELEGATE: Question.

CHAIRMAN: Ready for the question?

LOPER: I rise to a point of information. Mr. Chairman would you review for us the motions and the amendments tha are pending before the committee at the present time?

CHAIRMAN: The only question before the committee is this, whether or not we should consider giving the counties taxation power or not.

DELEGATE: Question.

CHAIRMAN: Ready for the question? All those in favor of considering that question, whether or not the county shall have the taxing power or not, say "aye." Those opposed, "no." The noes seem to have it.

LOPER: Do I understand that the Committee Proposal No. 26 and the amendment proposed by Delegate Sakakihara are now before the committee for discussion?

CHAIRMAN: Yes.

LOPER: In my analysis of the provisions of the majority and the minority reports, I note that Committee Proposal No. 26 says something about general laws and about no special legislation affecting finances and property. I think that perhaps both provisions are alike on that, the majority and the minority. Neither of them provide taxing power for the counties; the difference then seems to be only in the fact that Committee Proposal No. 26 provides for a charter for the local subdivisions and for the selection of officials in accordance with law. That is the only point on which they are different. In one case the minority report says that the selection of officials shall be as provided by the legislature and the other, majority report, says that it shall be as determined by the political subdivisions.

I'm concerned in this matter because of the financing of public schools. I would like to ask any member of the committee, the chairman, vice-chairman, or any of the others, if they can answer how will public schools be financed if we adopt Committee Proposal No. 26?

KAUHANE: If I may attempt to answer the question, I'll answer it this way. That the Committee on Taxation yesterday and today took care of the matter of finances of county government with relation to the maintenance of school buildings.

CHAIRMAN: Does that answer your question, Dr. Loper? Does any one else desire to further answer the question posed by Dr. Loper?

WHITE: May I ask Delegate Kauhane to repeat what he just said.

KAUHANE: The question asked by Doctor Loper was settled by the Committee on Finances. When the question was asked of the school buildings, the maintenance cost of school buildings, who was to bear the cost of that, I think your committee here went on record as stating that that would be considered as part of the financial setup with respect to the bond and revenues that is to be raised for the respective counties.

RICHARDS: The question of maintenance of school buildings has nothing to do with the -- The only statement that we made was that bonds issued for the construction of schools, with the exemption of one item of $300,000 that had recently been issued by Kauai, was considered state obligation -- would be considered state obligations and not county obligation. We didn't get into the question of maintenance of schools at all.

H. RICE: I think that the whole proposal hinges on Section 2, the matter of finance is in Section 3, and that reserves the right to the State on finances. In Section 2, if we adopt Section 2 as it is, we'll put the police department and the liquor boards all under the county. In most states, I think—I haven't checked the number on this—but I understand in most states the liquor is controlled by the state, and the police is controlled by their subdivisions. In other words, if we adopt Section 2, and it becomes part of our Constitution --

PHILLIPS: I rise to a point of information.

CHAIRMAN: Please state it.

PHILLIPS: I'm still confused as to just how we're attacking this proposal. I don't believe that was ever settled and until it is, I want to know exactly what we're talking about.

CHAIRMAN: Well, there is --

HOLROYDE: Actually as Delegate Rice said the real crux of this proposal by the committee is Section 2. If we debate Section 2 and come to a conclusion of adoption or rejection of that section, I think we could reconcile some of the other problems. With that in mind, I move, therefore, that we tentatively adopt Section 2 of the committee proposal.

PHILLIPS: I rise again to a point of information. I don't believe this satisfies how we are going to proceed with the rest of the report then. I feel that we need a plan on which we're going to attack the proposals; therefore, again I move that we consider Proposal 26.

HEEN: Point of order. Point of order.

HOLROYDE: I yield to the delegate.

HEEN: The delegate was asking for information; instead of that he's making a statement.

CHAIRMAN: Was there a second to --

KAUHANE: I'd like to second the motion by Delegate Holroyde.

CHAIRMAN: Delegate Holroyde's motion is properly seconded, that we consider and tentatively approve Section 2 of Committee Proposal No. 26. Ready for the question?

J. TRASK: I should think we should hear some debate on this section before we proceed with the vote.

FUKUSHIMA: I don't know how many hours we've wasted, but this proceeding this afternoon reminded me of my bank account, it's not making any progress. But I would think that we can take care of Delegate Phillips' amendment right now, and if we -- if the Convention wants his proposal, we'll adopt it; if not, we can go on with the majority and the other minority amendment. So at this time I move that we adopt Delegate Phillips' amendment to the committee proposal.

PHILLIPS: I second the motion.

CHAIRMAN: Delegate Phillips', which part?

FUKUSHIMA: I believe he has an amendment, does he not?

CHAIRMAN: Well, he hasn't proposed that as yet. You mean his entire proposal or Section 1 of his proposal, please?

FUKUSHIMA: His entire proposal, and we can vote on his proposal; then go ahead.

NIELSEN: Point of order.

J. TRASK: Point of order. We are -- have tentatively adopted Section 2. Now the gentleman should confine his --

CHAIRMAN: Pardon me. It has not been adopted as yet.

J. TRASK: Tentatively, Section 2?

CHAIRMAN: It's been moved and seconded to tentatively adopt Section 2 of Committee Proposal No. 26.

CROSSLEY: My point of order -- May I have the floor? If they would like to follow the procedure suggested by Delegate Fukushima, it would then be necessary for Delegate Holroyde to withdraw his motion. Otherwise the motion before us is to adopt Section 2. We have not acted on it yet.

KING: I feel that Delegate Fukushima has brought out a point that we might decide. In other words, if we'll forget the majority report tentatively or if Delegate Phillips had moved to delete everything in the majority report, outside of the enacting clause, and substitute his, he has submitted a complete proposal. Then we can consider his or not as the case may be. Until we straighten out the parliamentary situation, I move for a short recess.

PHILLIPS: Second the motion.

HOLROYDE: I second the motion for a short recess.

(RECESS)

CHAIRMAN: The question before the house is Section 2 of Committee Proposal No. 26.

HOLROYDE: I withdraw that motion.

CHAIRMAN: Delegate Holroyde withdraws. There is nothing before the Committee at this time. President King is recognized, who's just been standing, waiting.

KING: I yield to the delegate from - -

SAKAKIHARA: In order to expedite the matter, at this time I move that the amendment proposed by me to the Committee Proposal No. 26 be adopted.

J. TRASK: Second the motion.

CHAIRMAN: It's been moved and seconded that the amendment of Delegate Sakakihara submitted to the committee, reading as follows:

> Section 1. The legislature may create counties and town and city municipalities within the state and provide for the government thereof, and all officials thereof shall be appointed or elected, as the case may be, in such manner as shall be provided by the legislature.

and the same shall be adopted.

KING: There is some discussion whether the minority reports should be discussed first or the majority report. I feel that if the Convention or the committee adopts the minority report then it serves no useful purpose to discuss the several sections of the majority report. Of course, after the adoption of the minority report, additional amendments might be offered. I, therefore, feel that a decision on this minority report should precede the discussion of the separate sections of the majority report. I have suggested to Mr. Phillips that pending action on this particular amendment he may offer the same sort of amendment, that his seven sections be substituted as an amendment to the entire article offered by the Committee on Local Government. I therefore favor the vote on the amendment offered by Delegate Sakakihara at this time.

CHAIRMAN: There's no - - Any further discussion on the - -

SAKAKIHARA: Question.

ANTHONY: What's the question before the house. Is the vote on - -

CHAIRMAN: The question before the house is the motion by Delegate Sakakihara with reference to his minority amendment to Committee Proposal No. 26, Section 1, which is on all the desks.

ANTHONY: Well, I think we'd better have the members of the body on the floor when we are going to take an important vote like that. They're not here.

KING: I was going to suggest that the Sergeant-at-Arms and the messengers ask the members of the Legislative Committee to please come in.

CHAIRMAN: Will the messengers and Sergeant-at-Arms and everybody employed by this Convention please get all the members off the floor or off the streets.

WIRTZ: Point of information. I don't know whether in your statement of the question before the house, you tied it down to Section 1. My understanding was that Mr. Sakakihara's amendment was to supplant the entire four sections that are contained in Committee Proposal No. 26.

CHAIRMAN: Well, in direct reply there is nothing before the committee - -

WIRTZ: There's a motion.

CHAIRMAN: - - except Delegate Sakakihara's amendment as circulated which reads - - which begins "Section 1."

WIRTZ: And the motion - -

CHAIRMAN: And that the intention is to supplant, of course, Committee Proposal 26.

WIRTZ: As I understand it, he has moved to adopt the amendment which is not an amendment only to Section 1, but an amendment to the entire article.

CHAIRMAN: The entire proposal of the committee, No. 26, that is correct.

For the benefit of the delegates who have just now seated, the motion before the Committee of the Whole at this time is the proposal by Delegate Sakakihara which seeks to supplant the majority Committee Proposal No. 26 reading as follows:

> Section 1. The legislature may create counties and towns and city municipalities within the state and provide for the government thereof, and all officials thereof shall be appointed or elected, as the case may be, in such manner as shall be provided by the legislature.

ANTHONY: I've an amendment. May I read the amendment? I move that this proposal - - amendment be amended to read as follows:

> The legislature shall create counties and city municipalities within the state and provide for the government thereof by the registered voters therein, and all officials thereof shall be appointed or elected, as the case may be, in such manner as shall be provided by the legislature to confer upon such political subdivisions local self-government insofar as may be consistent with this Constitution.

If I can get a second to that, I'd like to explain the purpose of the amendment.

CROSSLEY: I'll second that.

CHAIRMAN: You second that? Thank you, Delegate Crossley.

ANTHONY: The reason I'm tendering this amendment is, if we adopt Delegate Sakakihara's motion, that will be a complete elimination of the committee proposal and the committee report, and as I understand it there was an effort—I think a desirable effort—on the part of the committee to secure local self-government, which the present Organic Act provision does not secure.

For instance, when I was attorney general I recall the legislature started to pass such laws. Delegate Wirtz came to my office one time and said, "How about this? Here's the legislature passing a law about the tennis court down at Ala Moana." In other words, they were telling the Board of Supervisors to put a new surface on the tennis surface. Well, now it's that sort of nonsense, as I imagine, is one of the purposes of this committee, and I think it's a very desirable purpose, and therefore if we just adopt Delegate Sakakihara's motion - - amendment, you'll be preserving that same situation, and I think that can be improved upon. I'm not particularly fond of this amendment of mine, but I still think that something should be done with the Organic Act provision to prevent such instances as I've just discussed.

PORTEUS: Such instances didn't eventuate in legislation, did they?

ANTHONY: Well, if the question is addressed to me, the answer is yes. The money was - - the mandate was actually passed, and it came to the governor's office and came over to my office and at that point the county attorney intervened. I've forgotten whether I persuaded Governor

Stainback to veto it or not, but it passed both houses of the legislature. That's the point.

CHAIRMAN: Does Delegate Phillips desire to be heard?

PHILLIPS: I would not like to see that motion passed for various definite reasons. That the legislature shall create a local government and take it away from the people, that the legislature should prevent the people from having the self-government for which the country itself is based on is to me -- I mean I could hardly believe my ears. Perhaps the delegate from the fourth district is versed in law but I doubt now since he proposes an amendment like this that he is versed in municipal law. I have great doubt.

I would like to read you that right down through the periods as set forth in Hawaiian history that they've had the same difficulty. The 1907 Act of Congress which finally got through was the result of a Congressional Board being sent down here to investigate the difficulties that existed between the highly centralized type of Hawaiian government that we had and the lack of local government completely. The reason for that highly centralized type of government was to keep the people or the natives completely under the thumb of the local population -- I mean of the Territory. There was no desire at any time to let them have the kind of self-government for which America is famous.

I quote directly from that history.* "The major problems," at that time, "in setting up these local governments centered about the division of the functions of government between the territorial and county organizations and the adjustment of their financial requirements. The arrangements first made were not entirely satisfactory and these problems became a continuing source of controversy." It goes on to say that, "Nearly every legislature has dealt with them in some way, and it does not seem likely that the controversy will cease until the existence of the local governments, the sources and limits of their revenues, and the scope of their authority are defined in the Organic Act." And then it had in parentheses, "(or in the Constitution of the State of Hawaii) and are thus made independent of the territorial (or state) legislature." The sources of irritation were chiefly that they were legislative mandates that were handed down to the counties. That continued and will continue unless we take this into consideration and do something about it here in this Constitution. As it said there, every legislature since 1907 has made an attempt, but a weak attempt, to give the counties what they deserve, local self-government.

I would like to quote further from some of the special legislation that has existed in the Territory.

ANTHONY: I at this time would like to withdraw my amendment, but I still think this question should be seriously considered before we adopt the delegate from Hawaii's simple incorporation of the Hawaiian Act -- Hawaiian Organic Act provision.

PHILLIPS: I believe I still have the floor.

KING: Will the delegate yield --

PHILLIPS: I'll yield.

KING: -- for a brief statement. I think we're all sympathetic toward what the Committee on Local Government is trying to obtain, a larger degree of self-government for the counties and any municipalities that might be created. However, I think there is a good deal of confusion whether the majority report goes too far or doesn't go far enough. I would like to ask Delegate Phillips if he'll complete his remarks, and then I want to make a motion to rise and ask permission to sit again. I do not want to deny Delegate Phillips the time that he has.

CHAIRMAN: Delegate Phillips, Delegate Phillips, the President has asked, without prejudice to your continuing later on, to conclude your remarks temporarily so that the committee may rise and report progress and some attention given to the report so that later on you may proceed further.

PHILLIPS: I'll do that, Mr. Chairman.

CROSSLEY: I move that we rise, report progress, beg leave to sit again.

SAKAKIHARA: Before that motion is made, before I second that motion, I will withdraw my amendment at this time.

CHAIRMAN: The motion is made and seconded that the committee rise --

KING: Before the Chair puts the motion, it is our understanding, then, that the committee report and the two minority reports are before the Committee of the Whole, and there's no motion pending at this time. Is that correct?

CHAIRMAN: That is correct. The motion before the house is that the committee rise and report progress and ask leave to sit again. All in favor say "aye." Opposed, "no." Carried.

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CHAIRMAN: The committee will please come to order. The committee shall consider Standing Committee Report No. 74, Committee Proposal No. 26 on local government. We were considering Standing Committee Report 74 with the attached Committee Proposal No. 26 on local government. There is nothing before the committee at this time, Delegate Sakakihara yesterday having withdrawn his motion and Delegate Phillips decided also to forego whatever matters he had to say, and then we declared adjournment.

CORBETT: I move for the tentative adoption of Section 1 of Committee Proposal No. 26.

PHILLIPS: I second the motion.

CHAIRMAN: Motion made and seconded for tentative adoption of Section 1 of Committee proposal 26.

SAKAKIHARA: I withdrew my amendment yesterday hoping that it would give the Committee of the Whole and the Committee on Local Government an opportunity to be heard on the majority committee report and on the Committee Proposal No. 28 [i.e. 26]. Later on, however, I intend to offer my amendment, after full deliberations on the proposal.

CHAIRMAN: Will you please state that question again.

SAKAKIHARA: I'm serving notice to the Committee of the Whole that I propose to offer my amendment later on.

CHAIRMAN: The discussion now is on the tentative adoption of Section 1 of Committee Proposal 26.

CORBETT: The purpose of Section 1 and this committee proposal is to mandate the legislature to set up boundaries and to define the part that will go into the constitution of a political subdivision. They may be counties; they may be city and counties; they may be municipal corporations; they may be anything, as the legislature sees fit. But the committee felt that this was the first step toward the creation of political subdivisions, and they felt that they would like to insure the legislature enacting laws so that any political subdivision wishing to adopt a charter, which we have set out in Section 2 of our proposal, will be able to fit themselves into a certain properly defined group or unit; either a county, a city and county, or a city.

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*Kuykendall, Ralph, and Day, A. Grove. *Hawaii, a history.* 1948.

KAUHANE: [Reads from Committee Report No. 74.]

The first section is strictly confined to the definition of political subdivisions. It does not empower the legislature to go beyond the definition, that is, no provision shall be made by the legislature as to the form and detailed management of the local subdivisions, except as provided in Section 2 in action on special requests and Section 3 on taxing power. The legislature is limited to defining standards, and that power may be exercised only by laws general and uniform in their application. The political effect of this limitation is that there will be no discrimination between localities. No locality meeting such standards will be precluded from becoming a political subdivision. The legislature will adopt by uniform laws, the conditions that a locality will have to meet before it can become a political subdivision. After the locality meets such conditions, it will be automatically entitled to a status as a political subdivision, without further action by the legislature.

TAVARES: I find difficulty in seeing how a provision like this will work. Don't you have to fix boundaries, and how can you fix boundaries if each subdivision is by general laws? I don't -- I'm a little afraid this provision isn't fully workable. If you mean the powers or the governmental organization or something like that, yes; but one of the things you have to have is boundaries, and I don't see how those can be by general and uniform laws.

PHILLIPS: May I attempt to answer that? In the event the municipality or the local unit was incorporated, the charter would have specified it. The charter sets forth, right at the beginning the charter would have specified just what the boundaries were of that particular unit.

DOI: I would like to attempt to answer the question raised by Delegate Tavares. The general and uniform laws would be something like this, that "Any island or combination of islands having a population of maybe 3,000 people or over are hereby authorized to form a local government known as a county government." Then you might have another general law reading, "Any island or combination of islands having a population of 500 or more but less than 3,000 will be entitled to a local government known as townships."

TAVARES: I do think we should consider that, in this connection, such a requirement is going to increase rather than decrease your cost of government. I believe in this Territory today, with all the kicks we've had, we have on the whole the most economically functioning government of any state as far as our local governments are concerned. The moment you have general laws authorizing this sort of thing, you're going to have the municipality of Wahiawa, the municipality of Kahuku, the municipality of Hilo, the municipality of Lanai, and -- but take Oahu, for instance. You could have Kailua and Lanikai one little municipality, and remember, every time you have one of those, you have a new mayor and a new set of officers to do that, and new taxes have to be levied to cover those extra salaries. I think we ought to be very sure we want this before we adopt such a provision.

I think in a large state, as most of the states in the mainland are, where you have a very large number of counties, it's impossible for a legislature to administer the private affairs or the local affairs of the many municipalities. But in this small territory, we probably will never have more than eight counties at the most. By that I mean one for each of the islands including Lanai and Molokai and maybe two on Hawaii, and so you've got a very, very small number of counties and you have a very economical set of government now.

I think we should be very careful before we allow a super imposition of these pyramided governments that they are having so much trouble with on the mainland where each little place that wants to be a town secedes, so to speak, and sets up its own little government and leaves the rest of the place flat.

DOI: I would like to again attempt to answer the statements and questions raised by Delegate Tavares. I gather from his statements that he is in agreement with at least having counties as they exist today, four counties, five rather. Then probably -- but he's against the creation of smaller subdivisions such as to superimpose upon the counties. I feel the same way as Mr. Tavares does and I stated my opinion in the committee.

Now, I think we can take care of this problem that Mr. Tavares stated by changing the wording to read, "The legislature shall have power to define," instead of making it mandatory that they must define these several different political subdivisions. So that they will have the power and it's in their discretion if in the future they feel that they should create smaller subdivisions to superimpose on the larger counties. In the continuity section we could have a provision to provide that the present setup shall continue until such time that the legislature shall provide, or the different localities shall come under the general and uniform laws.

CHAIRMAN: Do you move for the adoption of those words "have power to" after the word "shall"?

DOI: No, I just raised that as a possible answer, and I would appreciate it very much if Delegate Tavares would answer it.

TAVARES: I think that of course it's very difficult to discuss one section like this alone. We had that same trouble yesterday, so I'll have to go into some other sections incidentally. I think that pure home rule is not feasible unless you're going to give your home rule municipalities some share of the taxing power. Otherwise, you're going to have trouble. In practically all of the states that have the pure home rule, they give some taxing power to those municipalities, so that then there is an incentive for them to sort of set up their own little kuleana. In other words, here's a little hamlet in a middle of a wide, sparsely populated area and they want to set up their own fire department and various other things. So they, by local option or whatever you call it, form this little municipality and set up their own little local government with their own little powers of raising money and so forth. As long as the taxing power is not going to be given to the county—and I'm for not giving it to them—I don't believe that the home rule in any substantial sense is feasible. Therefore, I'd rather see some general law authorizing the legislature to create counties than do it piece-meal here.

PHILLIPS: I wonder if the last speaker would yield to a question.

CHAIRMAN: He apparently will. Proceed.

PHILLIPS: I don't mean it to be impertinent at all, only that I believe that -- I mean the committee itself, the standing committee had a tendency to look at home rule from the standpoint of taxation. Taxation is a very difficult thing. It would have to be worked out. I believe that the delegate that last spoke is very fond and is on record as having said that the tax system of Hawaii is one of the finest in the United States. I'm afraid that I have to agree with him. We do have a very fine system of taxation, but I feel that he's overlooking a series of questions. Isn't the delegate overlooking the fact that self-government, that is, a given small unit of people, should have the right to govern themselves, should have the right to choose their officers, should have the right to decide and plan the particular area that they live in, never forgetting the agency of the state relationship?

TAVARES: May I be allowed later on to answer this? I see it's time for me to leave with the delegation to see the Acting Governor. I would be glad to try to answer that.

CORBETT: May I move for a recess at this time?

DELEGATE: Second the motion for a recess.

CHAIRMAN: Hearing no objections, so ordered.

(RECESS)

KAUHANE: Is there a motion for the adoption of Section 1 of the committee proposal?

CHAIRMAN: There is now pending adoption, tentatively, of Section 1.

KAUHANE: I would like to second Delegate Apoliona's motion for the previous question.

PORTEUS: I had understood that the representative from the first representative district, the delegate from that district, had offered an amendment, but that amendment has incorporated portions of both one and two, so that if we adopt this on a tentative basis, it would not foreclose, would it, the presentation of the amendment at a later time?

KAUHANE: That's right. Everything is being adopted on a tentative basis.

PORTEUS: It wouldn't be necessary to reconsider, in other words, in order to consider the - -

KAUHANE: At a later time, if it is so desired.

CHAIRMAN: Will the Delegate Kauhane restate the question?

KAUHANE: The motion was made by Delegate Apoliona for the previous question and I seconded his motion.

CHAIRMAN: Ready for the previous question? Adopt Section 1, tentatively.

ROBERTS: I'm in complete sympathy with the recommendations of the Committee on Local Government. I believe that we ought to give serious consideration to the desire and request for local government consistent with those institutions that we have established on a state-wide basis. I think as a democratic country, we have got to get people interested in government on a local basis and as close to their home communities as possible. We have established by state action certain things in the field of education and finance which are wholly commendable and probably should remain on a state-wide basis. There are, however, areas in which local self-government ought to be aided, and people should become more interested in the operation of their government, and the only way to do it is to create greater responsibility on the local level as close to the grass roots as possible.

I am in sympathy with the proposal, but certain suggestions have been made which indicate that there may be some difficulties in carrying it out. It has been pointed out, for example, that in the first section which is now before us for consideration, that the word "define," "the legislature shall define the political subdivision," merely means that the areas are to be set out, and the question has well been raised as to how the charter is actually to be put into effect. Shouldn't the legislature be permitted to indicate the method by which that charter is to be created? I would therefore move an amendment to Section 1. That the word "define"- -

APOLIONA: On a point of order. I now withdraw my motion for the previous question so that Delegate Roberts could give his amendment.

CHAIRMAN: Thank you. Proceed, Delegate Roberts.

ROBERTS: I would therefore move to amend Section 1, which incorporates in part the first part of the present Organic Act, and it would read, "The legislature shall create counties and city municipalities within the state, and the method of establishing the same." That would permit and in part meet the defect which has been suggested; and when we get to Section 2, it seems to me that Section 1, if adopted as amended, would meet that particular difficulty.

CORBETT: I second that motion.

CHAIRMAN: The motion is seconded by Delegate Corbett. The motion as seconded reads as follows - -

KAUHANE: Your Committee on Local Government accepts the amendment.

CHAIRMAN: The amendment made and accepted by the committee reads as follows: "The legislature shall create counties and city municipalities within the state, and the method of establishing the same."

TAVARES: Is it still the understanding that even if this is adopted, that does not foreclose an amendment to the whole article later by an alternative provision?

CHAIRMAN: That is the ruling and our understanding.

KAUHANE: The committee would like to go on record as approving any further amendments - - any reconsideration that we adopt Section 1 - - it's accepted by the committee on tentative basis, everything here is on a tentative basis. Then there can be any consideration of further amendment later.

HEEN: Did I understand the last speaker to say that the committee will approve any amendment that might be submitted later?

KAUHANE: We'll accept - - will consider any further amendment. It was expressed here that Delegate Sakakihara be given the right to submit his amendment.

HEEN: Oh, I see.

CHAIRMAN: The committee will not be obdurant to any suggested amendment later on.

BRYAN: Speaking to the amendment proposed by Dr. Roberts, do you think that the word "city" is required?

ROBERTS: I merely followed the language of the Organic Act as a matter of convenience. I don't think it is necessary.

CHAIRMAN: Any further debate on the amended Section 1?

PHILLIPS: It's very difficult for me to get up and say anything against this because my teacher, Doctor Roberts, would put me in a bad light. I would like to say this though, that for the legislature to create a county or municipality, no legislature ever creates a municipality. It doesn't create a city; it can very definitely and would, whether we put it here or not, create a county. A county is a defined area, as brought out by Delegate Tavares, is an area whose boundaries have been established to establish it as an administrative, a political . . .
[Part of the speech was not recorded.]

Congress will pick that out as one of the basic things wrong with the Constitution.

It seems local government doesn't have so very much meaning, just pass it right along, it doesn't mean much. But it is the grass-roots, the very fundamental of the kind, type, quality of government at the top of the ladder. The legislature itself, the special legislation that the legislature has been dealing in all these years is not a healthy thing. They've done a good job as best they can, but it's still special legislation; and because it's special legislation, any individual who is familiar with simple municipal corporations or muncipal law would tell you that it is not—and we can find it in all our manuals—that it is not a healthy thing to let the State create something when the desire for self-government, the pride of ownership, the pride of planning,

beautifying, keeping clean and establishing efficiency, rests in the local unit.

Therefore, I think that this is not a necessary section if all it's going to do is just create a county. They would do that for the admininstrative purposes. Therefore, I feel that we should establish in our first section an opportunity for those individuals who are going to run, who are going to live in that community and not be dictated down from above, which has always been obnoxious to Americans. I believe that we should permit them, through a charter and a commission established by them or by the legislature, to put this thing into being through this charter and establish their right to self-government, limit them and let them discover and find out about their government on the bottom. Now to do it that way rather than to let the almighty legislative tyrannical body over there tell them how to, what their government is going to be, who - - how they are going to select their officers, what their boundaries are going to be and do it arbitrarily, is obnoxious to American democracy fundamentally.

CHAIRMAN: Thank you, Delegate Phillips. It is the rule, of course, I believe, that as communicated yesterday by Delegate Rice, we shall follow the idea of five minutes to each and not have any repeats until the other delegates have all spoken. Then, you may then consider speaking on the matter.

ROBERTS: On a matter of personal privilege.

CHAIRMAN: Dr. Roberts, you may answer.

ROBERTS: First, let me say that I do not accept Delegate Phillips as a student in the Convention. He is my equal as a delegate, with the power to vote and the power to express his opinion and his position. Further, I might point out that Mr. Phillips has already graduated from the University and therefore nothing that I may say and do will in any way affect his future.

CHAIRMAN: We are aware that we are all peers.

ROBERTS: I might state on the matter of the problem before us that the creation of the counties is not a creation in the sense of doing something which establishes something which has not existed in terms of property. It's an area which is recognized. If you don't create it in some form and establish the area, you may have so-called jurisdictional disputes. One area decides it wants this, one area decides it wants the same thing. Those problems, of course, can be resolved. The word "create," as I've used it, I don't thing can be objected to by the Congress of the United States. It is the word that they themselves put into our Organic Act. Now maybe the present Congress will think differently; that may be. I can see no serious objection to leaving the word "create." I think the problem that Delegate Phillips presents, I think is basically a problem of difference in terms as to what should ultimately go into the basic article.

APOLIONA: If all the delegates here assembled are satisfied with the section and have no further debate, I now move for the previous question.

CHAIRMAN: Ready for the question? The question is on the accepted amendment to Section 1 of Committee Proposal No. 26, the amendment having been accepted by the committee, reading as follows: "Section 1. The legislature shall create counties and city municipalities within the state, and the method of establishing the same."

CASTRO: I do believe that the words "political suddivisions" is better and more all-encompassing than "counties and city municipalities"; soI would move to amend the amendment to delete "counties and city municipalities" and substitute in lieu thereof the words "political subdivisions," so that the section as amended would read "The legislature shall create political subdivisions within the state, etc."

KAUHANE: That's acceptable.

CHAIRMAN: Is that accepted? Will the committee chairman accept that amendment, to substitute the words "political subdivisions" for the words "counties and city municipalities"?

KAUHANE: We'll accept it.

PHILLIPS: The words "cities" and "municipalities" are identical. They are a repeat of one another. Then secondly, that would preclude any of your small cities or your so-called townships or if someone wanted to call it a village or something like that, or a district, or any other division of the future. We don't know exactly how transportation is going to change within even the next five years. So I feel that if we were to follow the accepted - - the generally accepted terminology as incorporated in all the other constitutions which I had an opportunity to go through, "the civil divisions," would encompass everything. Cities and counties as we know here, we have - - right now there are no such things as cities. We only have counties, excepting in the city and county which is a consolidation in Honolulu. Therefore, to just say "cities and counties" would be to establish for all time no opportunity for anybody living in a city which, we'll say, originally was a village, then all of a sudden due to technology it thrives and becomes a very large group, but it was never considered a city, so therefore it never will be considered a city and it will be right down into the future subservient just as New York City is today subservient to Albany.

I would say - - I would move to amend that, instead of the terminology as suggested by Delegate Castro, that the term "civil divisions," which would be sufficiently inclusive, sufficiently flexible, and definitely understood by the courts because they have a great deal of interpretation on that.

CHAIRMAN: I hear no second to the motion.

SAKAKIHARA: Second it.

CHAIRMAN: Seconded by Delegate Sakakihara, namely that the words "political subdivision" which has been accepted by the committee, the amendment made by Delegate Castro shall be stricken and in lieu thereof the words "civil divisions" supplied by Delegate Phillips, seconded by Delegate Sakakihara. Ready for the question?

HEEN: You'll find in the articles already approved by this Convention the use of the term "political subdivisions or agency thereof" in several places. This might create a situation where you'd have to interpret the difference between "civil divisions" and "political subdivisions." I think inasmuch as we've used the term "political subdivision or agencies thereof" in the articles which already have been approved, we ought to follow that same language throughout.

APOLIONA: Your committee is not in favor of that word "civil" and I hope that the Delegate Phillips' amendment will be voted down, and now I move for the previous question.

NIELSEN: Point of order.

CHAIRMAN: Point of order.

NEILSEN: We have an amendment and we have an amendment to the amendment and now we have another amendment to that amendment.

CHAIRMAN: All the amendments have been accepted, except the last.

NIELSEN: Well, you can't have three amendments.

CHAIRMAN: These are not amendments. They are accepted by the committee and they are not considered amendments as such.

PHILLIPS: I really regret taking any more time of this Convention than is necessary, but I'd like to say to Delegate Heen that that word "political subdivision," I wrestled with it for about three solid days, and it's an elusive term. I would say this though, that the word "political" attempts to establish an adjective which would define the fact that a county or a subdivision or individual of a state is broken down into that division for this purpose, for basing the representation in the State legislature, and therefore if you were to say "political," then you would mean that that is the chief purpose for which that subdivision was established. Now the word "civil" includes administration, election—which is your political—the various other things such as, you have your elections -- you have more, and especially and primarily you have a . . . [Not recorded.]

BRYAN: I think that it would be entirely adequate to use the word "political subdivisions."

PHILLIPS: I have the floor. If I --

CHAIRMAN: Unless you'd like to state a point of order.

BRYAN: I'm sorry, I thought you were finished. I'm very sorry.

PHILLIPS: No, my mike went dead.

BRYAN: Well, would it be acceptable to you if the Committee of the Whole report was to show that that would include towns and cities?

PHILLIPS: I would say that we could, simply, just a matter of clarity, and I would like to support it by this, that Dillon's Rule, which is applicable in municipal law is -- just one second, I have it here. It's one of the most important reasons why we should carefully say what we mean in this particular section. There has been massive, great stacks of cases come out of litigation between municipalities and counties and states, and out of that has been established what has been known as Dillon's Rule. If you'll bear with me just a minute, I'll read it. Dillon's Rule essentially is this:

> It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers and no others: First, those granted in express words.

CHAIRMAN: Well, Delegate Phillips, our attention is directed to your suggested amendment, to the term and definition of the words "civil division." Now you're talking about municipalities and city municipalities. I'll have to rule you out of order unless you confine yourself specifically to the definition of "civil division," whether it includes or excludes "political subdivision" or whether it's a broader term which would include "political subdivision."

SAKAKIHARA: In order to expedite the matter, I withdraw my second to that motion.

CHAIRMAN: The question before the house, therefore --

H. RICE: I'd ask the chairman of the committee and the committee to accept Senator -- Delegate Heen's amendment, "political subdivision or the creation thereof -- or any agency therof," because I can see that the Water Board on Maui would be an agency of the county, and I think that that would be agreeable to the committee.

KAUHANE: Mr. Rice being a member of the committee, the full committee will accept that amendment made by Delegate Heen.

HEEN: I did not make that motion to have agencies included in that definition. I think if you use "political subdivision" it would include any agencies that might be created afterwards. I think the amendment proposed by Delegate Roberts and accepted by the committee is the one that should be adopted.

DELEGATE: Question.

MAU: Before you put the question, I have no objections to the words "political subdivision" being substituted, but I think the Convention ought to know that that is a very, very much broader term than "counties or city municipalities or towns," so that in the creation of these political subdivisions throughout the various counties we could have townships, villages. We could have education districts, irrigation districts. They are all political subdivisions. Now, of course, that would be left to the legislature, but I just want to point out that that term is so broad that you can have more than merely county governments and city governments.

APOLIONA: In the language of H.R. 49 as amended the phrase "political subdivision" is used throughout, and I think if Congress uses that word throughout in its language in H.R. 49, it's not wrong to use it in our Constitution.

ROBERTS: May I suggest, since the statements made by Mr. Mau and Mr. Phillips do raise some question, that the Committee of the Whole report show that the adoption of this language does not preclude the creation of counties, cities, and other civil divisions. If the Committee of the Whole report will show that, then I think our problem can be met.

CHAIRMAN: The question before the house is this, as the amendment recently made by Delegate Rice was accepted, to read as follows: "The legislature shall create political subdivisions or any agencies thereof within the state, and the method of establishing the same."

ROBERTS: I understand that "other divisions" were left out.

APOLIONA: "Or agencies" was left out.

CHAIRMAN: So that it reads as follows: "The legislature shall create political subdivisions within the state, and the method of establishing the same." Ready for the question? Those in favor say "aye." Opposed, "no." Motion carried.

PORTEUS: May I point out that it's now five minutes after 11 or 10 past 11. Unless we move along today, we're not going to finish this article. I think it is highly desirable, if we can. So I suggest that we limit the speakers to five minutes on each point, and that the Chair insist that all people speak before the person who has spoken speaks a second time. I'd be very happy to assist the Chair in being the unmentionable that gets up and directs attention to the fact that the person has spoken more than once before the others have spoken, or that they have spoken more than five minutes, if that procedure is acceptable.

HEEN: I move then, that it is the sense of this committee that speakers be limited to not more than five minutes discussing any issue; and in connection with that I move that the Secretary be timekeeper and referee.

NIELSEN: I second that motion.

CHAIRMAN: Ready for the question? All those in favor say "aye." Opposed, "no." [Carried.]

CORBETT: I move for the tentative adoption of Section 2.

HOLROYDE: Second the motion.

CHAIRMAN: Delegate Holroyde seconds.

KAUHANE: [Reads from Committee Report No. 74.]

> The first sentence of Section 2 deposits a constitutional right with each political subdivision to adopt a charter of its own choosing. The committee feels that the legislature should establish mechanics for this including the manner of electing a charter commission, the com-- position of this group, their method of procedure and

the means for referring the charter to the people and should also provide the funds therefor. This does not give the legislature authority to detail what shall be contained in a charter or to interfere in any way with the self-determination of each political subdivision. If a political subdivision has the power to frame and adopt its own charter, even in the absence of complete taxing power, it is considered to have at least some degree of home rule. This is the political philosophy strongly endorsed by your committee.

The committee feels that any board, commission or department of the local government should be a constituent part of such local government and that all appointments to such boards, commissions or departments should be made by the duly constituted authorities of such local government.

CHAIRMAN: Any further debate on the tentative approval of Section 2?

SAKAKIHARA: I, at this time, desire to offer an amendment to Section 2 of the proposed amendment, Committee Proposal No. 26. I think my amendment has been circulated and distributed to the members of the committee. I think this is the appropriate time to take up the amendment. My amendment reads as follows:

Section 1. The legislature shall create counties, and may create town and city municipalities within the state, and provide for the government thereof, and all officials thereof shall be appointed or elected, as the case may be, in such manner as shall be provided by legislation.

HEEN: It seems to me that amendment should be offered to Section 1 of the article proposed by the majority of the Committee on Local Government - -

CHAIRMAN: I might indicate that - -

HEEN: - - or it may be substituted for one and two; and if that is so, then of course - - and if it is adopted, then we don't have to do anything more.

CHAIRMAN: That's correct. Delegate Sakakihara yesterday indicated, and it was the sense of the committee, that his amendment would apply to practically the entire proposal. Any further discussion?

CORBETT: I would like to point out to the members of the Convention that this proposal leaves out two points in our Section 2 which the committee feels are of importance. One, the formation of any local group of their own charter, the choosing of the method by which they wish to be governed. If it is a city, do they want to be governed by a mayor and a board; do they want to be governed by a commission form of government; do they want a city manager, or what? We feel that local people should have this choice. Now, there is nothing said about that in the amendment offered.

The next thing which is completely omitted in the amendment is any reference to the legislature not interfering with local government. Now, I don't wish my good friends to jump on me and say that I don't have faith in the legislature. I've always been a very strong backer and an ardent admirer of legislators individually and collectively, but I do feel that the burden of local government for people who are elected to govern the state is too much, and they should not interfere with local government. The officials elected at a local level should take care of the burden that their people lay on their shoulders.

SERIZAWA: I believe the amendment as offered by Delegate Sakakihara leaves it up to the legislature to decide as to whether or not the local subdivision will appoint or elect its officials. I believe the consensus of the Committee on Local Government was that as much home rule as feasible should be given to the local subdivision, and for that reason I believe that all officials, whether appointive or elective, should be decided by the local subdivision. For that reason, I am against the phrase in the last two lines that say - - the last three lines which says, "All officials thereof shall be appointed or elected, as the case may be, in such manner as shall be provided by the legislature." I think that should be the prerogative of the local subdivision.

RICHARDS: I have been sitting here day after day after day listening to this discussion on the point of whether officials of State government should be appointed by the governor or handled in such manner. And there has been continual talk about not having faith in the people. Now, apparently, the legislature doesn't have faith in the people either because they wish to retain - - or rather certain delegates wish to make the legislature all-powerful over the rights of the people. I don't quite understand that particular way of thinking.

We of the committee felt that the people should have the say in how they should be governed at the local level. It was brought up yesterday and remarked that citizens of Molokai had to go to the legislature to get redress from the County of Maui. Now, if the County of Maui was able to form its own government, probably that would not be necessary. The government has been thrown at the County of Maui by the legislature. My feeling is that we should trust the people and permit them to have their own form of local government of their own choosing.

APOLIONA: I am speaking against the amendment. Your Committee on Local Government is trying to get for the people of the several counties exactly what we delegates in the Convention here assembled is trying to get for the people of the State of Hawaii.

CHAIRMAN: Would you yield for a moment, please? There is some doubt in the Chair's mind whether or not the motion made by Delegate Sakakihara, the amendment, was seconded. I don't believe it was seconded.

WOOLAWAY: I'll second the motion.

CHAIRMAN: Seconded by Delegate Woolaway. Proceed.

APOLIONA: As I have said, we delegates here assembled in this Convention are trying to get for the State of Hawaii the type of government which we in committee here are trying to get for the people of the several counties, and that is home rule as much as possible. We recognize the supremacy of the State just as much as the State recognizes the supremacy of the Congress. The Congress of the United States has in the past fifty years put Hawaii on probation, yes, on probation, before she could be welcomed and taken in to the states as one of the states of our Union. Congress has sent congressional committees after committees down to Hawaii to investigate.

PHILLIPS: I rise to a point of personal privilege. I believe that the delegate has made a misstatement there. I think that just as the states are under or subordinate to the Congress, I don't feel that that is the real difference - -

CHAIRMAN: That's part of debate. Proceed.

APOLIONA: I prefaced my argument on that—home rule as much as possible.

The Congress of the United States has sent committees after committees down to these islands of ours to ascertain for themselves whether Hawaii has met with the qualifying requirements and needs to become a state. Congress has defined to the people of Hawaii the definition of a state and today Hawaii has answered to Congress that she has what is needed to be a state. In this section we are exactly saying what the Congress has been saying to the people of Hawaii, and that is, "Here are your qualifications, go and meet them." Here we are asking the State legislature to set the

qualifications for county self-government, and if and when a political subdivision qualifies itself to be self-governing, then the State legislature should grant the deserving political subdivisions self-government, not detrimental to its cause.

Now, we ask ourselves, what constitutes a political subdivision? For our purpose here we can say each island is a potential political subdivision. Having determined this factor as one of the qualifications of a political subdivision, we now say to the legislature, provide for that form of government thereof, whether county or city and county or city municipality, reserving to the several political subdivisions the form of government it desires. We agree that complete home rule is an impossibility, just as a complete home rule for the State of Hawaii is a complete impossibility. But we do say, and we say with emphasis, that out of respect to the lowest level of government for, of and by the people, we should encourage and not discourage our local government to have as much home rule as possible. How we are going to do it is up to each and every one of the delegates here assembled to help us in this problem and we so request it.

TAVARES: I think a little information here is in order. Under the Organic Act, contrary to Delegate Phillips' report, Congress did not create counties. Congress authorized our legislature to create them and under that authorization our legislature has created them and there has been quite a measure of self-government. If you listen to the arguments here, you'd think there had been no self-government. There has been a great deal of it.

Secondly, Congress didn't see fit to put a mandate on the legislature. It left the legislature to make cutting and trying here and there, to work out the best possible adjustment.

Thirdly, it is my understanding that a large number of states, perhaps a majority, do not have mandatory provisions in their constitutions for home rule, according to the Manual as I read it.

Another point, we are a very small territory, as I said before. Our legislature has, can and does pay more attention to local problems than a legislature of a large state. And for that reason, we are justified in burdening it, as we wouldn't be in a large state, with more local problems than we otherwise would.

Another point I'd like to bring out. I make no criticism of this, of the county committee. I think if all the lawyers in this Convention had worked for 60 days on this problem, they probably couldn't have brought in any more satisfactory solution than this. My own feeling is, I'd like to see more home rule, but I don't think it's been worked out carefully enough and I don't think we can, in the time we have, to make -- to see what is going to happen to the presently existing government, some of these elements of which we would like to see preserved. I am not satisfied, from the language given in the committee majority's report, as to just what would happen. I don't think we can, in the time we have, make such a satisfactory working out of a program or plan to show just what will happen. Now, there is no agreement among the various states as to what home rule should be, or how much home rule is to be, or just how it should be done. So it's no wonder that we can't agree here.

Now, I think one of the greatest objections the counties have had, has been to the mandates which have been placed on the counties at times to pay certain claims. I think that's very bad practice. I would like to ask the sponsor of the amendment if he would accept the following amendment to be added -- First of all, an amendment. Instead of the last two words "the legislature," insert the word "law," "as shall be provided by law." And then add the following sentence: "No law shall be passed mandating any county, town or municipality to pay any previously accrued claim."

CHAIRMAN: "No law shall be passed mandating any political subdivision -- ?

TAVARES: Well, I -- the word I had was "any county, town or municipality," to fit in with Delegate Sakakihara's amendment which reads, "The legislature shall create counties, and may create town and city municipalities."

I think there's some virtue in retaining the Organic Act provision. I'd like to point out that the Organic Act says "may" as to all. We are mandating county creation and making it permissive for other types, and I think that's all right. That's to recognize our existing counties' status, so it can never be taken away, but with that addition, I think a great deal of the trouble that the counties have might be taken away.

I'd like to read that sentence again. First of all, change the words, "the legislature" in the last two lines of Delegate Sakakihara's amendment to read "law." Then add the following sentence: "No law shall be passed mandating any county, town or municipality to pay any previously accrued claim." I move the amendment.

WOOLAWAY: I second the motion and on behalf of the movant, we accept the amendment.

SAKAKIHARA: My attorney-in-fact has expressed my opinion.

TAVARES: Now, the meaning of this is this. Where a claim is already accrued against the county, even if in favor of the State, we shall not mandate the county by law to pay it. We go into court or do it some other way. However, that will not prevent the legislature, in making appropriations, to put conditions on those appropriations; but it will prevent the legislature from saying to a county, "You shall pay this claim which was previously accrued." And I think that is one of the greatest sore spots about mandates.

RICHARDS: I think that is one point that the counties object to, but having served on the counties, there are a lot of other mandates that are just as obnoxious. There is a great habit on the part of the legislature of mandating the construction of certain things without providing the funds. That is a mandate for the future, and it's swell to pay a political debt by getting something through the legislature that merely mandates the county to do something without providing any money for it. That is very obnoxious to members who have served on any county government.

There is another matter, too, and that is when local functions are involved and not State functions. Why is it that the governor appoints various boards to handle just local functions, such as the liquor commission, police commission and other commissions of that nature that are purely local in their functions?

ASHFORD: Speaking for the forgotten island of Molokai, we very much approve legislative mandates.

SHIMAMURA: May I ask the proposer of this amendment a question? Will you yield to a question, Delegate Tavares?

TAVARES: I'm always glad to yield.

SHIMAMURA: You have here "pay any previously accrued claim." Is there any special reason for "previously accrued"? Couldn't you just say "pay any claims"?

TAVARES: Yes, there is this difference. I think that after a claim has accrued, the legislature should leave it to the courts to decide who should pay that claim. The legislature shouldn't move in there and be judge, jury and prosecutor. But as to future claims, I think the legislature ought to have some leeway to say that if certain types of claims accrue in the future, they shall be handled a certain way or certain things shall be done. I'm not sure if we made it all claims, whether we would be foreclosing the legislature too much. But I do think that as to accrued claims,

there has been a definite abuse in the past about the legislature taking on these claims and acting as judge and jury.

SHIMAMURA: Do I understand from the speaker that the meaning of the term "previously accrued" means accrued at the time of the adoption of this Constitution, or accrued at any future date?

TAVARES: I think it means accrued at the time the law is passed. Already accrued at the time the law is passed. We don't want the legislature acting as a court.

SHIMAMURA: That was my understanding at first.

CHAIRMAN: Any further discussion?

BRYAN: I'd like to ask the joint council of movants of this amendment if they would consider another amendment to the first line and also in the last line. "The legislature shall create counties and may create other political subdivisions." Then use the word "political subdivision" in the last sentence as well. Would that be satisfactory?

TAVARES: Speaking for myself, I think that would be all right.

CHAIRMAN: Will you please restate that?

SAKAKIHARA: I understand the motion. In lieu of "town and city municipalities," the amendment proposed by Delegate Bryan is to insert "other political subdivisions." Is that correct?

CHAIRMAN: At what particular place?

SAKAKIHARA: On line two of my amendment, after the word "create."

CHAIRMAN: Insert the word "political subdivisions"?

TAVARES: No, I think the amendment was to have the first few words read, "The legislature shall create counties, and may create other political subdivisions."

SAKAKIHARA: That's right.

TAVARES: Well, is that acceptable to the movant?

SAKAKIHARA: It is acceptable to me.

TAVARES: We all accept it, Mr. Chairman.
In that case, I ask that we accept another amendment to my amendment, namely where it says "mandating any county, town or municipality," substitute the words, "mandating any political subdivisions."

SAKAKIHARA: I second that motion. I'll accept the amendment.

CHAIRMAN: That's to be inserted between the words "any" and "county," is that correct, Delegate Tavares?

TAVARES: That is correct, and then delete the words "county, town or municipality."

CHAIRMAN: The consolidated amendment offered by Delegate Sakakihara reads as follows: "The legislature shall create counties, and may create other political subdivisions," striking the words "town and city municipalities."

TAVARES: May I read the whole section as proposed to be -- as it is now that the amendments have been accepted.

CHAIRMAN: Proceed.

TAVARES: I'll read slowly. It will read as follows: "The legislature shall create counties, and may create other political subdivisions within the state and provide for the government thereof, and all officials thereof shall be appointed or elected, as the case may be, in such manner as shall be provided by law. No law shall be passed mandating any political subdivision to pay any previously accrued claim."

APOLIONA: Will the Delegate Tavares yield to a question? Delegate Tavares, if this amendment passes, does it mean that the governor could appoint your police commissioners and your liquor commissioners?

TAVARES: That is correct, if the legislature so provides.

ROBERTS: I'm wondering whether the movants would accept a further suggestion in the following form. Let me state first the purpose and then I'll read the language. This provides that the government of the political subdivisions is to be established by the State. I think that we ought to make some provision to give the people who are to be governed some opportunity in the creation, structure and operation of that government. Just as, for example, we as a State now are setting up our own form of government. I would suggest the inclusion after the words "for the government thereof," the inclusion of the following phrase, "when approved by a majority of the voters registered therein in the political subdivision," which would give the local government -- the group that is to be governed the opportunity to pass on whether or not the legislature -- the political subdivision created by the legislature and the form of government was acceptable to them.

TAVARES: May I, in answering that, ask another question? Is it not true that in many states, without a mandate in the Constitution, the legislature has by law provided for such types of home rule?

ROBERTS: Oh, there's no question that such procedure has been followed, but I gather that what we are trying to do is to give as much local self-government as possible, and this would, it seems to me, give that opportunity.

TAVARES: I see the gentleman's point, but it seems to me that the counties -- the voters of the counties are going to elect the members of their legislature, and if they want such provisions, it seems to me that it's within the province of the legislature to authorize such types of adoption by the voters. It can be done under this provision.

CHAIRMAN: Before we proceed any further, will there be a second to this suggested amendment by Delegate Roberts?

PHILLIPS: I second that motion.

CHAIRMAN: Proceed, Delegate Tavares.

TAVARES: Sorry, Mr. Chairman, I've spoken more than once. I just want to say that I am opposed to this amendment. I don't think it can be worked out properly in the time we have.

CHAIRMAN: Any further discussion on the suggested amendment seconded by both Phillips and Delegate Corbett?

BRYAN: Speaking to the last amendment proposed by Delegate Roberts, I believe that that could be provided by the legislature.

CORBETT: I'm of the opinion a great deal of material that has been written into the Constitution could be provided by the legislature but my courage was stirred the other night by one of my fellow lady delegates when she got up and said, "What are we doing here if we are not writing constitutional law? If it all can be done by the legislature, why have we been elected? Why are we sitting here?" We certainly are putting some legislative law into the Constitution, but we are affirming certain beliefs when we do that. We believe the people of the counties should have a great deal of say in governing themselves at their own local level. In order to insure that, this clause, or phrase rather, added to the amendment would insure legislation being passed. If it can be passed, if it has been passed in many states, where is the harm of writing it into the Constitution? It will serve notice to the people who have to vote on this that

they are going to have control of government at the local level which is the place that immediately interests them.

CHAIRMAN: Question before the committee - -

DOI: I would like to move to amend the amendment of Delegate Sakakihara and Tavares by deleting on the fourth line after the word "thereof," instead of a comma, inserting a period, all that follows after the comma down to the end of the sentence before the new sentence as recommended by Delegate Tavares, and inserting a new sentence thereof to read, "All officials of the several political subdivisions shall be elected by the electors of the said subdivisions or appointed by the authorities thereof."

CHAIRMAN: I'll have to rule that particular motion out of order as not being germane to the motion made by Delegate Roberts at this time where our attention is to the motion, "when approved by a majority of the voters therein." So if you'll hold that up, Delegate Doi, for a moment, let us dispose of this matter. Are you ready for the question?

SERIZAWA: Point of information. Would it be possible to have Doctor - - Delegate Roberts' amendment restated?

CHAIRMAN: Delegate Roberts' amendment as seconded, is on the fourth line after the first word "thereof" comma, insert "when approved by a majority of the voters therein."

SERIZAWA: "Therein registered" or - -

CHAIRMAN: The amendment is, after the word "thereof" on the fourth line, "when approved by a majority of the registered voters therein."

ROBERTS: I might suggest a slight technical change in language, "when approved by a majority of the registered voters voting thereon," in conformity with our previous discussion on the people who actually vote on the question. "When approved by a majority of those voting thereon."

CHAIRMAN: Is there any further - -

PHILLIPS: I'll accept that. I'll second that.

HOLROYDE: I'm a little confused as to the full effect of that suggestion by the delegate from the fourth district. For example, if the legislature wished to provide Lanai with a separate county, what voters would have to approve that legislative action? All of the present County of Maui would be affected. Would they all vote to approve that or just Lanai, for example?

ROBERTS: That would apply only to the political subdivision that is being considered.

HOLROYDE: The one to be formed, not the one that - - not all that are affected by that formation, then?

ROBERTS: The political subdivision created by the legislature under the section. The people there covered and the government provided by the legislature would be voted on by the people who are to be governed by that area.

PHILLIPS: I am not sure, but I don't think that - - I'm not sure. I don't think that's quite right. The political subdivision would be the county there, so the entire county would vote on whether Lanai got segregated or separated apart.

HOLROYDE: Point of information.

APOLIONA: If Delegate Phillips will read his amendment, it says "other political," "may create other political subdivisions."

CHAIRMAN: The question before the house is, after the word "thereof" on the first line insert "when approved by a majority of the voters voting thereon." We are 15 minutes to 12, ladies and gentlemen. Can we dispose of this matter before noon? Ready for the question? The question as stated. Those in favor say "aye."

H. RICE: I think they ought to mimeograph this section as it is being proposed at this time, and let it go over until Monday because I don't think that they have touched on the two main topics that the counties are interested in, and that is the liquor commission control and the police control.

PHILLIPS: I second that motion.

CHAIRMAN: You've heard the motion, seconded, that we recess, or the committee - -

H. RICE: The committee rise and report progress, and in the meantime have this amendment presented to the staff and have it circulated and put on our desks on Monday morning.

WOOLAWAY: I second the motion.

CHAIRMAN: It has been moved and seconded. Those in favor vote "aye." Those opposed, "no." Motion carried for the committee to rise and report progress.

JUNE 26, 1950 • Morning Session

CHAIRMAN: Committee of the Whole will now consider Standing Committee Report No. 74 on the Committee Proposal [No.] 26, and also - -

H. RICE: I move that we have a five minute recess.

CHAIRMAN: No objection, so ordered. Sakakihara, the movant of the pending motion, is not present.

(RECESS)

CHAIRMAN: We are considering Standing Committee Report 74 and Committee Proposal No. 26. For purposes of continuity, the matters before the committee are these, two in number. You have on the desk the amendment offered by Delegate Sakakihara with reference to the tentative adoption of Section 2 of the Committee Proposal No. 26, which reads as follows:

> Section 2. The legislature shall create counties and may create other political subdivisions within the State, and provide for the government thereof and all officials thereof shall be appointed or elected, as the case may be, in such manner as shall be provided by law. No law shall be passed mandating any political subdivision to pay any previously accrued claim.

At the close of the session on Saturday, Delegate Roberts offered the following amendment, in the fourth line after the word "thereof," to insert "when approved by a majority of those voting thereon." So the question before the committee is for the - - on the amendment to the amendment of Delegate Sakakihara, "when approved by a majority of those voting thereon." What is your pleasure?

CORBETT: I have an amendment which I think has been put on the desks of all the delegates. Would the proper thing be to offer that as an amendment to Delegate Sakakihara's amendment or not?

CHAIRMAN: You may do so.

CORBETT: Well, my new proposal is in five sections and I believe properly only the first two sections would be an amendment to Delegate Sakakihara's. The others go further into the other sections of the original committee proposal. However, I would like to offer the entire five sections at this time as an amendment, and may I have a second?

> Section 1. The legislature shall provide by general law for the incorporation, by locally framed and adopted charters, of political subdivisions.
>
> Section 2. The legislature shall also provide by general law (which may provide optional plans of organization

and government) for the organization of political subdivisions which do not secure such locally framed and adopted charters.

Section 3. Any such law may make provision for the alteration of boundaries, the consolidation of neighboring political subdivisions and the dissolution of any such political subdivisions; but no such law hereafter enacted shall become operative in any political subdivision until submitted to the qualified voters thereof and approved by a majority of those voting thereon.

Section 4. Political subdivisions shall have and exercise such powers as shall be conferred under the provisions of such general laws, and unless the governing body of any such political subdivision shall so request no special or local law shall be enacted which shall restrict or direct the exercise of such powers by political subdivision.

Section 5. This article shall not be construed to limit or restrict the power of the legislature to enact laws of statewide concern and uniform application.

H. RICE: I second the motion.

CHAIRMAN: The motion made and seconded. Delegates Corbett and Rice and Yamamoto offering an amendment to the pending amendment.

CORBETT: I hoped by drafting this proposal to answer some of the questions and doubts that were expressed on the floor and also in conversation with some of the delegates. Let me explain briefly what the intention of each section is. In Section 1 - -

CHAIRMAN: One moment, please. The delegates all have the amendment that's being referred to? I believe so. Proceed.

H. RICE: I suggest we take now this new amendment, section by section, and start with Section 1.

CHAIRMAN: Hearing no objection - -

H. RICE: I move the adoption of Section 1 of this new amendment.

CHAIRMAN: That's the tentative adoption of this new amendment by Delegate Corbett in five sections?

NIELSEN: I'll second the motion.

CHAIRMAN: You've heard the question. All those in favor say "aye."

TAVARES: We are rushing into this thing again. Is it to be understood that we are having the same understanding as yesterday, that the complete amendment to the whole thing can still be substituted if we tentatively approve this? We are again going at it piecemeal.

CHAIRMAN: The entire understanding of the committee from the commencement was that we shall all consider these sections, if adopted, tentative. So far we have one section, Section 1, that has been approved. Section 1, tentatively approved, reads as follows:

> The legislature shall create political subdivisions within the State and the method of establishing the same.

That is our Section 1, tentatively approved.

TAVARES: Well, for the purposes of argument I have no objection to any number of amendments being argued, but it seems to me that taking this up section by section conflicts with the proposition of those who may want to have just one section for everything. Now, I want to hear all the arguments pro and con for any amendments, but I don't like to vote on it because it sort of confuses the situation. May we just argue the matter of Delegate Corbett's motion, rather than at the moment vote on any separate section, because otherwise we are going to get into the same trouble we got into the other day, unless it is understood that in tentatively approving this we do not waive the right to put in one section for the whole article, or for the whole proper amended proposal later on.

H. RICE: I think that ought to be agreed to.

CHAIRMAN: That has been the sense of the committee from the beginning, Delegate Tavares. Is that the understanding of the movant and the second? All those in favor of proceeding as outlined, tentatively approving Delegate Corbett's amended proposal to the Committee Proposal 26 in five parts, say "aye." Those in favor say "aye." Opposed. Carried unanimously. Proceed, Delegate Corbett.

CORBETT: Is it understood that you want to take it section by section? This first section is intended very obviously to empower the legislature to set up the laws by which political subdivisions may become incorporated, may adopt charters of their own framing, and that is to be done only by the general law. Now, there may be some question as to whether there is to be one law under which all counties, or all city and counties will have to incorporate, but we felt that as is the accepted practice that there will be a number of different methods, a number of different ways by which the different types of subdivisions may be empowered to frame and adopt their charters. I don't really believe there is anything particularly controversial in this, so I won't go on any further.

ASHFORD: May I ask a question?

CHAIRMAN: You may proceed. Of the last speaker, I take it.

ASHFORD: If you please. Is it your idea that a charter might be locally framed and adopted that would prevent a legislative mandate for the expenditure of funds?

CORBETT: We have said in Section 4 that the legislature is to give only such powers, that is, it says definitely, "The political subdivision shall have . . . such power as shall be conferred under the provision of such general law." Now, we feel that that is going to protect many of the things that seem to be in a debatable area right now, the Board of Water Supply possibly—though I have never had any worries about it—the police commission, and so forth. If the legislature feel that those are functions that should not be bestowed upon the county governments, they will exclude them in these laws which are to be passed by the legislature.

ASHFORD: May I carry the question just a little bit further. Without regard to Section 4, is it your idea that a locally framed and adopted charter might, under the provisions of Section 1, prevent the mandating of funds by the legislature?

CORBETT: I would think that the legislature under general laws would be empowered to give them such authority as they wish to give them.

ASHFORD: But if that were given in one legislature, it could be withdrawn in the next, could it not?

CORBETT: Not after the subdivision had adopted a charter, had framed and adopted the charter in accordance with the laws that were set up by this coming legislature. It's hard to do so.

ASHFORD: So that if no specific reference were made in the law providing for the locally framed and adopted charter, that charter might have a provision in it forbidding the mandating of funds.

CHAIRMAN: Do you desire to say anything furthermore? Delegate Corbett still has the floor. Proceed, Delegate Corbett.

CORBETT: I believe only the powers that the legislature lays upon the shoulders of the political subdivision and

which appear in their charter would hold good. Is that an answer to your question?

CHAIRMAN: The question was with reference to mandate under the first section, I believe.

ASHFORD: I think you answered it just before this last one. I think the two are somewhat conflicting in the absence of legislative provision on the subject. It is your view, I understand, that the locally adopted charter - - locally framed and adopted charter could prevent the mandating of funds by the legislature.

KELLERMAN: Will the speaker yield to a question? Do I understand that Section 1 relates or is intended to relate to counties as well as municipal corporations?

CHAIRMAN: The words "political subdivision" have been understood by everyone to refer to any type of division under the state government, or agencies.

CORBETT: That is correct, in my interpretation. I originally had the "counties, cities and counties, and cities," and so forth.

KELLERMAN: Well, I would like to be corrected if I am mistaken, but I'm under the very definite impression that counties are not incorporated under charters in any state in the Union. The chartered governments are townships, towns and cities or possibly incorporated villages. Some states permit incorporated villages, where the population exceeds two thousand, sometimes they go down even as low as fifteen hundred. But I have never heard of an incorporated county, and counties do not operate on charters in any state that I have ever heard of. In my work with municipal bond law for the federal government, to my knowledge I never ran across such a thing as a county with a separate charter of government. I would like for someone who has had possibly more experience in municipal law than myself to correct me if I'm wrong on that, but I think that is a very serious question under your Section 1. If the committee is attempting to incorporate counties, I think they better clear that point of general municipal law.

CORBETT: I think that can be very easily cleared up. Probably your suggestion would be simply to delete the words "for the incorporation," and "The legislature shall provide by general law for the framing and adopting of charters by political subdivisions," or something of that sort.

KELLERMAN: No, that would not achieve the result. My point is that counties are not bases of charter government that I know anything about. The charters are given - - charters are charters of incorporation. That's what it means, and they are given only to cities, towns and villages under general laws of the different states. Now, if I'm mistaken, I would like to be shown. I don't mean to be argumentative, but I think it's quite a serious point of municipal law in state organization. To my knowledge counties are not chartered governments that I've ever heard of anywhere else.

CHAIRMAN: Would you like to try to answer that question?

CORBETT: I am afraid I can't answer the question. I bow to the definitely superior knowledge of my fellow delegate, but I believe that the - - while the wording may be incorrect, it could be altered to fit our purpose very easily. Our purpose in this first section is very obviously to empower the legislature to set up general laws whereby any political subdivision may adopt some specific form of government of its own choosing; that is the intent. Now, I'm sorry if I don't have the background. If they shouldn't have charters, we won't give them charters; if they shouldn't be incorporated, we won't have them incorporated.

ASHFORD: May I ask a question? Wasn't the intention really of the first section to provide for incorporation of such political subdivisions as may properly be incorporated, and the section - - the second section refers to those which would not be properly incorporated?

CORBETT: That explanation is very acceptable.

CHAIRMAN: May I bring to the attention and inquire of the delegate, whether or not in submitting this amendment, Delegate Corbett, you had accepted the principle of the tentatively passed Section 1, which reads: "That the legislature shall create political subdivisions within the State and the method of establishing the same." That your amendment follows, and assuming the acceptance, tentatively, of this approved Section 1, and if so, probably the question posed by Delegate Kellerman is answered.

LARSEN: Could I ask a question? I am wondering, Delegate Corbett, say that in this charter the city wanted the election of the police chief. That was in their charter. Would the legislature have to allow that?

CORBETT: In Section 4, we have very specifically stated that the legislature shall confer such powers, well - - it says, "Political subdivisions shall have and exercise such powers as shall be conferred." In other words, if the police department should be kept out of the clutches, shall I say—because that seems to be the general feeling about the local government—it can be kept out by general law. In other words, the legislature couldn't pass a law saying that on the island of Oahu the police department should be under the State rule, and on Maui the counties can take care of State rule. It should be by general law, we feel, so that all the counties shall have a like chance. But that is taken care of in Section 4.

BRYAN: I'd like to ask—it refers back to Section 1 actually—but in Section 3 and Section 4, you refer to "such laws." Are those the general laws that are mentioned in Sections 1 and 2?

CORBETT: That is correct.

BRYAN: If that is the interpretation, unless I misread the other sections, they will have to be amended so that the legislature actually will have some power over these subdivisions, because it looks to me as if any general laws passed could be more or less vetoed within the subdivisions if the people there don't accept them.

CORBETT: May I ask where you read that, Delegate Bryan?

BRYAN: Two places where it's questionable in my mind. The consolidation - -

CORBETT: In Section 3?

BRYAN: In Section 3, "But no such law hereafter enacted shall become operative in any political subdivision." "No such law," is that referring back to your general laws applying to all - - the general outline of all subdivisions?

CORBETT: Well, it refers back to the laws that make provision for the alteration of boundaries and so forth and so forth. In other words, no county can be chopped up into five parts without a majority vote of the, of voters in that county.

BRYAN: Well, I think the answer to your question would be that Section 3 would have to be amended so that the laws mentioned in the second part of that sentence - - second part of that paragraph would be the laws considering boundaries, consolidation and so forth, and not just the general laws pertaining to subdivisions, I mean political subdivisions.

CORBETT: Yes, that is correct.

BRYAN: Then in Section 4.

NIELSEN: Point of order. Aren't we discussing Section 2? We are never going to get anywhere if we just keep on reading into the record everything beyond that.

CHAIRMAN: The delegate is right except that - -

BRYAN: I asked when I started speaking, before we could really consider Sections 1 and 2, I wanted to know if all these other sections referred to the words "general laws" in Section 1. That was all. Thank you very much.

CHAIRMAN: Are you ready tentatively, therefore, to vote on Section 1 of the amendments submitted by Delegate Corbett? Any further debate?

KELLERMAN: May I offer an amendment then to Section 1 to clarify that language? At least it does make it clearer to me. "The legislature shall provide by general law for the incorporation, by locally framed and adopted charters, of municipal corporations."

CHAIRMAN: After where, please?

KELLERMAN: In lieu of the words "political subdivisions," use the words "municipal corporations." Or if it would be preferable, say "city, town and village," "of cities, towns and villages." The term "municipal corporations" includes all three of those, so I was being brief using that term instead of "political subdivisions." "Political subdivisions " includes counties.

CHAIRMAN: Will you please give me your precise amendment, Delegate Kellerman?

KELLERMAN: In lieu of the words "political subdivisions," the last two words of the paragraph, insert the words "municipal corporations." No, Mr. Chairman, on second reading that is not accurate because you've got - - if you read back you've got to provide for the incorporation of municipal corporations. It would probably be better to enumerate and say "cities, towns and villages," if that's the intention of the committee, to include villages. They might not want to include villages at all.

CASTRO: I was under the same impression as Delegate Kellerman that there had been no chartered counties, but I see that in the California State Constitution provision is made for the framing of county charters.

CHAIRMAN: Will you yield for a moment? Was there a second to Delegate Kellerman's motion? I did not hear any. Oh, seconded by Judge Wirtz. Proceed.

CASTRO: It seems to me that the word that is misleading in this particular section is the word "incorporation," because a charter need not necessarily incorporate a political subdivision; it might establish the definition of it, but not necessarily an incorporation under the technical sense of the word, and I suspect that the word "incorporation" here is used in a rather liberal sense. I would suggest that the word "establishment" be submitted for "incorporation" and I wonder whether Delegate Kellerman would be willing to include that in her amendment.

CHAIRMAN: Substitute the word "establishment" instead of the word "incorporation."

KELLERMAN: If my amendment is to remain as "cities, towns and villages," I think the word "incorporation" is more apt because they must be - - they do become corporations if they are established in this sense, and I think the committee intends to have city, town or village government. There is such a thing as an unincorporated village, and that has very different powers from an incorporated village. So if we just use the term "establish," that also might be intended to extend to an unincorporated town or unincorporated city, which would then definitely limit its powers. My impression is that, if the committee wants the incorporation or the possibility of incorporation of the city and town and then possibly a question as to villages, I don't think the word "establish" would achieve that.

CHAIRMAN: Mr. Castro, I think your offer is denied.

HEEN: Point of information. How many amendments have we got before this committee?

CHAIRMAN: We have the pending amendment of Delegate Sakakihara and a pending amendment to that by Delegate Roberts, namely that after the word "thereof," insert "when approved by a majority of those voting thereon," and this proposed amendment from Delegate Corbett submitting five sections which goes to amend the entire Proposal 26.

HEEN: As I understand the rules of parliamentary procedure, you can have an amendment upon an amendment; you cannot go beyond that then having an amendment upon an amendment that designs to amend another amendment. That's why we are getting bogged down here. We don't know where we are. If we abide by the rules, there can only be one amendment to an amendment; then we can proceed, I think, much faster.

CASTRO: In that case this amendment of Delegate Corbett's would be out of order because there was already an amendment to Delegate Sakakihara's amendment. Is that what Delegate Heen referring to?

CHAIRMAN: That is a point well taken. The immediate question therefore is the amendment to Delegate Sakakihara's motion - - amendment by Roberts namely: "when approved by a majority of those voting thereon." Are you ready for the question? Those in favor of voting for Delegate Roberts' amendment wherein after the word "thereof" in the fourth line insert "when approved by a majority of those voting thereon." All of those in favor of the amendment say "aye."

TAVARES: May we have the whole thing read now with the proposed amendment in it? I'm kind of out of order.

CHAIRMAN: The amendment offered to be incorporated in the submitted amendment of Delegate Sakakihara will therefore read as follows:

> Section 2. The legislature shall create counties, and may create other political subdivisions, within the state and provide for the government thereof when approved by a majority of those voting thereon, and all officials thereof shall be appointed or elected, as the case may be, in such manner as shall be provided by law. No law shall be passed mandating any political subdivision to pay any previously accrued claim.

CORBETT: At the top of this amendment it says that this is the amendment by Delegate Sakakihara and that he has accepted the further amendments by Delegates Tavares and Shimamura. Now, doesn't that mean that it is just one amendment, or does it mean that it is three amendments?

CHAIRMAN: No, I beg your pardon. The pending amendment is the Committee Proposal, Section 2; that's the primary question before the committee. Delegate Sakakihara's is an amendment; Delegate Roberts' is an amendment to the pending amendment to the question of adoption of Committee Proposal, Section 2.

LOPER: I note that in the reading of the Sakakihara–Tavares–Shimamura amendment as amended by Delegate Roberts, you have put new wording in line three after "thereof." There is a "thereof" in line three and also in line four, and I can't make it read - - make sense in either case. I'd like to ask Delegate Roberts to read it as he wishes to amend it.

ROBERTS: The purpose of the amendment was to insure and give an opportunity to the political subdivision that is

either being created or whose charter is being modified or whose form of government is being changed, to give them the opportunity to pass on such change by a vote of the individuals in the political subdivision. If a majority of those approve the change, then that goes into effect; if it does not, then the previous form of government stays in effect. That, I presume, will be taken care of under the ordinances. Now - -

CHAIRMAN: Will you answer the immediate question first, Delegate?

ROBERTS: I wanted to explain that so that the placing of this parenthetical phrase may be put somewhere else by the Style Committee to achieve the purpose that I have in mind. The language that I had provided was, "when approved by a majority of those voting thereon," and the question was raised the other day whether or not that meant a majority of those in the political subdivision, and the answer to that for the record was "yes." Now, you do have a little difficulty in language, but I believe that if the intent of the Committee of the Whole is clear, I think the Style Committee can take care of that problem.

ASHFORD: May I ask a question of Delegate Roberts? Is it not true that the legislature in creating counties could very easily provide that no vote be made thereon? Because the language of your amendment is "when approved by a majority of those voting thereon." Unless the legislature provides for a putting to a vote, there will be no people voting thereon, and therefore, no majority.

ROBERTS: Well, that is certainly not the intent of the proposal, and it would seem to me that if the provision does state that this requires the approval of the voters in the political subdivision, that the legislature would be going beyond its bounds in setting up the charter to state that the individual shall not have the right to vote. That would be, to my mind, in conflict with the intent of the section that we are now drafting.

CHAIRMAN: So, to the precise question made by Delegate Loper, you cannot say where the amendment will go, either after the word "thereof" in the third line or after the word "thereof" in the fourth line. You want to leave it to the Style Committee. That is the answer. Is that correct, Delegate Roberts?

ROBERTS: I suggest that as a matter of procedure and as a matter of moving the thing along on the floor, that it be left to the Style Committee to place as long as the intent of the Committee of the Whole is clear.

PORTEUS: Unfortunately - - Am I recognized?

CHAIRMAN: Yes, you are, Delegate Porteus.

PORTEUS: In offering an amendment, the person who makes the amendment has got to pick the place.

CHAIRMAN: I'm afraid so.

PORTEUS: Now all we want to know is what place does he pick? May I have an answer to the question as to what place has been chosen?

ROBERTS: The place that has been chosen is in the fourth line after the word "thereof." That's the place.

CHAIRMAN: The fourth line, after the word "thereof."

HEEN: In this draft that I have in my hand there are two words "thereof" appearing in the fourth line. Now, Dr. Loper asks the question whether it was "thereof" in the third line or "thereof" in the fourth line. So it looks to me that we have all kinds of drafts of the proposed amendments in the hands of the delegates. We don't know which one to use.

CHAIRMAN: The answer made by Delegate Roberts, Delegate Heen, is that it will appear in the fourth line. After the third word, "thereof," insert "when approved by a majority of those voting thereon."

BRYAN: I have a suggestion for Delegate Roberts, if he would like to consider it. That would read, "within the state and provide for the government thereof, and which shall be approved by a majority of the voters of the subdivision voting thereon."

CHAIRMAN: Will you please restate that? Where does it appear?

BRYAN: "And which shall be approved by a majority of the voters of the subdivision voting thereon." Does that help the question?

CHAIRMAN: Delegate Bryan, I have difficulty in finding out where you would want to insert this. Please - -

BRYAN: Wherever Delegate Roberts wants to insert his amendment.

CHAIRMAN: I think you had better get together.

ROBERTS: We have two drafts before us, as Senator Heen pointed out. The draft that I was reading from is the draft which was submitted by Delegate Sakakihara on Saturday, and I am reading from the fourth line on that. Now apparently some are reading the fourth line on that in the new redraft of the proposal. The language that I have is inserted, "within the state and provide for the government thereof, when approved by a majority of those voting thereon, and all officials thereof shall be" and so on.

CHAIRMAN: I think that is clear.

HAYES: Just a point of information. We are now on Roberts' amendment, and he is trying to get this last word into Sakakihara's amendment?

CHAIRMAN: That is correct.

HAYES: Now, what has happened to the Corbett amendment?

CHAIRMAN: That will have to be - - that is out of order.

HAYES: It hasn't been - - I see. Thank you.

ASHFORD: May I ask a question? I would like to ask Delegate Roberts a question. When he refers to a "majority of those voting thereon," does he mean a majority of those within the proposed subdivision created by Section 2, or the subdivisions that now exist and will be carried on under the provisions of the ordinances and continuity of law?

ROBERTS: It applies only to new political subdivisions or any subdivisions later created by the legislature. There is no intention of requiring the present political subdivisions to pass on their present form of government. I assume that the section dealing with the ordinances and continuity would retain the existing form and setup.

ASHFORD: I think that doesn't quite answer my question. For example, suppose some provision is made whereby the island of Lanai could be set up as a separate county, does that require all the voters of the present County of Maui to approve it, or does it require, under Mr. Roberts' amendment, only the voters of the island of Lanai?

ROBERTS: Just the island of Lanai.

KELLERMAN: May I ask a question, too? "The majority of the voters voting thereon," does that mean the voters within the political subdivision, or simply a majority of those who have cast their votes? "The majority of the voters voting thereon" can certainly be construed to mean simply a majority of those who have cast votes which would - - it might be very much less even than the majority of the political subdivision.

ROBERTS: Those voting thereon are the individuals who actually cast their votes.

KELLERMAN: I understand that means then only the majority of those who actually vote.

ROBERTS: That's right, but the vote is confined to those who are in the political subdivisions.

KELLERMAN: So there really are two interpretations of "voting thereon."

ROBERTS: No, those voting thereon, as in any general election -- Take the general election, we have qualified voters in the entire territory; those voting thereon would be only those who vote on that particular question.

KELLERMAN: Then you intentionally would make it possible for the people within a subdivision to approve a major change in their form of government only by a vote of, say, only one-third or twenty per cent of the entire registered voters of that --

ROBERTS: A majority of those voting on the question, just as our new Constitution is going to be put.

CASTRO: It seems to me that it's a rather complicated procedure to set up a political subdivision of the state. This amendment of Delegate Roberts is nothing more than a referendum, which this Convention has already indicated it did not favor. It seems to me, although I am not a legislator, that if a group of people who were anticipating emergence as a political subdivision of the state wished such a condition upon themselves, that they could aid in the drafting of the proper bill in the legislature, which upon proper passage would become law, and the need for a referendum would not be present. I feel that the amendment therefore should be defeated.

CHAIRMAN: Ready for the question?

LOPER: I would like to ask Delegate Roberts a further question, whether the following additional wording doesn't express the thought he has even better. Instead of saying "when approved by a majority of those voting thereon," use this language, "when approved by a majority of the registered voters of such subdivisions voting thereon."

ROBERTS: That's perfectly all right.

CHAIRMAN: The amended amendment which has been accepted by Delegate Roberts will read therefore, "when approved by a majority of the registered voters of such political subdivisions and those voting thereon"?

ROBERTS: "Voting thereon." Comma, "voting thereon."

CHAIRMAN: May I first get the amendment properly agreed upon, Delegate Fong. The accepted amendment therefore incorporated would read as follows: "when approved by a majority of the registered voters of such political subdivisions, and those voting thereon."

ROBERTS: No, "of such political subdivisions," comma, "voting thereon."

CHAIRMAN: So that will reads as follows: "When approved by a majority of the registered voters of such political subdivision, voting thereon." Correct?

ROBERTS: Correct.

CHAIRMAN: Delegate Fong. Oh, pardon me. I beg your pardon. Delegate Bryan had stood just after Loper. I'll recognize Delegate Bryan.

BRYAN: The question I had is that you may oftentimes have a case whereby creating one political subdivision, you create two. Take the island of Kauai and divide it in half, you have two political subdivisions. Now if the people on one-half of the island vote in favor of it, and those on the other half do not vote in favor of it, those who don't vote in favor of it are still left with a new political subdivision of their own, if you grant the wishes of the majority of the voters in the other subdivisions. Now what is the intention to get around that sort of thing? I don't think that this is too practical. I have no qualms about the referendum part of it, but I can see where in many cases it wouldn't be practical. I'd like to know if there is any suggestion to get around it.

ROBERTS: As I understand, the purpose is to permit the legislature to take the initial action. It would seem to me that the legislature should give sufficient and careful thought to what they are doing in the creating of new political subdivisions or changing them, to meet that particular problem. The only point of the amendment is to provide those individuals who are going to receive the change to give them the opportunity to vote on whether the proposal submitted by the legislature meets their needs. That's the only purpose of the amendment.

I might state further, in reply to the previous observation made that this was merely a referendum. I don't want the delegates to get the impression that there is something ornery about a referendum, that there is something dirty about a referendum. We are submitting our own Constitution, the one we're drafting now, to a referendum. It's a perfectly proper and perfectly sensible procedure, and I certainly can't see anything wrong with it.

FONG: Mr. Roberts, you don't give an opportunity here for an expression of what the objection may be. For example, you are setting it for the people to vote, and there is nothing here for an alternative proposal. Now, in our Constitution here the legislature will have alternative proposals to submit to the people. Now, you are just giving it to the people to either vote yes or no. There is nothing here to show what they disapprove of. Now, how is the legislature to know as to what has been disapproved and what is good in the proposal? Don't you think that there should be something here by which the people may express the approval of certain parts of the charter which is given to them and disapproval on other parts?

ROBERTS: I understand the question, but the question is no different from the question we are going to have in our submission to the people of our own Constitution. We are not going to know whether they like part of it or don't like part of it. They are going to vote on the question, I assume, of whether they want the Constitution in the form we have drafted or not. Now actually the way to obtain whether they don't like certain parts would be in the discussions that take place before the ratification of the new Constitution, and it's up to the legislature, just as it will be up to us and the legislature, to keep an ear to what is going on and to what people are thinking. Our own Act 334 provides that if the people don't accept the Constitution, then we have to draft another one. We don't know actually what they are going to disapprove of, but it is up to us to try and keep in touch to see what the thinking of the people is, and if it is disapproved—which I hope it isn't—it would seem to me that we have to keep our ears to the ground and find out why they disapproved it.

FONG: In our case the legislature will have the opportunity of submitting alternatives to the people. Now, the people may vote on the -- they will vote on the alternatives and they will vote as to whether they want to ratify the Constitution. In your plan here, there is nothing here for an alternative and the people either vote yes or no.

ROBERTS: But the alternative is that the legislature creates this political subdivision or gives it the authority. Now, if you think that it's necessary to have a constitutional convention of the political subdivision first, and then to

submit to the legislature and then to the people, it seems to me that you are overcomplicating it.

PHILLIPS: I might answer Delegate Fong's question by saying that in a great many of the constitutions they set forth just exactly what will be said in this so-called referendum to the people. The reason that referendum goes down is, do they want self-government, that kind of self-government, under the conditions set forth in that so-called charter or not? And that charter, as you know, is a kind of constitution. Now, it would say we do or we do not want self-government in this particular subdivision. As Dr. Roberts has said, it would be black or white. You either want it or you don't want it. But in many constitutions it's written out and the form of how it will be sent down to the people is set forth there. Now, I believe he has left it out because the tendency here is to leave out as much wordiness in the Constitution as possible.

CHAIRMAN: Ready for the question?

HOLROYDE: I'd like to ask Dr. Roberts one question to be sure that it's clear in my mind. "When approved by a majority of those voting" applies only to the creation of counties. If there is a change of the government within the county, a redistricting of districts for, say, the supervisors to be elected from, or an increase in the number of supervisors, that wouldn't be returned to the people for approval under this wording, would it?

ROBERTS: This deals with the creation, as I read it, of "political subdivisions." Now, you might have a problem if you have a serious reorganization of the counties and a change in their government. You might want to submit that.

HOLROYDE: But it's not required under this wording?

ROBERTS: Not as I read the present proposal, no.

HOLROYDE: That's the point I wanted cleared up.

LOPER: I think Delegate Bryan's question deserves a little fuller answer. He pointed out that if West Kauai wished to secede from the rest of the island, you might have, under this, the people of West Kauai voting and the rest of the people not. But is not the answer implied in the question? That is, if by dividing the island you were making two political subdivisions, then by the wording here the people of both of those subdivisions would vote on it because you would be creating two new subdivisions.

ASHFORD: But the answer was from Dr. Roberts that if you set up the County of Lanai, the rest of the County of Maui wouldn't have to vote on it.

BRYAN: That's why I put that question, because actually you are making two subdivisions. You are making a new subdivision of the County of Maui, and you are making a new subdivision on the island of Lanai, and it looks to me as if the whole works would have to vote on it.

TAVARES: That's the whole trouble with this county government proposition. All of these new ideas and new amendments are not well worked out. I, myself, don't know -- I am not sure that this amendment even accomplishes what Dr. Roberts wants to do, and I think it's confusing, and as I say, it's just not well worked out. I think it's going to just render this section very, very difficult to interpret if it's adopted.

CHAIRMAN: Are you ready for the question? Question is the amendment of Dr. Roberts, accepting the further amendment by Dr. Loper, wherein after the word "thereof" appearing on the fourth line of Delegate Sakakihara's amendment to the committee's tentative approval of Section 2, reading as follows: inserting after the word "thereof," "when approved by a majority of the registered voters of such political subdivision voting thereon." All those in favor say "aye." Opposed. The noes seem to have it. The amendment to the amendment is killed.

KAUHANE: The Committee feels that we've had somewhat informal discussion on the amendments that were submitted, and expression of ideas as to how the powers ought to be granted. I think if we consider also the amendment offered by Delegate Richards, I think it will take care of the propositions that have been raised on the floor as to the granting of powers either to the State, to the legislature or to the county government, as were well expressed by Delegate Richards' proposal.

HEEN: Point of information. I don't understand that Delegate Richards has submitted any amendments.

CHAIRMAN: It's not before --

KAUHANE: He has. I think it's been circulated, Delegate Heen.

HEEN: He may have circulated but he hasn't moved any amendment.

CHAIRMAN: The question before the committee, Delegate Heen, is the tentative approval of Section 2 of Committee Proposal No. 26, and the pending amendment thereto by Delegate Sakakihara.

PORTEUS: I wonder whether we can get at these various propositions in perhaps a little more simple fashion. I think the reason that Delegate Richards is unable to present his amendment is that there have been so many amendments pending, that this would have been out of order. There are really before the house, this Convention, as a practical matter, the following questions: whether or not we shall take the provision on county government as brought in by majority of the committee on county government or whether we'll follow the theory of the Organic Act as presented by the delegate from Hawaii, Delegate Sakakihara, with, as we know, further suggested amendments by the delegate from the fifth district with respect to mandates. Now those questions are before us.

In addition, there is the question as to whether or not the scheme as proposed by my fellow delegate from the fourth district, Delegate Corbett. We have lost sight for the moment, but not yet completely disposed of, the proposition as submitted by the delegate from the fourth district, Delegate Phillips, except that we have cut the heart out of his proposal by saying that the counties shall not have unrestricted power of taxation.

I think it would simplify our procedure if we could decide first, do we take the Sakakihara amendment or the original committee proposal. If the Sakakihara amendment were to be chosen, then we could go on with the Phillips amendment, with the Corbett amendment. If it's turned down, it's then out of sight and we don't have to pay attention to it any more. It would seem to me if we could orderly clear the decks, if there has been enough discussion, and decide which theory we are going to follow, then we could make the various amendments we need.

CHAIRMAN: We have before us the amendment to the Committee Proposal 26, namely the Sakakihara amendment.

PORTEUS: Well, may I suggest then that we now vote on the Sakakihara amendment, right now. And then with that determined, if that carries, then Delegate Phillips can -- I mean delegate from the fifth district Richards can offer his amendment and Delegate Corbett can adequately discuss hers.

CHAIRMAN: Well, that's the pending -- that's the pending question.

PORTEUS: Pending amendment.

CHAIRMAN: The Sakakihara amendment.

NIELSEN: If you'll make that into a motion, I'll second it.

PORTEUS: I move then that we now proceed to vote on the adoption of whether we will adopt the Sakakihara amendment now.

NIELSEN: I'll second the motion.

CHAIRMAN: Are you moving for the previous question?

PORTEUS: In effect that's it, but I wanted to explain what the moving of the previous question would really be, and rather than use that word, I - -

CHAIRMAN: Moving of the previous question is the immediate voting on and shutting off debate on the Sakakihara amendment.

PORTEUS: But then, as soon as - - if once the vote is taken - - I don't want to foreclose further debate on the Sakakihara amendment. That's my point. For further amendments, in other words.

CHAIRMAN: Well, I'm afraid if we vote for your amendment, we will shut off any debate.

PORTEUS: No, Mr. Chairman, let me put it this way. I move that we now proceed to vote on the Sakakihara amendment with the understanding that if that carries, it will then be open to further amendments.

CROSSLEY: Point of information.

NEILSEN: I second the motion.

CROSSLEY: As I understand this, what we are voting on is the theory behind the two. So, if we could dispose of what direction we are wanting to go, I believe what Delegate - - the Secretary has to say would be worthwhile. If we can decide on the course that we want to follow, then we shouldn't be foreclosed from making amendments to that course of action, but we would be limited tc following that course.

CHAIRMAN: Well, to resolve the question before the committee, the sense of the motion is this, as I understand it: to continue the same theory of local self-government with relation to its creation or non-creation by the legislature, or to adopt an altogether new theory of true so-called local government. Is that correct? So, by voting for your motion now would be to consider in broad scope without embarrassment of further amendments the Sakakihara theory of the present situation continuing with respect to counties, the creation of municipalities, and so forth.

PORTEUS: I don't want to foreclose Delegate Corbett from being able to present her amendment, but I'd like to get a choice made between the proposition as made by the County Government [Committee] and as suggested by Sakakihara. Let's dispose of that so we don't have too many questions.

NIELSEN: I second the motion then for this reason; that when we dispose of this amendment, then we can go back to Section 2 as in Proposal 26, and other amendments can be submitted for discussion, and they can be amended anyway they want to.

ROBERTS: Point of information. Before I vote on Section 2, I'd like to have an explanation as to the meaning of a "previously accrued claim." I'm not quite sure that that was discussed, as to what this intent is.

CHAIRMAN: Delegate Tavares will answer that.

TAVARES: It was intended to cover situations of the type of the Gamewell case, which we all remember, of the Medeiros claim and a number of other claims where somebody has dealt with a political subdivision or one of the county agencies, and has a claim and the agency has turned him down. He comes to the legislature and gets a law through, or tries to get it through, ordering the county or political subdivision to pay that claim that has already previously accrued before the legislature is asked to act upon it. In other words, the type of claim that makes the legislature act as a judge of the merits of an already existing claim, which has been one of the, in my opinion, grave abuses of the legislature. Where, instead of leaving the matter to the courts and to the discretion of the political subdivision, the legislature has assumed to pass upon the merits of the claim and tell the subdivision, "You must pay this claim."

CHAIRMAN: Question. All those in favor of the tentative adoption of the Sakakihara amendment, will say "aye."

MAU: This motion is for the adoption of the Sakakihara amendment?

CHAIRMAN: That's right, tentatively, without prejudice to any further amendment of it.

MAU: If the delegates to this Constitution [sic] desire to retain the present status of county governments, then they should vote for this amendment. It leaves the absolute power with the legislature to do what they will with the counties and the county government. There is no question about that. I think that in view of the arguments made, not only in this Convention Hall, but throughout all the elections held in the past ten years, together with the platforms of both major political parties in the Territory, this amendment should be voted down because it does not provide for what is popularly known as home rule; it does not provide for autonomous county governments, local governments; and if it is the desire of this Convention to provide autonomy or more autonomy to the county governments, then they must vote against this amendment. We have heard arguments in previous sessions of this Committee of the Whole and in the Convention that certain powers should not be taken away from the legislature with respect to the executive powers; likewise, certain powers should not be taken away from the local government. I believe that we have progressed far enough in this territory in the past fifty years to be willing to allow people living in localities as we have fixed them in the past, counties, county governments, that we should give them an opportunity to govern themselves. This amendment does not do so, and I ask that the delegation here vote this amendment down.

TAVARES: Speaking to the over-all picture, which I think is not exactly described with full accuracy by the preceding speaker, I'd like to just point out a few things. First of all, we must remember the small size of this territory, which as I have said enables our legislature to pass on local problems. Secondly, we must remember that the legislature by general laws can provide more local self-government.

Thirdly, we must also remember that history shows very clearly that when the people of a county wanted something badly enough, the legislature, within a reasonable time, has given it to them. I think history shows that. For instance, you had a Board of Water Supply on Oahu for awhile to meet a special problem. The other counties weren't forced to do that until they came and asked for it; and when they asked for it, what happened? At the last session the legislature gave them Boards of Water Supply. In the old days, Kauai never elected its chairman of the Board of Supervisors separately as chairman. They elected a board and the board elected their chairman. When the people of Kauai got around to wanting to change that and have the chairman run as chairman, the legislature gave it to them.

Our legislature has been very, very mindful of the desires of the people of each local county as it was demonstrated clearly to them that the people really wanted it. I submit that this proposal is in line with the historical development of this territory, and that we have not failed

to make progress and can still make progress under the system proposed by Mr. Sakakihara's amendment.

CHAIRMAN: Let us be mindful of the motion made and carried by Delegate Heen last Saturday that the speaking shall be limited to five minutes, and if there are no other speakers, I will call upon the movant, Delegate Sakakihara, to conclude this debate.

SAKAKIHARA: Following up the able submission of the statement here by Delegate Tavares, I recall some years back that the people of the City and County of Honolulu requested of your legislature to restore the power of appointment of the police commissioners. The legislature yielded to the request of the people of City and County of Honolulu and gave them the right to appoint the police commission. After that power was given to the City and County of Honolulu, what happened? They were saturated in politics, there was disharmony among the police commissioners, and it did not serve the best interest of the police commission of the City and County of Honolulu. Consequently, what happened? The public was dissatisfied, except for the politicians who craved power within the city government. The legislature restored the power where it rests now, namely, the appointive power of the police commissioners to the governor with the confirmation of the Senate. If we are to follow the philosophy laid down here by the majority proposal, we are going to duplicate the very unpleasant situation which we have experienced when the legislature restored the power of appointment of the police commission to the Board of Supervisors. To obviate that in the future as a state, I felt very strong in my heart that we have demonstrated during the last fifty years that the City and County of Honolulu and the counties throughout this territory have enjoyed and progressed under Section 56 of the Organic Act, namely, vesting the power in the hands of your legislature, and as time progressed the legislature can meet the situation as requested by the people of the various counties and City and County.

I submit to you, Mr. Chairman and members of the Convention, that is the purpose which prompted me to introduce this report and the proposal. I say with all due sincerity, Mr. Chairman and members of this committee, that my proposal in no way tends to curb the power which the Board of Supervisors of City and County of Honolulu or the outlying counties would like to retain. The legislature, upon the petition of a local unit, will from time to time yield certain powers to the Board of Supervisors and restore a home rule to the people. But what assurance do we have here now, once this frame of government as proposed by the majority is set up, we are only going to be confused deeper and deeper, further and further from the very object that we are trying to drive in.

CORBETT: There is always a great deal said about the virtues of the Organic Act and how wonderfully well the territory has fared under the Organic Act. There is very little doubt in anybody's mind about that. We agree. We think the legislature has done a swell job for fifty years. We don't know whether they are going to continue to do as good a job for the next fifty years and we would like to insure the type of government that we want.

Now, the current trend is very plainly demonstrated in everything you read. As my fellow delegate from the fifth district mentioned, the political platforms of both the parties here are in favor of home rule. I submit that the Model State Constitution, which I've heard a good many people hoot at and call a professor's constitution, and so forth, however it is very strongly in favor of local government and goes to greater length than did your committee. This Model State Constitution was drawn up by professional men, students of government. They know their business. They put a great deal more time and thought on this constitution than we have been allowed to put. Most of us would like to put as much time as they have but that power has not been given. I would also like to call your attention to a recently redrafted constitution, that of the State of Missouri. In here, we find twenty pages on local government. We have submitted four or five sections.

I picked up a Saturday Evening Post of this current week last night and one of the first editorials is on the subject of local government, in connection with taxation, it is true, which doesn't interest us because we don't feel it fits the current situation, but it does express an interest in local government at the present time.

Now, it seems to me the issue is very plainly before us in the vote that is coming up. Do we want to stick with the Organic Act? Do we want to say that what is good enough for grandpa, is good enough for us, or do we want to try to catch up with modern times and express the current thinking of truly modern government?

PORTEUS: I rise to a point of order.

CHAIRMAN: State it please, Delegate Porteus.

PORTEUS: As I understood the motion, the motion on the sense of this Convention is that we're just clearing the decks. We are either taking the committee proposal or the Sakakihara proposal. If we take the Sakakihara proposal, it is only the vehicle for further amendment. It's not a question that we stay on this theory of the Organic Act at all times. We are going to have the Corbett amendment, we are going to have the Richards amendment and we are going to have the Phillips'. That's what we understand here.

CHAIRMAN: And Delegate Mau has also submitted an amendment.

PORTEUS: Well, and the Mau amendment. We'll have further amendments. So let's move along. I warn any other speakers who attempt to speak that I'm going to rise to a point of order because I think it's time we voted on this, so we know the vehicle that we are going to use to make amendments to.

CHAIRMAN: Are you agreeable with that, Delegate Phillips?

PHILLIPS: I have this feeling, that at least three or four speakers have had an opportunity to proclaim their views on this thing.

CHAIRMAN: Proceed, proceed, proceed.

PHILLIPS: I feel that if we were to put a gag rule on any other individuals at this time - -

CHAIRMAN: There is no gag rule, and please don't refer to any such thing, will you, please? We want to expeditiously go through this thing and nobody is being gagged.

PHILLIPS: I would like to prevent this being voted on at this time for a very basic reason. However, I mean I wouldn't want to force my words down the throats of the Convention and then have them turn a deaf ear to it. If it's the feeling of the delegate from the fourth district that we should accept or not accept one or the other before we proceed with further amendments, then I will adhere to that; but I still feel that many ideas have already been proclaimed and that we should continue until those run out.

CHAIRMAN: The question - - Are you ready for the question?

DOI: I think the issue before this committee here is as to whether we are going to adhere to the theory of Sakakihara's amendment or to the theory as submitted by the committee, and therefore, I think those in favor of the committee idea should have a chance to speak.

CHAIRMAN: Proceed.

DOI: I would like to speak against the amendment offered by Delegate Sakakihara. The amendment gives full power to the legislature. The amendment has this in mind, I believe, efficient government, period. If the legislature is interested in efficient government alone, why not set up a department in the several counties. I think the result insofar as efficiency goes is better. The amendment forgets and by-passes this very important idea, and that is participation in government by the people. Probably, participation does not bring about highest efficiency, but then I believe it brings about better government because it strengthens the government by education and participation. You will note that the amendment provides that all officials thereof shall be appointed or elected. Even as to that subject matter, there is no discretion left to the local unit.

The committee proposal, on the other hand, studied all the facts as they existed in the Territory of Hawaii today with this desire, to give as much local participation as is possible without injuring the welfare of the State or the welfare of other local units, and in that regard they came to the conclusion that it is best to leave the taxing power to the State, and as to other subject matters, leave it to the local unit. Therefore, I submit and urge that the amendment should be voted down.

CHAIRMAN: Are you ready for the question?

KELLERMAN: May I make a correction in the interest of the committee? I will precede my statement by saying that I am in favor of the Sakakihara amendment, but in all fairness to the committee and its proposal, I found that I was mistaken on the charter of counties. The new Missouri Constitution, in 1945, does provide for a charter and the incorporation of a county with a population in excess of eighty-five thousand.

CHAIRMAN: Are you ready for the question? The question is on the adoption or rejection of Delegate Sakakihara's amendment, Section 2, with reference to the main question which is the adoption tentatively of Committee Proposal Section 2, which reads as follows—and this adoption is without prejudice according to the understanding of the committee—"The legislature shall create counties, and may create other political subdivisions, within the State, and provide for the government thereof, and all officials thereof shall be appointed or elected, as the case may be, in such manner as shall be provided by law. No law shall be passed mandating any political subdivision to pay any previously accrued claim." All those in favor will say "aye."

DELEGATES: Roll call.

CHAIRMAN: How many in favor of roll call? Tentative approval, that's all. There's not 10. Those in favor please raise your right hands. Sufficient for roll call. Clerk will please read roll call. Tentative adoption without prejudice.

Ayes, 26. Noes, 29 (Akau, Apoliona, Arashiro, Corbett, Doi, Dowson, Ihara, Kam, Kanemaru, Kauhane, Kawahara, Kawakami, Kido, Kometani, Luiz, Mau, Nielsen, Phillips, H. Rice, Richards, Roberts, Serizawa, Silva, St. Sure, Wirtz, Wist, Yamamoto, Yamauchi, A. Trask). Not voting, 8 (Anthony, Lee, Mizuha, Okino, Sakai, J. Trask, White, King).

CHAIRMAN; The amendment is killed.

We are now on the principal question before the committee, namely, the tentative adoption of the committee proposal Section No. 2.

RICHARDS: I have an amendment which I believe has been placed on the desks of everyone here. Shall I read it?

> Section _____. That the legislature may create counties and city and counties and municipal corporations within the State of Hawaii and provide for the government thereof. The legislature shall provide sources of revenue for the operation of such government so created. The legislature shall not, subsequent to the creation of such government, mandate expenditures from such sources of revenue so provided without providing additional sources of revenue or appropriation. All officials thereof shall be appointed or elected by their respective counties or city and counties in such manner as shall be provided by law.

CHAIRMAN: No, it isn't necessary. Is there any second?

SERIZAWA: I second the motion.

CHAIRMAN: Seconded by Delegate Serizawa. You may proceed in argument.

RICHARDS: This particular amendment I grant you is a certain compromise in the theories that have been placed before this Convention in that it does allow considerable legislative control but does place certain specific restrictions on the legislature, particularly in the matter of mandating the various county governments without providing the funds for such purposes. It also does restrict somewhat the matter of appointment and elections within the various counties or city and counties. I feel that this will give us a certain degree of home rule, and yet it is not as sudden a step perhaps as is suggested by the majority committee report. Personally, I signed that committee report and I am in favor of strong local government. But there does seem to be considerable objection by other members of this Convention to taking that step all at once at this time, and I offer this amendment, as I feel that it does give additional control within each county or political subdivision by the people of that political subdivision, and yet still does not too much infringe upon the power of the legislature.

TAVARES: I think in principle this amendment is unobjectionable but I think that it needs a little polishing and I suggest a short recess so we can get together and perhaps we can work something out here and save a lot of hot air on the floor.

CHAIRMAN: For the benefit of the clerks and also in line with the suggestion of the committee, we'll have a recess. There is no objection.

(RECESS)

RICHARDS: May I now withdraw a previous amendment that I made and substitute therefor the present amendment that is placed on the desks of the members of the Convention?

> Section 2. That the legislature may create counties, towns, cities and other political subdivisions within the state and provide for the government thereof. The legislature shall provide sources of revenue for the operation of each government so created. The legislature shall not mandate, or increase the mandate of, expenditures from any previously provided sources of revenue of a political subdivision, without providing sufficient additional funds or other sources of revenue therefor, unless the governing body of such political subdivisions shall approve thereof. All officials of a political subdivision shall be appointed or elected locally in such manner as shall be provided by law. Political subdivisions shall have and exercise such powers as shall be conferred under the provisions of general laws.

CHAIRMAN: The amendment to be substituted for the pending amendment to the committee's amendment to Section 2, which is on the desks of all the delegates.

BRYAN: I'll second the motion, if you'll delete the first word of this new amendment.

RICHARDS: I accept the amendment.

CHAIRMAN: The first word "That" will be stricken and capitalize the word "The" so that it will be "The legislature."

APOLIONA: To make our work here a little easier, I would like to ask Delegate Richards, who made the motion to adopt, to offer this entire amendment and that we proceed taking one sentence at a time.

CHAIRMAN: Well, we'll proceed in the manner as amendments are made, Dr. Apoliona, if that's agreeable to you.

APOLIONA: I think it's easier if we take sentence after sentence.

CHAIRMAN: Well, I think it would be too restrictive a ruling. Let's proceed as the amendments come in, Doctor.

TAVARES: A typographical error, I see, has crept in, in spite of care. Under the tenth line, the last word "political subdivisions" should be singular "political subdivision," singular.

CHAIRMAN: Will Delegate Roberts accept the amendment "subdivision" instead of "subdivisions"?

TAVARES: Delegate Richards accepts.

CHAIRMAN: All right, the amendment is accepted. Any further debate on the pending question as submitted by Delegate Richards?

ASHFORD: The second sentence would be most damaging to such places as Molokai, Lanai and the rural districts of the county. I shall therefore vote against it.

PORTEUS: Isn't that the third sentence, the one with respect to mandates, that the delegate has reference to?

ASHFORD: That's right, Mr. Chairman.

CHAIRMAN: The third sentence reading, "All officials of a political subdivision shall be appointed or elected locally in such manner as shall be provided - -"

ASHFORD: No. "The legislature shall not mandate, or increase the mandate of, expenditures from any previously provided source of revenue of a political subdivision, without providing sufficent additional funds or other sources of revenue therefor, unless the governing body of such political subdivision shall approve thereof." That means that if those islands referred to or other rural areas aren't getting their fair share and are being neglected, the legislature cannot provide for them without increasing the revenue, so they'll have to pay again.

PHILLIPS: In speaking against this amendment, I would like to say that our committee has sweated hour after hour, received testimony from every expert official, conducted research into every phase of this subject - -

CHAIRMAN: Delegate Phillips, may I ask, we have twenty minutes to go and I think the Secretary has his bell, and if you could direct your remarks and make them, without feeling you are being gagged, and make them as pithy as possible, I think it would be appreciated by all.

PHILLIPS: That's precisely why I wrote them down, Mr. Chairman, and they consist of no more than thirty-five words, so I'm really taking care of the Convention by assisting, rather than go into a long harangue. If it pleases the Chair, I will continue.

CHAIRMAN: Proceed.

PHILLIPS: As I said, we have had testimony from every expert official, conducted research into every phase of this subject and have come out with its considered and deliberated Proposal No. 26. Now, we have a caucus which has just now, without any of the above work, has just gone in and decided arbitrarily a provision without any inclusion of the Convention's methods. Are we going to let a three minute caucus or a five minute caucus dictate the fate of local government because they remember something or they are proud of their legislature?

CHAIRMAN: Delegate Phillips, I will have to rule your remarks out of order. They are unseemly. You were present in that so-called caucus and I think you should have made those remarks when you were present. I rule those remarks are out of order. Let's confine and make ourselves germane. And address yourself to the pending question.

SHIMAMURA: Mr. Chairman.

CHAIRMAN: Delegate Richards, I mean Roberts please.

ROBERTS: I'll yield. I think Mr. Shimamura hasn't spoken on this subject. I'll wait until he's through.

SHIMAMURA: May I ask the committee that drafted this proposal as to the construction of the words "or increase the mandate of" in the third sentence of this new proposal, "The legislature shall not mandate, or increase the mandate of." Would those words add anything to that sentence?

TAVARES: I'll try to answer that. The intent of that was this. There are now existing laws which presumably will be carried into effect, at least for the time being, which do mandate certain county funds. Now, the burden of that mandate is not to be increased by mandating more than the existing proportions or amounts. That's what it means to increase the mandate. Or in the future suppose the legislature passes a new law, putting a new tax into effect and saying it shall be spent in a certain way by the various counties. After they pass that law, then they can't go back and increase that mandate without consent of the governing body or unless they provide enough additional moneys to cover the increase of the mandate. That is what it is intended to cover.

ROBERTS: I'd like to offer two amendments to this proposal. In the first line, "The legislature may," I'd like to offer an amendment to change the word "may" to "shall." And in line three which reads "within the state and provide," an amendment after the word "and" to read: "within the state and by general law provide for the government thereof." So that the first sentence would read, "The legislature shall create counties, towns, cities and other political subdivisions within the state, and by general law provide for the government thereof."

CHAIRMAN: Delegate Richards, have you heard the amendment?

RICHARDS: A question that comes to my mind. By changing the word "may" to "shall" because it then would practically force, under the other wording here, that we might have a pyramiding of various forms of government, inasmuch as they have to do all of these things. If the desire of the movant is to make sure that the legislature creates a single form of political government in a "political subdivision," the "shall" I agree with, but I'm afraid there will have to be other changes in wording to make it such that it won't be necessary to create all of these various and sundry subdivisions.

CHAIRMAN: Well, you do not accept the amendment as offered by Delegate Roberts?

RICHARDS: Not without further change.

ROBERTS: I'd like to offer the same language of the first part, as was agreeable to the delegates who were preparing this modification on the Sakakihara proposal, so that it would read, "The legislature shall create counties and other political subdivisions within the state and by general law" and so on.

CHAIRMAN: Eliminating the words "city, towns and." There has been no second to these.

CORBETT: I second the motion.

HEEN: I'm responsible for the use of the word "towns" and "cities" because those words appear in the Organic Act, and placing them in this particular section together with the words "and other political subdivisions" will show that they have always been considered as "political subdivisions." In other articles already adopted by this Convention, we use the term "political subdivisions." When we use those words in these other articles, they mean counties, towns and cities.

CHAIRMAN: Are you ready for the question?

HAYES: Point of information. I just want to know whether in the Richards' amendment whether the legislature can - - whether this part of the Sakakihara amendment is included that I think is very important, "No law shall be passed mandating any county, town or municipality to pay any previously accrued claim."

CHAIRMAN: That is not in the proposed pending amendment.

TAVARES: I think that hasn't been included, but I see no objection to including it. But going back to Delegate Roberts' amendment. As I recall the Sakakihara amendment, it said something like this, "The legislature shall create counties and may create towns, cities and other political subdivisions."

CHAIRMAN: That is correct, and that motion lost.

PHILLIPS: Mr. Chairman.

CHAIRMAN: Delegate Roberts, I mean Delegate Phillips.

TAVARES: Mr. Chairman, I'm not through yet.

CHAIRMAN: Pardon me.

TAVARES: May I just add a - -

CHAIRMAN: Will you yield?

PHILLIPS: I yield.

TAVARES: I want to point out that this mandates the legislature then not only to create counties but to create towns and cities and other political subdivisions. What does that mean when you say they shall create other political subdivisions? It doesn't make sense. You should say "may" after these others; maybe we don't want "towns," maybe we only want a "city and county." Why should we compel the legislature to create them all.

ROBERTS: I agree with the previous speaker. What you want is that "The legislature shall create counties, and may create other political subdivisions, within the state by general law." Delete the words "towns, cities" and substitute "and may create other political subdivisions within the state."

TAVARES: I second the motion.

CHAIRMAN: The amendment of Delegate Roberts reads as follows: "The legislature shall create counties, and may create other political subdivisions within the state, and by general law provide for the government thereof." Is that a correct statement, Delegate Roberts? Are you ready for the question?

ASHFORD: No, Mr. Chairman. If you are permitting amendments to this amendment, I wish to offer an amendment.

CHAIRMAN: To the first sentence, Delegate Ashford?

ASHFORD: No, to the third sentence. I wish - -

CHAIRMAN: Well, could we hold that off until we direct ourselves to this first sentence? Is that agreeable?

ASHFORD: In other words, you are permitting amendments to the amendment.

CHAIRMAN: Just to the one sentence.

ASHFORD: Well, if you are permitting it to one sentence you should be willing to permit it to other sentences.

CHAIRMAN: Let's confine - - say that amendments to the pending Richards' amendment shall be considered as being one class and not pyramiding. Is that - - that's agreeable with the committee? Seeing no objections, that's ruled.

BRYAN: I think if the delegate from Molokai has an amendment to the amendment made by Delegate Roberts, her amendment would be in order. If it is to some other part of this proposal, I think it should be held in abeyance until Delegate Roberts' amendment is passed on.

CHAIRMAN: Well, it's agreed there would be no pyramiding and that it will all be considered as one amendment designated Roberts, Ashford or others. Are you ready for the question?

FONG: These words, "general law," now I'm afraid that we are going to have a lot of pilikia over those words. Now, as I understand it, the legislature has reserved to itself the power of appointing - - giving to the governor the power of appointment of police commissioners in the City and County of Honolulu and also within the City of Hilo. Now, does that mean that if we were to give powers to the government or to - - that they can exercise their powers only by general laws, that the legislature will not be able to say that as far as the City and County of Honolulu is concerned, the power of appointment of the commissioners of police shall vest in the governor and the powers in the appointment of chief of police in the county, say Hawaii, will be with the supervisors? Does that mean that?

CORBETT: May I answer that?

CHAIRMAN: Delegate Corbett will answer that.

CORBETT: I think that situation is taken care of in the last sentence of this proposal, "Political subdivisions shall have and exercise such powers as shall be conferred."

FONG: I am referring to that. What is the meaning of that? Does that prohibit the territorial legislature from saying to the City and County of Honolulu, by special law, that your city and county police commissioners will be appointed by the territorial governor and the county police of the County of Hawaii shall be appointed by the Board of Supervisors?

CORBETT: That is the intention. However I - -

CHAIRMAN: Delegate Heen will answer that.

HEEN: I take it that under the language of the last sentence there, the legislature "may by general law" provide that all members of the police commission may be appointed by the governor, subject to the confirmation of the Senate, so long as that general law applies uniformly to all of the political subdivisions. That I take it would be a general law. Likewise, your legislature may provide that in its wisdom the matter of liquor traffic shall be controlled on a statewide basis, so as to provide that all the members of the liquor commission shall be appointed by the governor, subject to the confirmation of the Senate, so long as that general language applies to all of the political subdivisions.

Now, I think this grant of power to the legislature to provide by general laws for the exercise by the political subdivision allows classification so long as those classifications are based on some valid reasons.

FONG: Well, that answers my question. Now, another question on this question of mandates. As I understand it, the City and County Police of Honolulu, the commission has - -

PHILLIPS: Point of order.

CHAIRMAN: State it please, Delegate Phillips.

PHILLIPS: I believe that the Chair has ruled that we would confine our talk to the first sentence, and now we are talking about the third sentence or the second sentence or something like that. I believe that we should confine our talk to the first sentence.

CHAIRMAN: If you will confine it, Delegate Fong, I'd like to put the question.

FONG: This is germane to the issue, Mr. Chairman, it's about - - it still deals with general laws.

CHAIRMAN: Proceed.

FONG: Now, as far as the Police Commission of the City and County of Honolulu is concerned, the legislature has seen fit to mandate certain amounts of money to the legislature - - to the Police Commission and they have provided for the increase of the property tax from $6,000,000 to $8,000,000. Now, as I understand the City and County Police Commission, their budget varies from year to year. Now, when it varies in the next biennium, now how will this law affect that raise of the mandates?

TAVARES: As I read this provision, it will mean that any increase over the previously existing mandates will have to be either provided for by additional funds or they will have to get the consent of the governing body of the City and County in order for it to be effective, to increase the mandate.

FONG: Now, as far as the City and County of Honolulu is concerned we have given them the power of taxing property by increasing the taxation power of $2,000,000. Now, that $2,000,000 certainly is far in excess of what the mandate is to the commission. Now, if we provide for the increase of $2,000,000 and then mandate them only for say $250,000, will we be able to come back next year and say, "We have already increased you to give you the source of revenue by which you can pay for the commission; we want to increase this mandate." Now, does it provide for a situation like that?

TAVARES: I don't think it would. The word "previously" means at any one time. When a new law is passed, whatever existed "previously" then can't be increased without either the legislature providing additional funds to cover that increase or additional sources of revenue to cover that increase, or without the consent of the governing body of the county concerned.

FONG: That seems to be a defect, but it isn't a serious defect at all. I presume the legislature could provide means of circumventing it.

TAVARES: There is one other thing that can be explained later about appointments of police commissions which is covered especially by a sentence later on, which I think we should discuss later.

CHAIRMAN: Is the committee ready to vote on the question?

PHILLIPS: In speaking against the amendment for the first sentence, I'd like to point out to the Convention that the wording, "provide for the government thereof" is in essence exactly what we have in our Organic Act. If the legislature is going to provide for the government of the local subdivisions, then there isn't really any necessity of any of the rest of this. If they provide for the government, then we're taking away from the local subdivisions the American doctrine of self-government, the basic thing that our forefathers laid the whole plan down for. This provides for the government. It's a mandate from above in itself. We are mandating the legislature to determine just exactly how the counties and the cities will conduct their affairs; how they will elect their officials; how they will collect their taxes; how they will plan their cities. This is absolutely against and the antithesis of the American doctrine of self-government.

DOI: In calling for a vote on this, I would like to suggest a division of the question. I think all of us or most of us at least are in favor of the first part of the amendment. There is some dispute as to the last portion, "by general law." Therefore, I suggest that we vote first on the first portion, and then take another vote on the second portion. Otherwise we are defeating the whole thing because we don't like one thing.

CHAIRMAN: That's how we will proceed immediately now. Thank you.

SHIMAMURA: The City and County government of Honolulu was provided for by special legislation, as we all know. Is it the intention of the proponents of this proposed amendment that such special charter shall not be granted by the legislature?

ROBERTS: There is no intention to take away the power of the legislature to set up counties, but when they are set up, they ought to be set up along the same lines with the application of general law. So if we set up another county you ought to provide the same general application of procedures as was adopted by the City and County of Honolulu.

SHIMAMURA: That's just the point. As I understand this wording, "by general law," the legislature is prohibited from providing for the city and county government of Honolulu or any other county by special charter, or any other municipality by special charter. That's the result of this use of the words, "by general law."

CHAIRMAN: Are you ready for the question? The question is this - -

HEEN: Point of information. I'd like to ask Delegate Roberts as to whether he wanted the phrase, "by general law" to apply to both the counties and other political subdivisions?

ROBERTS: May I reply in part by a question to the senator? Would the senator suggest that as to other political subdivisions that the general law be applied; whereas to counties, they may set them up by special charter?

HEEN: Well, that's the way it reads to me. Whether your amendment or suggested amendment, by inserting the term "by general law" in the place where you have inserted that phrase, my question is whether you wanted that phrase, "by general law," you intended that to apply both to counties and other political subdivisions? Is that your intent, Delegate Roberts?

ROBERTS: That was my intention, but I'm willing to be persuaded otherwise by the senator.

HEEN: In other words, counties may be created by special statutes. Did you have that in mind?

ROBERTS: They might be, but they generally aren't; they are generally set up separately.

TAVARES: As I read this, there is nothing to prevent the legislature by special statute originally to set up counties, but after they set them up, then they must provide for the governing thereof by general law. That's the way I read it. Otherwise you would have your counties static now, and never could be changed in the future.

CHAIRMAN: Well, would Delegate Roberts consider perhaps inserting the words "by general law" to be inserted after the word "create" rather than -- so you would have the legislature creating more or less by mandates, and then --

ROBERTS: I think it's in a correct place, and I think that Mr. Tavares' statement of it was correct.

CASTRO: If Delegate Doi would make his suggestion for division of the question in a form of a motion, I would be very happy to second it.

DOI: I so move.

CASTRO: I second the motion.

ARASHIRO: In the proposed proposal, I mean amendment, is that word "that" still there in the first word of the amendment?

CHAIRMAN: That is stricken.

ARASHIRO: Oh, all right. Then, do I understand that we are now voting as has been suggested by Delegate Doi, only on the --

CHAIRMAN: On the first sentence.

PHILLIPS: I would like to further amend the motion to read, after "provide for the," to delete "government thereof" and in its place include "adoption of local charter."

CASTRO: Point of order.

CHAIRMAN: There is no second, Delegate Castro. May I get that amendment first, Delegate Castro? Will you yield for a moment? What is that amendment again?

PHILLIPS: After the word "the," before "government" in the third line, it would read "provide for the adoption of local charters" in lieu of the words "government thereof."

CHAIRMAN: "Provide for the --"

PHILLIPS: "Adoption of local charter."

HOLROYDE: Point of information. How are we going to vote on all these?

CHAIRMAN: That's been seconded. Are you ready for the question?

HOLROYDE: Point of information. What are we going to vote on? You have about three amendments to this one thing.

CHAIRMAN: I'm afraid I'll have to rule that out of order for the time being.

CASTRO: I believe the proper thing to do at the moment is to recess until 1:30. I so move.

SAKAKIHARA: I second the motion.

CHAIRMAN: Is there any objection to it?

NIELSEN: I think we have to rise and report progress and ask leave to sit again.

SAKAKIHARA: No, Chair has the right to put direct motion for recess.

CHAIRMAN: In as—just a moment please, I must make this -- convey this bit of information. I have been called to the Supreme Court at 2 o'clock and perhaps, under the circumstances, it would be better that the committee rise and report progress and ask -- beg leave to meet again.

PORTEUS: If you aren't able to be back at that time, I think you could either ask or designate someone else to take the Chair in the meantime.

CHAIRMAN: All right, if you want. Recess until 1:30.

Afternoon Session

[President Samuel W. King presided in the absence of the Chairman.]

CORBETT: May I make a motion to the effect that on this matter, that we rise and report progress and let the committee work over these many amendments that have been suggested on the floor?

WOOLAWAY: I'll second that motion.

PRESIDENT: Delegate Charles Rice made the same motion, so I'll consider it made by Delegate Rice and seconded by Delegate Corbett. Ready for the question? The motion is that the committee rise, report progress and ask leave to sit again.

KOMETANI: What would be the reason for delaying this matter this afternoon? Why not go right through with it? We'll have to come back to it anyway.

PRESIDENT: The Chair has no conviction except that the time might permit the committee and those who have various suggestions to make to agree on the common set of phrases or sections.

CROSSLEY: Wouldn't it be that we could go back into the Committee of the Whole on Miscellaneous and continue our work, without losing any time?

PRESIDENT: That is what the Chair had in mind. Now the substantial number who prefer otherwise might vote against the motion to rise and report progress.

APOLIONA: Before you put that motion to a vote, will you please ask the chairman of Local Government if we could meet tonight, the entire membership, and meet with the different people who have different amendments so we can have a common solution to present to this Convention as a Committee of the Whole in the morning?

PRESIDENT: Delegate Kauhane, did the chairman of the committee have that in mind, perhaps?

KAUHANE: In that case I'm agreeable to the suggestion that has been made, but in order that the suggestion may be carried out to its fullest extent, I think the Chair should direct the committee to meet and to meet with any others who are willing to sit with the committee and offer proposals or amendments to take care of the proposition of local government.

APOLIONA: That's what I had in mind. If we're going to put over this matter for that reason, then it's in good order.

SAKAKIHARA: I thought that we had an understanding here that we could work on various proposals here pending before the committee, whether it be Miscellaneous Committee proposals or the Local Government; that we have agreed upon working until late in the afternoon and dispense with the night meetings, so as to enable the Committee on Style to work on.

PRESIDENT: Well, the Committee on Style will be having a meeting this evening, and perhaps the assistance of some of their members could be obtained.

SAKAKIHARA: And I believe that if we should go into night sessions, I don't think we'll be able to give the Committee on Style sufficient time to work on the proposals pending before it.

CROSSLEY: I believe that Delegate Sakakihara misunderstood. As I understood, the night meeting was only of the committee itself, Local Government Committee, and such other people as wanted to propose changes. It was not a Committee of the Whole meeting, because it's true the Committee on Style is meeting tonight and has a full schedule.

SAKAKIHARA: I misunderstood; I thought the Committee of the Whole would return here tonight.

ASHFORD: Won't we again be meeting with the same difficulty? That is, there is a profound rift in opinion, and the committee apparently represents one theory and a substantial number of delegates don't go along with that theory. Won't we be faced with exactly the same situation tomorrow?

CORBETT: I believe that the hope is that now that we have the sense of the Committee of the Whole, we will better be able to draft a proposal that would meet with their approval. We really don't want to stick to our own ideas in a pig-headed fashion. We wish to present something that will meet with the approval of the group. We now have some notion of what the group wants, and we hope to expedite matters by this procedure rather than delay them.

PRESIDENT: The Chair understood that Delegate Kauhane suggested that together with the motion to rise, report progress and sit again would be instructions to the Committee on Local Government to review their own proposal and the amendments that had been offered by various delegates with the view of perhaps bringing forth a proposal tomorrow that would represent the consensus of the Committee of the Whole.

ASHFORD: One of the difficulties with that was that we were limited to amendments; that is, we were considering the first sentence of a given amendment, and there were very grievous complaints about the third sentence, to which no amendments had yet been presented.

APOLIONA: And further on that motion, that you will direct Committee on Local Government to meet tonight.

PRESIDENT: The Chair didn't get that point. The Committee of the Whole will direct the Committee on Local Government to reconsider its proposal in the various amendments and be prepared tomorrow to make some recommendations.

KOMETANI: I feel like the delegate from Molokai. After all, the rest of the amendments that have been proposed on the floor have not been given serious consideration by the Committee of the Whole. If it has already been done and discussed, then the Committee on Local Government can go into session this evening and have the rest of the amendment discussed; but until otherwise, I think we'll come back - - revert back to the original place when we come back from the committee meeting.

PRESIDENT: Let the Chair put the question. Those who feel we could go on this afternoon, vote against the motion. The motion is to rise, report progress and ask permission to sit again, with instruction to the Committee on Local Government to reconsider its own proposal and all of the amendments that have been offered thereto. Those in favor of that motion, please say "aye." Those opposed. The Chair feels the noes have it. Anyone desiring a different vote? The Chair will decide the noes have it. The Committee of the Whole will proceed to consider the - -

SAKAKIHARA: I so move that the Committee of the Whole proceed with the deliberation on Committee Proposal No. 26, and amendments offered thereto.

SMITH: I'll second the motion.

PRESIDENT: It's been moved and seconded that the Committee of the Whole proceed with the consideration of the committee report from Local Government and the amendments pending thereto. All in favor say "aye."

Now, the Chair was acting really as chairman of the Committee of the Whole from the beginning of this issue substituting for Delegate Arthur Trask, in the absence of his brother and his own absence. Delegate Charles Rice, would you like to take the Chair of the Committee of the Whole? Delegate Arthur Trask said he would be back as soon as he can get clear of the court. The Chair will appoint Delegate Crossley temporarily. Delegate Arthur Trask is coming back from court and will take over the Chair, if you will just substitute for him in his absence. As a matter of fact, the Chair had appointed Delegate James Trask, but for some reason or other he has not returned on time. We are still in Committee of the Whole and Delegate Crossley will act as chairman pro tem.

Chairman: RANDOLPH CROSSLEY

CHAIRMAN: Will the Committee of the Whole please come to order. Can the Clerk tell me where we were?

HEEN: What matter are we on, if I may ask, Mr. Acting Chairman? Is this on local government?

CHAIRMAN: This is on local government. I'm only sitting temporarily here for the Honorable Senior Trask.

HEEN: Are you an amended chairman?

CHAIRMAN: I'm an amended chairman three times over.

BRYAN: As I understood it, when we recessed the motion before the house was an amendment which was originally one, broken then into two parts. The amendment of the proposal came out of the caucus this morning and that was to put the word "shall" in the place of "may" in the first line. That was the first part of that amendment. The second part of the amendment was to add other words in the third line, "by general law," and also I think an amendment, "may create other political subdivisions," in the second line. But that amendment was broken down and the one that was before the house when we recessed was for the change in the third word in the first line from "may" to "shall."

CHAIRMAN: And as I understand it, we are working on the Richards amendment. Is that correct?

CASTRO: I seconded a motion for the division of the question. My understanding was that the first half was the statement, which is an amended statement, "The legislature shall create counties, and may create political subdivisions within the state." I believe that was what was contemplated by the division of the question.

CHAIRMAN: Well, the Chair might state that we have since then - - Delegate Roberts amended the language in the first part by deleting the words "towns, cities," so that it would read, "The legislature shall create counties and other political subdivisions within the state, and by general law provide for the government thereof."

ROBERTS: In order to keep the problem simple, I will withdraw the words, "by general law," so that we can vote on the entire sentence without having to divide the question. So the delegates would be voting on the proposal of the first sentence to read, "The legislature shall create counties, and may create other political subdivisions within the state, and provide for the government thereof."

CHAIRMAN: Is there a second to that? That appears to be a new motion.

CORBETT: I'll second that motion.

CHAIRMAN: It has been moved and seconded that we vote on the following language: "The legislature shall create counties, and may create other political subdivisions within the state, and by law provide for the government thereof."

PHILLIPS: I believe that I had made a motion to amend the amendment, and that was seconded; so there is a motion to amend the amendment on the floor.

CHAIRMAN: I might say, that doesn't show on the record that I have here.

TAVARES: To simplify matters may we not vote only on those - - only on the first two parts without prejudice to Mr. Phillips and Mr. Roberts later adding further amendments to the rest of the sentence?

CHAIRMAN: I'm informed by the Clerk that the amendment offered by Mr. Phillips was ruled out of order. I wasn't in the Chair, so I can't say as to why, and it does not appear at this time. I think that if the gentleman will suspend for a moment, we can get this out of the way without prejudice to what amendments you would like to make.
Delegate Phillips still has the floor.

TAVARES: Point of information.

CHAIRMAN: State the point of information.

TAVARES: I think that there is a little error about what the Chair stated to be the amendment. As I understand it, the amendment which is to be voted on now according to the agreement of Delegate Roberts was to leave out the words, "by general law," or "by law" before the word "provide" in the last line of that first sentence.

CHAIRMAN: I believe that's the way the Chair read it, "within the state."

TAVARES: "And provide for the government thereof."

CHAIRMAN: "And provide for the government thereof."

TAVARES: Yes, without prejudice to a further amendment later of the latter part of the sentence.

CHAIRMAN: Correct.

PHILLIPS: That's what I was worried about, that if we vote on this sentence here up to the third line, then that's approved, well that will have already been accepted. Then there will be no chance to amend it then.

CHAIRMAN: No, the Chair would rule that this is only tentative and this would not foreclose you from making further amendments.

APOLIONA: Your committee is in agreement with amendments made by Dr. Roberts changing the word "may" to "shall" and deleting the words "town, cities" and in lieu of, insert "and may create other political subdivisions."

CHAIRMAN: I want to be absolutely certain, Delegate Phillips, that you feel that your rights are preserved in this. Are you satisfied?

PHILLIPS: If we are only voting down to the end of the second line there will be no difficulty.

CHAIRMAN: That's right. All in favor of the amendment say "aye." Opposed? Carried.

PHILLIPS: In regard to the third line, as I had already made the motion, and I'm sure it's understood by this time, that after - - from the word "provide," I would include that "by general law," but I particularly wanted in there "provide for the" instead of "government thereof," "for the adoption of charters," "of local charters." Now I would like to support that if it's - - that is the amendment. I move - -

CHAIRMAN: Will you state the amendment now and where you would - -

PHILLIPS: The amendment would be that in lieu of the word "government thereof," these words would be substituted instead, "adoption of local charters." That's at the end of the third line.

CHAIRMAN: "Adoption of local charters"?

PHILLIPS: Yes, sir, and it would read, "provide for the adoption of local charters."

CHAIRMAN: Is there a second to that?

CORBETT: I'll second that.

CHAIRMAN: All right. Would you like to speak on that now, Delegate Phillips?

PHILLIPS: I would like to speak very, very briefly on it. I would like to say this, that if the legislature provides the government, that is, provides who is to be elected; how the monies will be collected; how the city is to be planned; how the individual local unit is to be planned; then you really in truth have no measure of self-government. If you permit those in the local subdivisions to prepare a charter, to create a commission which will draw up a charter, and to set forth in that charter the things that will be of the local unit, then you are really providing a measure of self-government for the local unit. This is a tested, proven fundamental principle, as I said before, and I hate to reiterate, principle or doctrine of American government, that the individuals who constitute the government will not have somebody hundreds of miles away telling them and dictating to them what to do by special legislation. Now, if they are permitted to prepare their charter, the legislature will determine the means by which the charter or the so-called local constitution is created; how it is drawn up; how it will be sent out to the local people to be ratified, much in the same manner that we are preparing this Constitution here. Then we will have a measure of local self-government. To put in there to have a higher authority provide government for somebody in a lower unit is absolutely anti-American and I plead with the Convention not to let such a thing go through.

CHAIRMAN: Any further discussion?

APOLIONA: The committee disagrees with the last amendment as provided - - as stated by the Delegate Phillips. Maybe Delegate Phillips doesn't know what he is trying to do. You are trying to make us go into the revision of an entire financial and tax structure, if you ask for the passage of this amendment, and I ask this Convention to vote this amendment down.

PHILLIPS: I rise to a point of personal privilege.

CHAIRMAN: State the point of personal privilege.

PHILLIPS: It was said that I had advocated a financial structure. At no time had I specified that at all, nor do I intend that to mean that in the local unit drawing up a charter. That does not imply that at all. The manner in which the sovereign power, the State, will delegate down to that local unit how taxes will be collected has nothing to do with it drawing up a charter, nor does it have any bearing on whether that individual local unit will put into that local constitution anything about the taxing power. So I would like to say that I did not imply that we would change the financial structure.

CHAIRMAN: I believe that the delegates understand your position on that.

BRYAN: I would like to ask Delegate Phillips a question. Does that provide for the "adoption of the charter thereof"?

CHAIRMAN: Would you address your question to the Chair, please?

BRYAN: Yes, Mr. Chairman. Is that correct?

CHAIRMAN: That's correct.

BRYAN: In that case, would the movant like to substitute the word "government" in place of "charter"? Counties don't necessarily have a charter.

CHAIRMAN: Delegate Phillips, do you care to answer?

PHILLIPS: I say, "provide for the adoption of a local charter" simply by the means that they would show how that "local charter" will be adopted, but I would go along thoroughly with Delegate Bryan in saying that if you were to place "charter" in there, you would take away the mechanics, I mean, that the legislature could specify the mechanics of how that charter would - -

CHAIRMAN: As the Chair understood the question, it was the substitution of the word "government" for "charter." Is that correct?

BRYAN: For the "adoption of the government," instead of "adoption of the charter."

CHAIRMAN: Would you accept the amendment?

PHILLIPS: I would accept that amendment.

CHAIRMAN: Then your language would read, "adoption of local government" instead of "adoption of local charter."

PHILLIPS: You are twisting it around. It would be, "provide for the " - - Now, you couldn't say "provide for the charter" because that's what a charter is. A charter is a constitution - -

CHAIRMAN: Would you state the amendment then, please?

PHILLIPS: I believe it's being amended. I believe I was asked to amend my amendment, and I was asked to place the word, "charter" - -

CHAIRMAN: Would you repeat your amendment for me, please?

PHILLIPS: I'd be delighted to. It says, "provide for the adoption of a local charter," in lieu of the words "government thereof."

CHAIRMAN: That's the way the Chair understood it. As I understood the amendment, it was to substitute "government" for "charter." Is that correct? Therefore, it would read, "provide for the adoption of a local government." I believe the Chair was correct in stating that the amendment offered by Mr. Bryan would make your amendment read, "provide for the adoption of a local government."

PHILLIPS: I would like to speak about that and to show why it should not be "government" instead of "charter."

CHAIRMAN: Well, the question was asked - -

BRYAN: Point of order. That wasn't a motion. I just asked him if he wanted to consider it because we - -

CHAIRMAN: The question that was asked, would you accept the amendment? Would you accept the word or not? That's all I want at this particular point.

PHILLIPS: I'll accept the wording.

MAU: Then it makes it unintelligible. It provides for the adoption of the - - As I understand now, the movant has accepted the suggested wording which would mean, "provide for the adoption of the local government."

CHAIRMAN: "Or a local government."

MAU: "Provides for the adoption of the local government."

CHAIRMAN: "Of a local government."

MAU: "Of a local government." That doesn't make sense at all.

CHAIRMAN: Are you ready for the question? Question is on the - -

MAU: I suggest that the movant do not accept the suggested amendment. I will - -

CHAIRMAN: Delegate Shimamura hasn't spoken on this yet.

SHIMAMURA: May I have that entire sentence read please, with the amendment in it?

CHAIRMAN: The sentence would then read, "The legislature shall create counties, and may create other political subdivisions within the State, and provide for the adoption of a local government."

PHILLIPS: I would like to withdraw my acceptance of that because I believe it would change the substance of it materially. However, it would be better than the way it was before, but I would like to withdraw my acceptance of that and have it read as I had previously wanted to amend it.

CHAIRMAN: Fine, then the amendment reads now, "provide for the adoption of a local charter." Are you ready for the question? Roll call's been called for. Does anyone want roll call? No roll call. Ayes and noes. All those in favor of the amendment will say "aye." Opposed. The amendment is lost.

APOLIONA: I now move for the tentative adoption of the first sentence as amended.

CHAIRMAN: Is there a second?

HOLROYDE: Second the motion.

CHAIRMAN: It has been moved and seconded for the tentative adoption of that sentence we have all heard quite a few times. All in favor say "aye." Opposed. Carried. Next sentence.

ROBERTS: I have a sentence which I'd like to insert before the next sentence, sentence 1A, to read as follows: "Each political subdivision shall have power to frame and adopt a charter for its own self-government within such limits and under such procedures as may be prescribed by law." If I have a second to that, I'd like to speak for it.

WOOLAWAY: Could we have that read once again before he speaks on it?

CHAIRMAN: As I understood the motion, it's "Each political subdivision shall have power to frame and adopt a charter for its own self-government within such limits and under such procedure as may be prescribed by law." Is that correct, Delegate Roberts?

ROBERTS: That's correct.

CHAIRMAN: It's been seconded. Any discussion? Delegate Roberts.

ROBERTS: I'd like to speak in support of this sentence. I believe that it does provide some basic acceptance of the concept of local self-government, but also recognizes that we have in the State here certain operations which are statewide in character and which have functioned well and effectively in the past. This gives the political subdivision the opportunity to frame and adopt a charter for its own self-government, but recognizes that the legislature in establishing the subdivision can prescribe and set the limits and the procedures under which such local charter may be established. It's not full local self-government or home rule, but it provides an opportunity for the development of as much self-government as is possible as our State develops. I, therefore, urge that the delegates support this proposal.

CHAIRMAN: Anyone else wish to talk on this? Are you ready for the question?

DELEGATE: Question.

PHILLIPS: I call for a roll call vote.

CHAIRMAN: Anyone wishing a roll call will hold up their hands. That's not enough, so it will be ayes and noes. All those - -

SHIMAMURA: May I have that read once more, please?

CHAIRMAN: The motion made was for a new sentence to immediately follow the one we just adopted and to be known as 1A tentatively, and reads as follows: "Each political subdivision shall have power to frame and adopt a charter for its own self-government within such limits and under such procedure as may be prescribed by law." All those in favor say "aye." Opposed. Carried. A new sentence has been adopted.

The next sentence. Are you ready - -

PHILLIPS: Now I'm worried about the wording of that last one because it is in direct opposition to what was stated just above that. Now, if the State is to provide for the government of the local unit, then on the next - - the next sentence why we permit them to provide for their own government, I'd like to know how we are going to bring those two together. Would they conflict so?

CHAIRMAN: Well, it would seem to the Chair that "as prescribed by law," is the thing that makes the second sentence work with the first and I don't believe that there is much confusion on that point. However, the sentence has passed, and we are now concerned with the next line and I would like to move on to it. Is there a motion to adopt the next sentence?

SHIMAMURA: I so move.

RICHARDS: Second the motion.

CHAIRMAN: It has been moved and seconded that we adopt the next sentence. Mine reads, "The legislature shall provide sources of revenue for the operation of such government so created." Is that correct? Ready for the question?

C. RICE: We've got a new one in there that Delegate Roberts put in. Which is the one that the revenue is going to be provided?

CHAIRMAN: How does yours read now?

C. RICE: It says, "The legislature shall provide sources of revenue for the operation of such government so created."

CHAIRMAN: Well, that's the way my copy reads. Now, is there a correction on that?

C. RICE: We had two at beginning.

TAVARES: I think the original Richards' amendment says "each" not "such."

CHAIRMAN: Well, the one I'm reading says "such." Has that been changed to "each"?

RICHARDS: It was my purpose to have "each government so created."

CHAIRMAN: Will you change "such" to "each." Then it will read, "The legislature shall provide sources of revenue for the operation of each government so created." Is that correct?

C. RICE: Now, who is going to say if the legislature provides enough revenue? They are supposed to give enough, aren't they? It seems to me the word "enough" belongs in there. "Sufficient"? I don't think this means very much. The legislature can ham-string one of these local governments.

CHAIRMAN: As I read this sentence, it says "The legislature shall provide sources of revenue." That has nothing to do with how much. They have simply provided a source. What is your pleasure? Anyone else?

FONG: What I want to know is this, suppose the legislature says, "Well, this is your source of revenue," and the budget of the City and County of Honolulu exceeds the amount which can be realized from that source of revenue. Now is the legislature bound to find additional sources of revenue? I think this is a little ambiguous the way it's written.

CHAIRMAN: Delegate Tavares, can you answer that?

TAVARES: As I read Delegate Roberts' sentence here as it was inserted, it says, "Each political subdivision shall have power to frame and adopt a charter for its own self-government within such limits as may be prescribed by law." I think that "within such limits" would allow the legislature to set limits to revenue.

NIELSEN: I'd like to amend the sentence, placing the word "sufficient" after the word "revenue," right near the end of the line, so it will read, "The legislature shall provide sources of revenue sufficient for the operation of each government so created."

CHAIRMAN: Is there a second to that?

TAVARES: Was that seconded?

CHAIRMAN: No. Are you ready for the question on the sentence? All those in favor say "aye."

FONG: Have we got an explanation on that?

CHAIRMAN: There was no explanation offered. Delegate Richards, do you want to answer that?

RICHARDS: I think that the intent is definitely there. "The legislature shall provide sources of revenue for the operation of each government." If the legislature - - it should be assumed that if the government can't operate, the legislature is not fulfilling its duty. It doesn't mean that the government can go hog-wild, though, in what it seems to think is necessary for operation. I think that that's a matter where the legislature, by using common sense, that it theoretically is going to have - - will be able to take care of that.

FONG: We find many times that the City and County comes to the legislature and says they haven't got enough revenue, and the legislature says, "Why, this is your source of revenue and you operate within that budget." Now, does this mean that the legislature is mandated to provide sufficient revenue? Now, if the answer is negative; if the answer is that the legislature shall only say where your revenue is coming from and not say that it must be sufficient, then that's another thing.

DOI: Will Delegate Fong be satisfied should we amend that sentence by deleting the words, "sources of," so that it will read, "The legislature shall provide revenue for the operation of each government."

FONG: I think it remains about the same.

CHAIRMAN: It would be my own opinion that you'd want "sources" rather than leaving it out, if the Chair can state an opinion.

C. RICE: At present they allow the county governments to have the real property tax, yet the legislature sets the limits which - - how far they can go. The City and County of Honolulu wants $8,000,000 now. The County of Kauai is $600,000. I just want to know whether they have to take off all those limits, or anything; or if the county wants to be a spendthrift the legislature will have to provide the funds for them.

CHAIRMAN: Well, it seems to the Chair that this sentence would say that the same controls that now exist would be continued.

ASHFORD: It seems to me that that is surplusage. As a matter of fact, the sentence we just adopted seems to me to be surplusage because when you say, "under such procedures" - - "within such limits, and under such procedures as may be prescribed by law," you make it purely a legis-

lative grant, and this again is purely a legislative grant. It seems to me that it doesn't direct the legislature as to just what shall be done. It still leaves it to the discretion of the legislature, and therefore, in my opinion it's unnecessary.

APOLIONA: If the movant will ask for a deletion of this -- to amend this motion to delete this sentence, because if you read our first sentence, the last line, "provide for the government thereof," then your State legislature must provide for the operation of your government that has been created. Doesn't it seem so?

CHAIRMAN: Of whom are you asking the question? The Chair?

APOLIONA: Chair to ask Delegate Richards.

CHAIRMAN: Delegate Richards, would you like to answer that?

RICHARDS: Well, I see no particular objection if the first sentence stands. In providing the government, part of what is necessary to provide is income for that government. So I think the sentence could very well be deleted.

CHAIRMAN: Would someone like to move to delete that sentence?

FONG: I so move that that sentence be deleted.

NIELSEN: I'll second the motion.

CHAIRMAN: It's been moved and seconded that the sentence be deleted. All those in favor say "aye." Opposed. Sentence deleted.

The next sentence reads, "The legislature shall not mandate, or increase the mandates, of expenditures from any previously provided sources of revenue of political subdivision, without providing sufficient additional funds or other sources of revenue therefor, unless the governing body of such political subdivision shall approve thereof."

ASHFORD: I move to substitute for that sentence --

CHAIRMAN: To keep our parliamentary procedure in order, would you move for the adoption of the sentence first and then we'll begin amendments.

HOLROYDE: I move for the adoption.

CHAIRMAN: Seconded.

ASHFORD: I move to substitute for that sentence the following, which was discussed at some length on Saturday, I think it was. "No law shall be passed mandating any political subdivision to pay any previously accrued claim."

SAKAKIHARA: Second it.

CHAIRMAN: Delegate Ashford, would you read that again, and slower so that we'll be sure and all be able to put it down?

ASHFORD: "No law shall be passed mandating any political subdivision to pay any previously accrued claim."

HAYES: I second that motion.

CHAIRMAN: It's been moved and seconded that this amended sentence be in place of the one on the copy before you. Are you ready for the question?

RICHARDS: I am in a peculiar position. I do not speak against the inclusion of the amendment, but I do speak against the deleting of the present sentence. I feel that it's perfectly proper to include that as an amendment to the section, but I think that there are two different points involved, and I feel that we can act on that as an amendment whether this other sentence be deleted or not, or changed.

ASHFORD: The reason for moving for the deletion is that it is a major concern with every rural area that the power of the legislature to mandate should not be destroyed. If this sentence as proposed by Delegate Richards remains in, the legislature can -- all the revenues from the urban -- I mean, the rural areas could be diverted to the benefit of where the large part of the population is, and if the legislature mandates a just share to those rural areas, then the taxation increases and the rural areas have to pay twice.

RICHARDS: I understand that there is a definite difference of opinion regarding the inclusion or deletion of this particular sentence; but I would appreciate it if the delegate from Molokai would make a motion to that effect, and that we do not have this other point of mandating for past claims confused with this other issue.

CHAIRMAN: I think the delegate from Molokai has stated her position quite clearly.

SHIMAMURA: I don't see why this aversion against mandating expenditure of funds should be limited to "previously accrued claims." Why don't we say, "to pay any claims." May I have that explained, if there's a special reason, from the proponent of that amendment?

ASHFORD: I thought that had been explained at some length on Saturday. Unfortunately, in a more or less remote past, the legislature has undertaken to require counties or the City and County to pay claims for which perhaps there was some moral obligation, but which were investigated and rejected by the counties. That is a true over-riding and most unfair as applied to indebtednesses already created. That is, the indebtednesses were not created but were imposed. In other words, what in criminal law would be known as an ex post facto law, and in civil law as a retroactive law, and I think that that is most unfair.

SHIMAMURA: In other words, as I understand this amendment, the legislature may still mandate the payment of claims unaccrued. There may be an existing contract, and the payment of money, the claim, has not accrued under such a contract, and the legislature may mandate the payment of such unaccrued claims although it cannot mandate previously accrued claims.

TAVARES: As a matter of practical feasibility, the legislature is hardly likely to do such a thing. But I can imagine the legislature passing a law authorizing condemnation of property by a city and saying the city shall pay for these claims when they are incurred. That would be perfectly all right. And if you say they shan't mandate, then you are tying up the legislature to even tell the City and County when they give them extra power, so that when they exercise it they must pay for the damage they do. That's why we have not brought in future claims, Mr. Chairman.

CHAIRMAN: Could the Chair ask the last speaker, are you speaking in answer to the question or in favor of the amendment by Delegate Ashford or opposed to it?

TAVARES: I'm only explaining this section. I have no objection to it going into this amendment, either with or without the clause. I think if the other clause stays in, it possibly covers the new one that's been proposed. But I don't object to that clause going in.

CHAIRMAN: The Chair would like to point out that Miss Ashford's -- Delegate Ashford's amendment is in lieu of the present sentence on this -- dealing with this subject.

FONG: In the last legislative session, the legislature mandated the City and County to float the sum of $2,000,000 in bonds for the use of the Parks Board. Now, they mandated the City and County to have that money for the Parks Board. Now, under this provision of the statute, nothing was provided where the source of revenue would come from. That bond will be liquidated probably in twenty, twenty-five years. Now, under those circumstances, what would we do with a

provision like this? The Territory certainly couldn't set up the source of revenue for $2,000,000 worth of bonds to be paid during a period of say 25 years.

RICHARDS: I believe that is answered in the last part of the sentence. The legislature could perfectly well go ahead with authorizing the county to sell the bonds -- City and County to sell the bonds for the benefit of the Parks Board but without providing the necessary revenues to the paying off of those bonds, if the governing body of such political subdivisions shall approve thereof. So that still permits the county, the board of supervisors and the mayor to go ahead with it on the authorization of the legislature, but it does provide them with a veto power if the legislature does not provide revenue—not necessarily to the $2,000,000 at one time but to take care of the gradual liquidation of the bond.

CHAIRMAN: Ready for the question? Question is the adoption of Delegate Ashford's amendment. All those in favor will say "aye." Opposed, "no." Seems to be evenly divided. All those in favor of the amendment -- Delegate Ashford's amendment which would substitute for this sentence, will please raise your hand. No. Ayes have it. The amendment we just adopted will substitute for the entire sentence.

The next sentence begins, "All officials of a political subdivision shall be appointed or elected locally in such manner as shall be provided by law."

APOLIONA: I move for adoption of this sentence.

CHAIRMAN: Is there a second?

DELEGATE: I'll second it.

BRYAN: I move for the deletion of it.

SAKAKIHARA: I second it.

RICHARDS: I will second the original motion.

CHAIRMAN: The original motion was already seconded. There is a motion now to delete. Is there a second to delete?

SAKAKIHARA: I second that motion to delete.

BRYAN: May I speak to the motion? I think that this would not be necessary in view of the amendment -- the additional sentence by Dr. Roberts which provides for a charter or method of self-government, and I believe that those things would be covered in that manner.

PHILLIPS: I disagree with the delegate, with Delegate Bryan, because as it says here, "under such procedures as may be provided" -- "such limits and under such procedures as may be provided by law." Now, if that's the case, then it would be up to the legislature to prevent the local unit from specifying, that is, either elect or select its own officials, and the legislature could appoint or take over the selection of local officials completely. So I don't believe that unless you expressly stated, as has been brought out before, it will not be carried into effect.

ASHFORD: A question. When you provide that, "All officials of a political subdivision shall be appointed locally in such manner as may be provided by law," does the appointment by the governor of a police commission of local residence comply with such provision?

WOOLAWAY: I would just like to say that as it reads here, I'd say, no.

CHAIRMAN: Any one else wish to answer this? Chairman of the committee? I was recognizing the committee here to see if they have any answer to this.

KAUHANE: We are trying to deliberate here whether we should accept the motion which was made or Delegate Roberts' theory wherein the local government shall have the power to frame and adopt its own charter and set up its own form of self-government. If that is the intent of Delegate Roberts' amendment, then we certainly don't need this sentence in, could be deleted, which will be taken care of by the charter and the government in setting up its form of local government.

CORBETT: Am I correct in assuming that it is not necessary for every political subdivision to form its own charter? That is the interpretation I put on it. They may if they want to but they don't have to and if they don't, then this clause, this sentence here, will apply. If they do not adopt their own charter, then they must be in a position to have all their officials appointed and elected, or elected locally. That is my interpretation and my attempt to answer the delegate from Molokai.

APOLIONA: Just some information that I wanted to get from Delegate Roberts. In the first sentence that we adopted, "the legislature shall create counties, and may create other political subdivisions within the State, and provide for the government thereof," now in 2A that section refers to the political subdivisions that "may" be created. Isn't that your thinking, Dr. Roberts, that each political subdivision that "may" be created by the legislature may—I mean, shall have the power to frame and adopt a charter of its own?

CHAIRMAN: Are you asking a question?

APOLIONA: I'm asking that question of Dr. Roberts.

CHAIRMAN: Delegate Roberts, would you like to answer that?

ROBERTS: I'll try. It seems to me that the sentence, "All officials of a political subdivision shall be appointed or elected locally in such manner as shall be provided by law," is identical in language with the proposal of the Organic Act with the exception of the word "locally." Under the Organic Act the provision is made that the "appointment or election, as the case may be, shall be in such manner as provided by law." This merely emphasizes the fact that in the setting up of these political subdivisions the appointment or election of the officers shall be locally; that's the only advantage of retaining it. Actually, of course, it could be covered in the previous section, but it throws it out a little more in this sentence.

BRYAN: I'd like to speak in favor of my proposal to delete again. In any event, whether it refers to the ones who "shall" be created, such as the counties, or those that "may" be created, it's either covered by the sentence 1A or by the last part of the sentence number 1 which says, "and provide for the government thereof." I think it's entirely unnecessary.

FONG: By inserting the word "locally," it gives you various meanings. Now, does it mean that the official must be locally appointed? Now, if he's elected, he is elected locally. Now, if he is appointed he may be appointed by the mayor and the board of supervisors, or the chairman and the board, or appointed by the governor. Now, does it mean that the governor can't appoint him? When you say he must be "locally" appointed, does that mean that the board of supervisors must appoint him? Now, what is the meaning of this? It has several meanings.

TAVARES: I'm afraid I'm to blame for that. If it's that ambiguous to a brother lawyer, then I must take the blame. Of course, the original wording of that was by the county, or city and county, and the word "locally" was put in there so as to apply to all political subdivisions. If it's not clear, it should be clarified. I'm not now speaking in favor of leaving that sentence in, I am only speaking as to the explanation of it. In discussing the matter in a group during recess, there was controversy about that, so we simply

agreed on the form and agreed to leave it to the floor to decide whether we'd have it in or out. But the intent of it was to require that, as to those officials of a political subdivision, they should be appointed or elected either by the electors of the subdivision or by the local government of the subdivision. That was the intention of that sentence, and if that is not desired by a majority of the delegates, then they should vote to delete the sentence.

CHAIRMAN: The question now is for the deletion of the sentence. Are you ready for the question?

FONG: In other words, Mr. Tavares, that means that if this is passed, the intent of the committee was to keep the governor out of the appointment. Is that right?

TAVARES: That is correct unless of course - - for instance the police, unless the Territory or the State, could avoid that situation by making all of the police commissions purely state commissions and taking over their support and expenses, in which case then it wouldn't be a county organization any more.

FONG: Now, your liquor commission, that is supposed to be a county - - on a county level? Isn't it?

TAVARES: Yes, those are what I would call "hybrid" boards where they are partially appointed by the governor and yet considered as county boards. They are somewhat of an unusual type of board and I call them "hybrids" for lack of a better term.

FONG: You say that if we raise it to the dignity of a territorial board, then the governor could appoint?

TAVARES: Well, I wouldn't say "dignity." I think they both have dignity, but I say that if you made them purely territorial boards by law, then they would not come under this provision. As it now stands, I think either by construction or by the wording of the chapters themselves on these particular commissions, they have been held to be county boards or commissions, even though the appointments may be made by the governor.

FONG: Can you see anyway by which the police commission could be raised to the territorial level?

TAVARES: I think so. I think that the legislature could provide that they were State boards and take over the expense of operation thereof, and in that case they would not be county boards.

FONG: And the police then would be under the jurisdiction of the Territory rather than the counties?

TAVARES: That's right, under that situation.

CHAIRMAN: May I ask the speakers to continue to direct their questions to the Chair. It's the only way on the tape recording that we can identify who is asking questions, who is answering.

FONG: I am through.

CHAIRMAN: Thank you, Delegate Fong.

MAU: What has transpired just a second ago indicates the concern of those who are interested in local government. Speaking on the police commission and the liquor commission, with certain of the senators sitting in this Convention excepted, the senators in the territorial legislature have been quite jealous of their power of confirming these appointments. It seems to me that is the only reason why those two commissions, for instance, are not in the hands completely of the local government.

But on this motion to delete, the second sentence which was added to this amendment to Proposal 26 would give the authority to the legislature to say how these county or city officials shall be selected. There is no question in my mind that unless this sentence remains in, the legislature will have complete control over the selection of city or county officials. It also seems to me that the last clause in the first sentence would provide for that, if this sentence before us now is deleted. So I think that if we are to give some measure of self-government to the counties and other local governments which may be created by the legislature, that this sentence ought to remain in.

C. RICE: The liquor commission is a territorial board. The employee of the liquor commission has to go through the territorial civil service. Their cars are all T.H. The only time they come in contact with the county is turning over the surplus. After they pay their expenses the surplus goes to the county and the county keeps the books. Police commission is entirely a local board. Everything is run by the county except the appointments. I think the legislature could make the liquor commission a territorial, and keep it territorial if they wanted to. I've been on the board of the police commission. I don't see that it makes much difference whether locally we appoint the chief of police - - I mean, the governor or the chairman of the board of supervisors. Originally, you all remember, it was made by - - the appointment was made by the governor to keep it out of politics, but if you want to throw it into politics, throw it over to the mayor and the chairman of the board of supervisors. Then why have a police commission? Let's elect our sheriff again.

CHAIRMAN: Any further question?

ASHFORD: I'm not necessarily speaking in opposition to this sentence, but if it is to do what it is intended to do, I think it should be rephrased. The governor has one aspect of divinity. He is everywhere within the State, and if he should go, for instance, to Maui and there make his appointments, he would be appointing locally.

CORBETT: I just wanted to say in answer to the delegate from Kauai that we have heard a very good many times on the floor that we mistrust the legislators. Now, it seems to me we're passing the buck on down and there is a good deal of mistrust of the members of the board of supervisors. If we are able to give the members of the board at the local level a little authority, a little responsibility, we will, undoubtedly, attract men of as high a caliber as those who now run for the legislature.

SAKAKIHARA: I thought that when the government employees were all placed under civil service law with job security, that that was to accomplish attracting more competent and able government employees. It seems that, from the line of argument advanced here by the proponents of the retention of this sentence, saying one thing from what was proposed when the civil service law was enacted into law.

CHAIRMAN: The Chair would like to state that we have in the audience today—inasmuch as we are in the Committee of the Whole and in informal session—Mr. Lane W. Lancaster, visiting professor from the University of Nebraska, who is teaching this summer at the University of Hawaii, state and local government. I wonder if Mr. Lancaster would be good enough to stand.

The Chair will declare a five minute recess so that we can find out how to solve this problem.

(RECESS)

CHAIRMAN: The pending motion before us is the deletion of this sentence. Are you ready for the question?

TAVARES: I don't think all of the members are back.

CHAIRMAN: I am going to wait just about 30 seconds.

TAVARES: I see several delegates. May the Sergeant at Arms notify the delegates, Mr. Chairman?

CHAIRMAN: The question is the deletion of the sentence, "All officials of a political subdivision shall be appointed or elected locally in such manner as shall be provided by the law." All those in favor of the deletion will say "aye." Opposed. The Chair is in doubt. All those in favor will raise their right hand, all those in favor of deletion. Opposed. Deletion carries. The move to delete carried. That sentence is now deleted.

We're now at the last sentence of this section, "Political subdivisions shall have and exercise such powers as shall be conferred under the provisions of general laws."

WOOLAWAY: I move for tentative adoption of that sentence.

CORBETT: I second that motion.

CHAIRMAN: It's been moved and seconded.

SAKAKIHARA: I move to delete that sentence.

FONG: Second the motion.

CHAIRMAN: It's been moved and seconded that this sentence be deleted. Are you ready for the question?

CORBETT: This last sentence leaves the power with the legislature to keep such things as the police department, the water board and so forth under their jurisdiction. In other words, the political subdivisions shall only have such powers as are conferred under the provisions of the general laws, which we have already discussed in the first sentence.

CHAIRMAN: Any other discussion? Delegate Mau, did you wish to be recognized? Are you ready for the question? The question is the deletion of that last sentence. All those in favor say "aye." Opposed. The motion failed. Now, the question is the adoption of the last sentence. All in favor say "aye." Opposed. Ayes have it.

The question now is the adoption of this section, as amended. Is there a motion?

ROBERTS: I move that we adopt this section, as amended.

SAKAKIHARA: Before that motion is adopted, I think in all fairness to the members of this committee that that should be reduced to writing for the information of the members so we could vote intelligently on the amended section.

CHAIRMAN: Delegate Sakakihara, I'd like to point out that we have adopted this sentence by sentence. I believe that - -

SAKAKIHARA: It was tentatively agreed, wasn't it?

CHAIRMAN: Yes, tentatively agreed. Now, we are adopting this thing tentatively until the whole thing - -

CORBETT: Point of order. I believe there was no second. I would like to second the motion.

CHAIRMAN: Second the motion to what?

CORBETT: To adopt this as amended.

SAKAKIHARA: I renew my motion. While this section was tentatively agreed, the motion now before the Committee of the Whole is to adopt the section as amended.

CHAIRMAN: That's correct.

SAKAKIHARA: It's only fair, therefore, to have these amendments which were amended from time to time to be written up so that we can vote intelligently.

CHAIRMAN: What is your motion, Delegate Sakakihara?

SAKAKIHARA: Therefore, I move that the amended section be written out and distributed to the members of the Committee of the Whole so that we may vote intelligently thereon.

HOLROYDE: I'd like to second that. We amended and put in other sections. I'd like to see how it all fits together now.

WIRTZ: I'd like to third that.

CHAIRMAN: It's been moved, seconded and thirded that this all be printed so that all the delegates can consider the final section before voting on it.

ROBERTS: I'd like to withdraw the motion to tentatively adopt this section to give the delegates an opportunity to see the draft as agreed to, even though we did consider it carefully in detail. Some of the delegates feel that they are not yet able to see the whole thing. I think in all fairness we should do so.

CHAIRMAN: If the motion to defer and have it printed carries, why that will automatically do that. All those in favor say "aye." Opposed. Carried.

APOLIONA: I now move that we rise and report progress and beg leave to meet - - sit again, rather.

CHAIRMAN: May the Chair inquire whether or not we have any unfinished sections to go on with?

ROBERTS: There are two more sections. I think they are relatively brief, and I think that there need not be too much discussion on them on the floor and we can adopt them and then come back to Section 2.

CHAIRMAN: While this is'nt my job, I have the feeling that we should continue on.

PORTEUS: Since the clerks may be the only ones that have this section as it has been amended, wouldn't a very short recess be in order, in order that they may send it to the room for printing?

CHAIRMAN: No objection, so ordered.

(RECESS)

Chairman: ARTHUR K. TRASK

CROSSLEY: I move for the adoption of Section 3.

CHAIRMAN: Any second?

DELEGATE: I second that motion.

CHAIRMAN: Section 3 to be tentatively adopted, of Committee Proposal No. 26. Question called for.

BRYAN: I would either like to speak against the adoption or move the deletion. I'll speak against the adoption. I think it would be the clearer way to do it. I think that this is covered pretty well by the outline of what the subdivisions may and may not do, and how they shall be set up in Section 2, which we don't have before us but which I think most of the delegates will recall. Therefore, I don't think we need Section 3.

FONG: Second the motion.

CHAIRMAN: Any further debate? Ready for the question Tentative adoption of Section 3.

TAVARES: I should like it clearly understood that if the motion to adopt fails or if this section is deleted, that that does not mean that the taxing power is not reserved to the State. It means - - it still means that under the other general powers, the State by general law can reserve the power of taxation to the State. That is correct, is it not?

CHAIRMAN: You are referring to what section of the taxation and finance proposal?

TAVARES: No, as I understand it, an opponent spoke against adopting Section 3 on the ground that it was already

covered by previously tentatively approved provisions, with which I agree, but I should like the record to show that that does not mean that the taxing power cannot be reserved to the State by the legislature under the other general provisions that have been tentatively approved. I think it can, and therefore, if Section 3 is not adopted, that power still remains in the legislature to reserve the taxing power to the State or to the legislature.

SAKAKIHARA: I rise to a point of information. Wasn't this power vested in the State according to the proposal submitted to this Convention by the Committee on Taxation and Finance?

CHAIRMAN: That is correct. In a general sense, it shall not be contracted away, and so forth.

TAVARES: I agree that the taxing power is reserved to the legislature.

SAKAKIHARA: Therefore, I'm in accord with the statement of the gentleman from the fifth district, Delegate Bryan. I therefore move to delete Section 3 from this proposal.

CORBETT: I believe the committee report stated that if this matter was sufficiently taken care of elsewhere in the Constitution, we would be perfectly willing to have it deleted from this particular proposal. However we did wish to express the committee's views and to insure understanding of the fact that we did not intend in any way to have the taxing power taken over by the units of local government.

CHAIRMAN: For the sake of the record, will Delegate Crossley read that provision in the taxation and finance proposal with reference to the particular matter at hand?

CROSSLEY: And I might say this is covered in the committee report.

CHAIRMAN: You withdraw your prior motion?

CROSSLEY: No, we have to do both of these in order to do it. I now move that this be - - I second the motion that this be deleted, and that would be the prior motion at this time.

ROBERTS: As I recall the section dealing with taxation and finance, that preserved the power of - - the taxing power in the State. It is not the intent, as I gather, of the Committee on Local Government to withdraw from that power, but this proposal does state, however, that the taxing power of the State stays there, but the State may delegate to the political subdivision some of those powers. It would seem to me to be a very valuable section to recognize that some of those powers of the State which reside in the State may be delegated to local subdivisions by actions of the legislature.

SAKAKIHARA: Speaking to the motion, if you'll read the first sentence of the amendment, "The legislature shall create counties, and may create other political subdivisions, within the State and provide for the government thereof." They may in that bill, when the government is set up, delegate certain taxing powers, if they see fit to.

CHAIRMAN: Are you ready for the question? The question is the adoption tentatively of Section 3. Pardon me. The deletion - -

KING: Before we vote on this—the motion now is to delete Section 3—I'd like to speak in opposition to that motion. Section 3 does do a little more than reserve the taxing power in the State, which is already reserved. I want to support the remarks made by Delegate Roberts that it offers an authority for the State to delegate such part of the statutory power it may see fit to do so to the counties. So it seems to me that this section has some value in order to be retained. I'm opposed to the motion to delete.

TAVARES: May I ask the last speaker a question? Is it not true that under Section 56 of the Organic Act, the legislature has allowed the counties to levy some license taxes or fees, and has also allowed them, of course, to receive the benefits of the real property tax?

KING: In reply to that question, I think it is true; but the levying of real property tax is still reserved to the territory under the Organic Act. All the counties do is submit a budget. The territorial treasurer and the tax assessor determine the rate and determine the assessment, but I don't want to get involved in a technical argument of that sort. There is a certain amount of duplication in this section, yet it serves a useful purpose and I see no occasion to delete it.

HEEN: I am in favor of deleting this section. I believe it's unnecessary. Without it, the legislature can do exactly what it says it might do here, and I will support the motion to delete this section upon the ground that it is unnecessary.

CHAIRMAN: Question? Are you ready for the question? The question is the deletion of Section 3. "The taxing power shall be reserved to the State except so much thereof as may be delegated by the legislature to the political subdivisions, and the legislature shall have the power to apportion state revenues among the several political subdivisions." Those in favor say "aye." Those opposed, "no." I'm inclined to think the noes have it. Show of hands. Those in favor of deleting Section 3, please raise your right hand. Twenty. Those opposed to the deletion. Twenty-five. Those not voting. The motion is lost, so the section is adopted tentatively, Section 3. Those in favor of formal adoption tentatively of Section 3 say "aye." Those opposed, "no." Ayes have it, except for two noes.

KAUHANE: I move that Section 4 - -

CHAIRMAN: Considering Section 4.

KAUHANE: - - Section 4 be tentatively agreed to.

CROSSLEY: I move that Section 4 tentatively be adopted.

DELEGATE: Second that motion.

CHAIRMAN: Ready for the question? Those in favor of Section 4 reading as follows: "This article shall not limit the power of the legislature to enact laws of state-wide concern," vote "aye." Opposed, "no." Ayes have it. Carried.

The committee's attention is now called to Section 2, as amended, for consideration.

CROSSLEY: We deferred action on Section 2 until we could have the section mimeographed for us; we now have these. I therefore move for the adoption of Section 2, as amended.

> Section 2. The legislature shall create counties, and may create other political subdivisions within the state and provide for the government thereof. Each political subdivision shall have power to frame and adopt a charter for its own self-government within such limits and under such procedures as may be prescribed by law. No law shall be passed mandating any political subdivision to pay any previously accrued claim. Political subdivisions shall have and exercise such powers as shall be conferred under the provisions of general laws.

ROBERTS: Second.

CHAIRMAN: There is a second to the motion. Any consideration?

SHIMAMURA: In my humble opinion, the second sentence is inconsistent with the fourth and also with a portion of the first sentence. By that I mean that under second - - the second sentence says that any "political subdivision shall

have the power to frame and adopt a charter for its own self-government," and then in the fourth sentence we say that the "Political subdivisions shall have . . . powers as shall be conferred under . . . general laws." The charter as we all can see would provide for the government of that particular subdivision and would provide for its functions and its powers, and it would not be by general laws but by special charter, by special legislation. Therefore those two sentences are inconsistent.

PORTEUS: I had an impression similar to that at first. However, it would be quite possible for the legislature to first create the counties and provide some sort of framework of government. In the meantime, before the political subdivisions actually as authorized get together to frame their form of government, you give them certain powers. You give them the power to handle zoning and the power to handle such matters as the senator from Hawaii and other things. So that I think that under this, that if the county was authorized to have a convention or some such matter as that, the convention could actually determine that they would have a board of managers with a city manager type of plan, rather than having an elective mayor, I believe, if the legislature in authorizing them would give them enough power so that they could determine to have one or have the other. On the other hand, if the legislature were to say that they were to set up a city form of government with an elective mayor and elective board of supervisors, of course those would be the limitations under which they would operate.

ASHFORD: Would it not be possible under this provision for the legislature to do what the Congress of the United States, we hope, is going to do. I understand there is a provision of H.R. 49. They are requiring our Constitution to be approved by the Senate first before we get statehood. And would it not be possible for the legislature, for instance, to say that the island of Lanai should become a county and should set up its own form of government, which should first be submitted to the legislature for its approval before it became a county. I think that with the smaller subdivisions which wish to become counties that would be very easily done and very satisfactorily done, and that is where that section would have real value.

CHAIRMAN: Delegate Shimamura, are you satisfied with the answer of Delegate Ashford?

SHIMAMURA: I can see the situation where a charter may provide for the bare frame of a government, that is, the mayor and council plan or the city manager plan; but the usual charters have included definite powers and functions to be given the governing authority of that particular state -- particular subdivision, political subdivision, and that is the reason I feel that there is an inconsistency between the second sentence and the fourth. If the fourth sentence were to be amended to read, "shall be conferred under the provisions of laws," instead of "general laws," I think there won't be any inconsistency.

CHAIRMAN: Well, Delegate Heen made a rather fine statement in the morning session in the committee room here, the caucus that you referred to, and I would like very much if he would repeat that sage advice with respect to this provision.

HEEN: I don't recall what it was in reference to, at the present time.

CHAIRMAN: You had referred to the vast study that would be involved in setting up the various intricate situations that confront the people here, and in our limited time here, to frame a broad constitutional provision would probably be wise, and you made some statement in favor of this—not this specific situation but your general attitude towards this provision—which would answer in some way the question posed by Delegate Shimamura.

HEEN: What I stated was this. I am opposed at this time to have written into the Constitution matters of detail with reference to the setting up of counties and other political subdivisions. I say this, that there are not many delegates here who are well enough informed as to how these counties and local units perform their functions, and how they are set up. Therefore, it would seem to me that we should use at this time some general language whereby the legislature may, after a more careful study, provide for the setting up of these various local subdivisions, counties, cities, and so on, and I am somewhat in favor of some general language along the lines set forth in this last proposed amendment.

CHAIRMAN: Section 2, specifically?

HEEN: Section 2, as amended.

TAVARES: Just to add further to the confusion, I would like to point out that we must bear in mind that we have one county, the County of Kalawao, which is called a county by law, but which I don't think we want to be covered by this. Now, that's just another one of the little problems that has to be worked out when you adopt a new provision. Now, I think maybe we can handle it by making it very clear in our Committee of the Whole report that the County of Kalawao is not a true county in the true sense of the word, and therefore is not covered by this provision giving them authority to frame and adopt a charter, unless that is what we mean. But there is another point that ought to be clarified, and before we adopt this section, I think it should be clarified. Now, if it is the sense of this Convention that the people of the County of Kalawao, instead of being governed by the Board of Health, as they are now, should have a right to adopt and frame their own charter, let's make that clear. But otherwise let's make it clear to the contrary that they are not covered at all.

CHAIRMAN: Are you ready for the question? Question?

KING: I don't see there is any conflict. That sentence ends, "and under such procedures as may be prescribed by law," so that it seems to me there will be no conflict in regard to Kalawao or any other county.

HEEN: It would seem to me that there should be a comma after the word, "subdivision."

CHAIRMAN: On what line?

HEEN: So that the term --

CHAIRMAN: On what line, please?

HEEN: Second line. So that the term "within the State and provide for the government thereof" shall apply not only to the counties which shall be created, but also to those other political subdivisions which may be created.

CHAIRMAN: So the sole amendment suggested is a comma after the word, "subdivisions" at the end of the second line?

HEEN: That's correct.

TAVARES: I'll second that motion to amend.

CHAIRMAN: Will the movant accept that? The movant accepts the amendment so that no vote is necessary.

TAVARES: That there may be no mistake, since I apparently provoked no thought from this Convention on Kalawao I move that before we vote on this, that it is the sense of this Convention that the County of Kalawao is not covered by this section as to counties.

CROSSLEY: I would second that motion.

CHAIRMAN: Motion made and seconded that it is the sense of this Convention that the County of Kalawao is not

included in the term used herein for the suggested Section 2 with respect to counties, that it is under the jurisdiction of the Board of Health, and for all purposes shall continue to be considered as such. You ready for the question?

HEEN: In connection with that, the legislature might later on study instead of calling Kalawao a county, might call it a village, and to provide for the government of that village. So I don't think there is any problem there at all.

CHAIRMAN: Well, to obviate any -- the question, are you ready for the question? Those in favor say "aye." Those opposed, "no." The ayes have it, so the sense of the committee will be inserted in the Committee of the Whole report.

We are on Section 2, as amended, with a comma after the word "subdivision" at the end of the second line. Are you ready for the question? All of those in favor of adopting tentatively Section 2 as submitted, the amended section of Delegate Richards, say "aye." Those opposed, "no." Unanimously the ayes have it.

HEEN: In view of the fact that this --

CHAIRMAN: Pardon me, will you yield a moment? Notice from Delegate Mau that it is not a unanimous adoption of Section 2, as declared by the Chair. The Chair is in error.

HEEN: In view of the fact that this last section which has just been adopted, I take it tentatively, Section 1 should be deleted. I move that it be deleted.

ROBERTS: I move we reconsider our previous action on Section 1.

CHAIRMAN: Is that matter -- there has been no second to it.

APOLIONA: I will second Delegate Roberts' motion to reconsider Section 1.

CHAIRMAN: Thank you, Delegate Apoliona.

ASHFORD: I thought it was agreed on Saturday that we didn't have to reconsider because we are just adopting tentatively.

HEEN: That is correct.

CHAIRMAN: That is correct. So the motion is for the deletion of --

BRYAN: I'll second that motion.

CHAIRMAN: -- of Section 1, namely, "The legislature shall create political subdivisions within the State and the method of establishing the same." Are you ready for the question? All those in favor of the deletion of this section as read say "aye." Those opposed say "no." Unanimously adopted. So the same is deleted. So that leaves standing this new Section 2. Section 3 has been adopted. Section 4 has been adopted.

APOLIONA: I move that this committee rise, report progress and beg leave -- ask leave to sit again.

ASHFORD: Would it not -- I think we are almost there, but would it not be better first to renumber the remaining sections and adopt them all, and then rise, report progress and beg leave to sit again to consider the report.

CHAIRMAN: Thank you. It's been brought to my attention by Delegate Crossley that there has been a Section 1A that has been tentatively adopted, and 1A reads as follows --

BRYAN: That was a sentence --

ROBERTS: That's covered in Section 2, so-called Section 2. I move that we tentatively adopt the proposed section on local government, as amended.

BRYAN: I second the motion.

CHAIRMAN: Specifically, that would be Section 2, as amended?

ROBERTS: Section 2, as amended which actually covers Section 1 and 2, and Section 1A, and Section 3 and 4. We can renumber it therefore, so Section 2 being Section 1, Section 3 being Section 2, and Section 4 being Section 3.

CROSSLEY: And that the Chair be instructed to draw up a report for final adoption by this committee.

BRYAN: I would second that motion.

CHAIRMAN: Yes, but there is a suggestion of Delegate Ashford that we should adopt this -- these entire sections as a whole. All of those in favor of the motion as made by Delegate Ashford and seconded say "aye." Those opposed. Unanimously adopted. Sections 2, 3, 4 to be renumbered 1, 2 and 3.

BRYAN: I move that we rise, report progress and ask leave to sit again.

CHAIRMAN: Second it?

APOLIONA: I second that motion.

CHAIRMAN: All those in favor say "aye."

BRYAN: I think that motion should include the fact that the various chairmen should prepare a report.

CHAIRMAN: I accept the amendment. Those in favor say --

CROSSLEY: There is only one chairman in this committee, believe me. It's you.

CHAIRMAN: Thank you for the kokua.

DELEGATE: I rise to a point of order. There has been no second to that.

SHIMAMURA: I second the motion.

CHAIRMAN: The motion is that this Committee of the Whole on Local Government will rise and report progress and that the chairman will make a report that this entire section has been adopted. Those in favor say "aye." Opposed, "no."

JULY 7, 1950 • Morning Session

CHAIRMAN: Committee of the Whole will come to order, please. Anyone desiring to move for a recess at this time to look over the report? Recess subject to the call of the Chair.

(RECESS)

CHAIRMAN: We are considering Committee of the Whole report and the proposal as amended by the Committee of the Whole.

H. RICE: I move that the committee rise and report recommending the passage of -- that Committee Proposal No. 26 pass second reading.

DELEGATE: I second that motion.

SAKAKIHARA: I have an amendment. After the first sentence and commencing with the words, "Each political subdivision," strike out the remainder thereof, of Section 1.

CHAIRMAN: Section 1. What line, please?

SAKAKIHARA: Third line, commencing with the words, "Each political."

CHAIRMAN: Is there any second to Delegate Sakakihara's determined motion? Hearing none - -

COCKETT: I second it.

CHAIRMAN: You heard the motion; the motion of Delegate Sakakihara was seconded by Delegate Cockett from Maui.

ROBERTS: This article has been adopted by the Committee of the Whole as amended. We can't amend it without reconsidering our previous action.

CHAIRMAN: Altogether correct. Any debate on the motion made by Delegate Rice?

DELEGATE: I move for the previous question.

ROBERTS: The motion is out of order.

CHAIRMAN: Sakakihara's motion is declared out of order Delegate Roberts. The pending question and motion here made by Delegate Rice is that we recommend - - the committee rise, recommend to the Convention the adoption of - - pass on second reading Committee Proposal No. 26 as amended. Question. All those in favor say "aye." Opposed Unanimously carried.

Debates in Committee of the Whole on

HEALTH AND PUBLIC WELFARE

(Article VIII)

Chairman: KATSUMI KOMETANI

MAY 3, 1950 • Afternoon Session

CHAIRMAN: The delegates will have permission to remove their coats and smoke, if they wish to. The Chair will ask Dr. Larsen, chairman of the Committee on Health and Welfare, to come forward and discuss with you his committee proposals.

LARSEN: I also want to mention the fact that these are not conclusions. The committee felt that they want your thinking, your collective thinking, with the hope that you'll raise questions. You possibly will give us some new slants or you might have certain objections that might - - you might wish to be deleted. I might say that the last word in the "Fellow Delegates" message is "deliberations" rather than "deletions," if you would change that.

I'll rapidly go through this, and, of course, part of our thinking here is that perhaps, as the committee chairman suggested, that this is an experiment to try to get us to move a little faster perhaps. We, all of us, I think, are conscious of the fact that time is getting short, and we want to try every way possible to speed up without hurting the deliberations and try to get off our desks as soon as possible certain things that most of us agree on.

As a headline to this, we are suggesting a change. Rather than "Health and Public Welfare," we are suggesting "Health and General Welfare" as the name of the article, the question being public welfare has gotten to have a connotation that sometimes is not too good.

I'll read the first section, which has to do with public health, and then we'll raise any questions, objections or additions. After considerable debate, we got down to this. "A. Legislation for the protection and promotion of the public health, including preventive measures shall be made by the State in the interests of its inhabitants." Are there any questions on wording, or additions or the thought involved?

KANEMARU: I was just wondering whether the phrase "including preventive measures" could be left out due to the fact that "promotion" - - "protection and promotion" might cover all of that phrase there. Or does it have to be?

LARSEN: The thought is - - I might say there was considerable discussion on that. So much of the present public health department has to do with innoculations to prevent disease, sanitation, and things of that type that although they might be stretched into promotion of public health, we believe that perhaps "prevention" does cover a little broader field than either "protection" or "promotion." The objection, I think, is a good one, but after considerable discussion we thought perhaps it made it a little clearer with only the addition of three words. Any other objections to that one?

AKAU: I am wondering if we couldn't start off with a statement about the legislature since somehow, this has to be mandated. In other words, "The legislature shall provide by law for the maintenance and efficiency of a State Board of Health." While I don't disagree with the statement that we have here, I'm wondering if it will be clarified a little bit more to say that the legislature shall provide for a State Board of Health.

LARSEN: Did you want me answer it?

CHAIRMAN: Yes, Dr. Larsen.

LARSEN: We have two or three propositions before us, one in which it's suggested that a State Board of Health be formed and that the head of the Board of Health shall be appointed by the governor and so on. I would feel very distinctly that that is limited. At the present time we have a State Board of Health. It might be that within the next ten years there will be a different way of protecting and developing and promoting health. Although at the present time the detail is a State Board of Health, I can conceive of the possibility of a different organization, and then we would have it frozen. I think we all agree that the one thing we are trying to protect from is producing frozen legislation here that will prevent the evolvement toward something perhaps bigger and better.

ASHFORD: Dr. Larsen, is it not true that everything that is referred to - - that some legislation on all the subjects referred to in this article except the preservation of natural beauty and sightliness and good order, have already been done by our legislature under the provision of the Organic Act that reads as follows: "That the legislative power of the Territory shall extend to all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States locally applicable."

LARSEN: I think that's true. I mean, we could perhaps end all our deliberations right here and say, let's just adopt, as we already have adopted, the Constitution of the United States; and as we know, for 150 years we've evolved very well under that. As I see this, the State legislature is trying to define a little more detail for our local use and perhaps —as will in some of these other sections—perhaps are trying to beat a pathway with the hope that further legislation will enlarge the development of the protection and the rehabilitation of people that isn't, I believe, or it certainly wasn't recognized at the time of the writing of the first Constitution. And, therefore, as I understand it, my thinking is that our State Constitution should enlarge a little bit without hampering or without freezing our concept of the duties of the State to their people. Now, I say this because as I read over these many other constitutions, that has been the general custom of the state constitutions. What we're trying to do is limit it as to the number of words and still carry this broad concept of present-day ideas regarding the care of our people. Does that answer - -

ASHFORD: I think not. My point was that under the legislative - - the grant of legislative powers in the Organic Act, all these various activities have been already cared for in a greater or less degree by the legislature, and that they do not need specific mention. That in itself might be a freezing operation.

LARSEN: Well, we happen to disagree here. I feel it isn't freezing; and of course, since the Organic Act was written, I think as we discuss some of these other sections, some of these concepts have developed even since our own Organic Act was put into use. I think it's more, as I read

and interpret these, that we are trying to define the philosophy of the care of the State for its members who are unable to care for themselves. However, that's one point of view. I would be very happy to hear any others.

FUKUSHIMA: As I read this section here and the following section, it is a mandate upon the legislature. I'd like to ask the chairman of the Public Health Committee -- Public Welfare Committee, how does the committee propose to enforce the mandate?

LARSEN: We feel it's not a mandate for detail; it's a mandate for the philosophy of care such as already, it's true, has been included through our Organic Act and through our various actions, but getting into our new Constitution that same concept. As far as how to put it into operation, it seems to me we leave it wide-open for future legislation, even to the question of the other delegates here, even to mentioning that a State Board of Health shall be appointed. We even leave that to the discretion and judgment of the legislature. As I see this, this is our concept. How it's to be done and the detail of its being done I think properly should be left to legislation.

FUKUSHIMA: Then isn't it the delegate's contention, the delegate from Molokai, that the Organic Act provides what you have provided here in five sections in two lines? Wouldn't that suffice?

LARSEN: I don't agree, of course. I believe that we need to define it. With our present concept of health, I believe we need to define it a little more than it's defined in the Organic Act. And, of course, as you realize, this will take the place of the Organic Act.

MIZUHA: I would like to ask the chairman of the committee --

CHAIRMAN: Will you please use your mike?

MIZUHA: Miss Ashford said that I was a subject of a good cartoon holding the mike, so I would like to refrain from holding the mike.

I would like to ask the chairman of this committee for some information or explanation of the language here in the first section as to whether the concept or philosophy expressed in this section will include appropriations by our State -- proposed State legislature for the welfare and the taking care of unemployed people?

LARSEN: If by taking care of unemployed you mean by giving them jobs, I would say "no." If the unemployed are sick and unable to care for themselves, they become dependents who shall be cared for by the State.

MIZUHA: Then the phrase "protection and promotion of public health" would mean the taking care of all people who are unemployed and who have no source of income?

LARSEN: No, I think Section A is more general than that. Section A doesn't cover that at all. It covers the whole present organization of the Board of Health. If you will take Section E, I think we can answer your question for the moment. "The legislature shall promote preventive measures, treatment and care of dependents, delinquents, criminals and psychopathic personalities, when necessary, in the interests of social welfare." If your unemployed became a problem of social welfare, I think legislation -- proper legislation could be passed to care for them.

MIZUHA: Then it is my understanding that the legislature must make a determination under these sections as to when the unemployed will become dependents.

LARSEN: I think so, and I think that's as it should be.

MIZUHA: Thank you.

SMITH: Looking over these sections I cannot help but feel that we would be adding a lot of things to our Constitution which, when you put it in your Constitution, right now might be perfectly O.K., but in the future they might be subject to some change. And always believing -- having faith in the people, I subscribe to a general provision in the Constitution giving the legislature full power to act for the government, the good order of the State, the health, safety and general welfare of its inhabitants, leaving the rest up to legislature.

NIELSEN: I'd like to know if the first sentence there, "Legislation for the protection and promotion of the public health," if any discussion was had regarding socialized medicine being covered by that part of it.

LARSEN: There was considerable discussion. Of course, I want to emphasize the fact that these are not conclusions. These are -- Just what we are getting is what we wanted. We wanted to see how the other delegates felt on these various problems. As far as socialized medicine is concerned, the nearest approach was perhaps—I think the committee members will allow me to say this—was regarding subsidization of all hospitals. But some of the committee members felt that was moving too far into specific fields and overruled me completely. The question I might ask the delegate from Hawaii is—the thing I'd be interested in—what his definition of socialized medicine is?

NIELSEN: Well, I meant the often-termed "government taking over the medical care of all the people." And that's the way I would read that first part of that if the -- it would mean that the State is assuming the responsibility for public health, and necessary legislation will be enacted so that everyone will be taken care of on cough, colds, etc.

LARSEN: I would answer that as a -- I feel that the gentleman is trying to needle me here, but I think I can answer that. Our usual concept of public health I think is so clear and, just as we've listened to many of these lawyers certain terms [that] were used have been used so much and have been clarified so many times that there won't be much danger of interpretation. I do have some clauses perhaps later on where you might well raise that question, but I think this one which is headed "Public Health" -- Public health has gotten to have a connotation of the things that our Department of Public Health is now doing. It has to do with such things as protecting labor from, say, lead poisoning, protecting labor from abnormal dust or abnormal injuries of all types, abnormal hazards. That's all included in our present concept of public health. That is an evolution, and I think from what I hear here, it might be well to leave some of these clauses simply to clarify some of these things that in our present day of thinking there has been considerable disturbance. I feel very distinctly that in our law courts or any other place that would not include our usual concept of socialized medicine, if by that we mean that type of medicine that's now going on in England.

SHIMAMURA: I asked what was the reason for the special use of the words "public health," instead of the general word "health."

LARSEN: For much of the reason that I just gave, that "public health" in this terminology has gotten to mean the public health department, which has to do with sanitation, food control, protection of labor, preventive innoculations, tuberculosis, anti-tuberculosis work, etc. That is usually accepted as going under public health. Why we wanted to change it in our headline was that at the present time in the philosophy of most states, we have gotten beyond just public health, we have gotten beyond that thinking even since our Organic Act was developed. Therefore, our first sentence does cover completely, I think, the present concepts of

public health, but doesn't take the concepts in some of these other sections on health and general welfare.

SHIMAMURA: The reason I raised the point is this. I think you are unduly restricting, under this particular clause and section, the province of the legislature. If you made it a general term and said, for example, "The legislation for the protection and promotion of the health of the inhabitants of the state shall be provided by the State," you would have a much more general term there, and I think the province of the legislature under this section -- if you're going to have a special section away from the general clause on Health, Safety and Morals, I think your purpose will be better served.

LARSEN: My answer to that would be, if we did that we'd come right down to the delegate from Hawaii's angle, and there it could be interpreted as meaning exactly what socialization in England is like. Now, if we got into that debate, why I'm afraid I would be a little partisan.

CASTRO: Dr. Larsen, I have a question about the language, the construction. The term, "legislation shall be made by the State," I doubt whether that is quite the correct or the whole thought. I presume that you have examined the section on public health in the Model State Constitution, and if I may just read it to indicate the phraseology that I would myself prefer: "Provision . . . shall be made by the State and by such of its civil divisions and in such manner and by such means as the legislature shall from time to time determine." Now, I realize that that's a little bit more verbose than the way you have it, but I think it would carry out the sense of the philosophy a little further; and that is that the provisions shall be made by the State. While the legislature shall have the right to pass laws, there will be certain civil divisions of the government that from time to time without legislation would have the right to act. Was that discussed in committee?

LARSEN: Yes, the section you mentioned was discussed. We discussed also this "from time to time." We felt that is inferred here, that of course it would have to be "from time to time" as laws are made. We felt it left it wider open to leave it out. "The provision shall be made," I think there was purely a question of styling and the question that -- Some of us felt this covered the thought just as well with fewer words. Now there again, I think, that again would be taken care of by the Committee on Style. I think that answers you?

HOLROYDE: I don't go back to this subject with the idea of needling Dr. Larsen on it, because I have a great horror of socialized medicine, as it is termed in England. I would like to ask if in your committee discussions whether you discussed at all any possible restrictions in the Constitution as far as socialized medicine is concerned. I admit this is undoubtedly legislative but I'm rather interested in that program.

LARSEN: I think I can answer that honestly. Much as though I might interpret the comment, you must have put some restriction there. I'm sure my other hard-working committee members, even if I wanted to do it, they wouldn't let me.

CHAIRMAN: If there is no other discussion, will the chairman move on to Section B?

A. TRASK: Dr. Larsen, I was just trying to sum up in my own mind, having interpreted in your remarks to mean that this section on public health, "legislation for the protection and promotion of public health, including preventive measures, shall be made by the State in the interest of its inhabitants," is to be interpreted in our present thinking, as you say, not to include but to exclude so-called socialized medicine which is the type of legislation that is now pending before the Federal Congress. Now, my question is, does this paragraph include or exclude the pending federal legislation which has been labeled as socialized medicine by the Medical Association?

LARSEN: I would say definitely it doesn't exclude it nor does it include it. I think the question brought from Hawaii was that, could public health -- promotion of public health be interpreted as allowing a legislature the freedom to evolve along that path. If some lawyers interpret that to mean that, then it could. It's wide enough so that in no way would it inhibit, for instance, the Taft or the Wagner Act or any one of these others that are up for legislation. The Taft Act is one right now.

A. TRASK: Well in the interest, therefore, of making it certain that perhaps this will not exlude the pending federal legislation, without going across the Atlantic Ocean to England, wouldn't your committee consider this so-called amendment to read as follows: "Legislation for," strike out the words "the protection and promotion of," so it would read, "Legislation for the public health"; strike the next clause "including preventive measures," so that you read on "shall be made"; and strike out the words "by the State," read on "in the interests of"; strike out "its inhabitants" and insert the words "the people." So that you would have the amendment to read as follows: "Legislation for the public health shall be made in the interests of the people." To me, it would, therefore, have determinative for legislation the two key words, namely, "interests of the people" shall determine legislation for public health. It would seem to me that would be a broader approach, a more permissive elastic thing for the legislature to be gauged by rather than be confronted with refinements as to the word "protection," which seems somewhat inhibitory; the word "promotion," also inhibitory; the word "inclusive" [sic] to perhaps be a little elastic but still limited by the word "preventive."

LARSEN: May I answer him? I think this is bringing out exactly what we wanted, and I think it's something we are going to have to face with every committee. It's a question, how far are we going to define these? Are we going to limit it to the barest few words? I think the gentleman is correct that if we left "legislation for the public health in the interests of its inhabitants," perhaps making the correction that Mr. Castro made, [it] would cover this. I'll certainly present it to the committee in its meeting tomorrow.

KAWAHARA: May I ask the chairman a question here? In the first part of the provision for health and general welfare, you have the statements, "health and general welfare." In Section A, you used the word "public health," but in the provisions of the Model State Constitution as mentioned by the delegate from the fifth district, "The protection and promotion of the health of the inhabitants of the state are matters of public concern." In this Model State Constitution, the premise is first, that the health of the inhabitants is a matter of public concern. In this proposed section here, the wording "public health" is used first. I wonder if the intention there in Section A to include the word "public health," and exclude the word "public health" in the heading of that section, the intention was -- What was the intention?

LARSEN: The intention was that we were going beyond the usual concept of just public health. Public health, as I said again, covers the public health department. We feel the concept of State control has gone beyond that. Therefore, the heading we wanted was "Health and general welfare" because some of these other sections are included in these other concepts. And I believe that that is understood as we go through. Personally, I believe that a number one necessity of State control is this present concept of public health. I think that should come first because that has been accepted for 150 years.

KAWAHARA: Does it mean that it will exclude other provisions other than public health?

LARSEN: You mean the State? What did you have in mind there?

KAWAHARA: Well, in reference to the provisions or the statement in the Model State Constitution where it says, "The protection and promotion of the health of the inhabitants," I think the word "public health" and the "health of the individual inhabitants," I think you have there a distinction.

LARSEN: May I say this. Now we are between two fires and again I think it's bringing out certain things that we are going to have to argue, and I think the sooner we get it clarified the better perhaps. On one hand, I hear we should cut down these definitions. On the other hand, we want these long, verbose things from the so-called Model. I say "so-called" because remember, the Model Constitution has never been a constitution. It's an academic concept of a certain group of men who have not been in public office and have not been running a state. I believe we should recognize that this Model Constitution is not one we should cover because certainly it is verbose.

However, I think your meaning is the question of whether the total health of the people is protected, and I think as we go down through the sections, if when we get to the last section, you still feel as you do, I would like to hear your comment on it.

BRYAN: I'd like to ask Dr. Larsen if his committee felt that this would leave the door open for the legislature to decide whether or not socialized medicine as such could be provided. That's the same question that you got in a different way. Did you intend here that the legislature could, if they so desired, pass a law?

LARSEN: I don't feel there is anything here, as I said before, that would inhibit them. I was sure my committee members wouldn't allow it even if I had the intention. My feeling, of course, is very strong. When the legislature comes to the point where they feel we should have complete socialization of medicine and the community believes in it—because I believe it's going to come from the total public—why I believe we're going to have it. I don't think it's any use arguing that from my standpoint because I know I'm not going to be the one who will be able to say no. If the community wants it, I'm going to be sure -- well, I'll have to agree with the community. That is a democracy.

BRYAN: Well, from that viewpoint, then, I would like to suggest a slight rewording or two. Striking the first two words, "Protection and promotion of the public health shall be provided for by the legislature."

LARSEN: Why did you want to define the "protection and promotion of public health"?

BRYAN: I didn't define it.

LARSEN: You mean you want to just leave those few words?

BRYAN: I want the legislature to define that because you evidently have ceded to them that power already --

LARSEN: Yes.

BRYAN: -- in your discussion. I stated, "The protection and promotion of the public health shall be provided for by the legislature." They can define it and provide for it.

LARSEN: All right. Thank you. Any others? I think this is just what we want. Shall we move on?

CHAIRMAN: That's right. Will you continue?

LARSEN: May we go on then, if there are no other comments to the next question? "It shall be the responsibility of the State to make adequate provision for the assistance and rehabilitation of mentally or physically handicapped persons who are unable to provide the same."

KELLERMAN: Mr. Chairman -- Excuse me, did you want to explain that first before I ask a question about it?

LARSEN: May I? Here the modern thinking, and remember again we are trying to indicate our trends. For instance today, if we actually applied everything that we know to all our mentally ill, 90 per cent of them could again take their place back into activity. The thought, therefore, is that rehabilitation should come ahead of care. Prior to this, most of our concepts and most of our state constitutions have thought in terms of domiciliary care. I think we should take one step ahead and think in terms of when we are providing. Let's try to get them back into normal activity; therefore, "assistance and rehabilitation."

KELLERMAN: I'd like to ask, according to some recent articles which I have read, if I'm not incorrect, it says that about one out of 12 or 15 adults in the United States either is now a member of an institution because of mental illness or should be. Does "mentally handicapped" mean all of those persons suffering from temporary psycho-neurosis which make them for the time being incapable of carrying on a profession or living a normal life, or does it mean persons who were born mentally deficient or who are actually insane? I think if you take the broader definition of "mentally handicapped," we are going to find a financial burden on the community which may be impossible for us to meet. As I understand, a long range care and rehabilitation of those mentally handicapped can run to months and a great deal of money, and a great many people would not be able to carry that burden unaided, if they were given that complete hospitalization or care.

LARSEN: May I answer?

KELLERMAN: Yes.

LARSEN: That's correct, if we took our old concept, domiciliary care. If we take these people and just put them on a farm and crowd them together in rooms as has been done today in the territory, we will have a stupendous increase in burden. If we accept the new philosophy, "assistance and rehabilitation," we have the newer concept which we hope will prevent this over-burdening problem. However, I call to your attention the last few words, "who are unable to provide the same." And, I feel that any person who is mentally handicapped—and I would wish we can all leave out the word insane, another word that's obsolete; we shouldn't use it, and it carries a certain amount of stigma—where the mentally ill are just as ill as anybody else, they can be cured as anybody else if we give them proper treatment. And I feel even though they are only temporary—and remember, many of those who a hundred years ago or fifty years ago were considered hopeless and kept hopeless, today are returned to their families, homes and activities in a relatively short time—if they are unable to provide the same, I feel it should be the duty of the State to try to get these people back into normal activity. Now that would be my concept.

HOLROYDE: Dr. Larsen, in your wording here, the word "adequate provision," if the legislature determines that a certain care is "adequate," having that word in the Constitution, would it be possible for others to consider the legislative action "inadequate" and take action to have further --

LARSEN: I would consider that. I would certainly believe that the real power of the State is in the people. If the legislature doesn't carry out their mandates I believe they should have the right to object. When we do, as we do, crowd a thousand people into a room built for five hundred,

I believe that some of us should have a right to protest. I believe that we should ask our legislature to provide "adequate provision." That's been one of the damages of the past. It hasn't been adequate.

ASHFORD: May I ask Dr. Larsen a question in regard to his recent statement. Suppose someone who was mentally ill—and in my opinion the word insane means just that—suppose someone who was mentally ill and violent were committed to the Territorial Hospital, could not that commitment be attacked under the language of this Constitutional provision because the care there is not adequate?

LARSEN: No, I don't think so. They could put them in. We are going to have many times when we don't have "adequate provision," but if we leave it to the legislature, give them the power to give us "adequate provision," I think we might save some of our poor sufferers.

I would like to talk to the delegate from Molokai about the use of the word "insane."

I think that that would cover it.

KELLERMAN: Dr. Larsen, would it serve your same purpose then to have this provision a granting of power to the legislature "to make adequate provision," rather than in imposing by mandate upon the legislature the responsibility to make the provision?

LARSEN: That's a good thought, good thought, because that covers this point just raised and prevents a certain other objection.

WIRTZ: Dr. Larsen, I was just going to raise a similar point. By making this a direct mandate, coupling that with the first section, the broadness of the first section, Section A, how can we possibly escape mandating the legislature into socialized medicine?

LARSEN: That does come back. It shows it must be a present day time. Don't you think that the power "to make" would cover that? Remember, what we are talking about now are institutions, institutional care, and I believe where you come back, the little sentence that I think prevents this exploitive expense, which I consider the British system, I think it is covered, if at all, by the words "unable to provide the same." I believe in a free state wherever a person is able to care for himself, he should not demand care by public expense.

OKINO: Point of clarification. "Who are unable to provide the same." Who is to decide who is able and who is not able to provide the same?

LARSEN: General welfare will give you an excellent definition. They gave the committee a definition and I think that's been worked out fairly well. We are giving them grants now.

WIRTZ: Dr. Larsen, apart from the other question, don't you think that this section -- or does your committee think this section would totally destroy any initiative on the part of private institutions or organizations such as the Shriner's Hospital from proceeding in their good work?

LARSEN: No, I think, in other words, it would help them. Just let's take a little suggestion here that the Shrine Hospital got to the point where they only were able to pay for half. They were taking care of physically handicapped persons who were "unable to provide the same." This would allow the legislature, as I see it, the opportunity to assist them to continue their good care. I don't think it's inhibitive.

SMITH: Was there any discussion with regard to Section A, having included there the wording "promote the health and general welfare," including "general welfare" in the Section A?

LARSEN: I don't recall that exactly, but we can put it down for discussion. You would like to see included in the "public health," "general welfare." That's why I thought as long as it was covered in our wording at the top, "Health and general welfare," it included that, but I'll take it up with the members and discuss it.

A. TRASK: Learned Doctor, as a matter of fact, our only institution today for the mentally and physically handicapped is the Territorial Hospital in Kaneohe.

LARSEN: Not the physically handicapped. We have the Shrine - -

A. TRASK: What I want is a little background as to that. There is Shrine, there is the Territorial Hospital and there is Kula and Leahi Home?

LARSEN: Well, they come under our, I would say, our public health with - - They cover infectious diseases, that's covered under public health.

A. TRASK: In other words, there are other sections that are to follow this?

LARSEN: No, I think legislation for the public health would cover that, "public health" designating any type of disease that, unless it's cared for, might affect the total population.

A. TRASK: Well, what I want - - I'm leading up to, of course, is the Democratic Platform as described by the Waikiki wing of the Democratic Party. Here, I listened the other evening to Mr. Vance, and he made a suggestion which I drafted in the platform of the party as follows: "Institutional rehabilitation: to lift our public institutions from a level of custody and detention and make them vital centers of treatment, training and rehabilitation." Now, Mr. Vance's criticism of his present duties as the institutional welfare director is that they secure a person and just merely keep custodial charge over him. There is no rehabilitation, no care, and I just wondered whether or not this section is in line with that thought.

LARSEN: Yes, Mr. Vance talked to us in committee, and one or two suggestions we have here, I think, came directly from Mr. Vance. I think the "assistance and rehabilitation" does cover that. I might say, I see we constantly recur or go back to our Model Constitution which is verbose. We are trying to cover the same thoughts and ideas with fewer words, and I see a definite tendency here of these two things that are in argument.

SHIMAMURA: Mr. Chairman and Dr. Larsen. If you amend the words "public health" into the more general term "health," won't you have the same provision in Section A? Wouldn't that make Section B unnecessary?

LARSEN: Section B, of course, has entirely to do with the rehabilitation of people who are sick. Section A has to do with the prevention of people so they won't become sick. The second one has to do with people who are handicapped and sick, and we are hoping eventually, if our Section A goes into proper fulfillment, that we will not have many people under B.

SHIMAMURA: Dr. Larsen, I don't read Section A to be merely preventive. You have there very general terminology, "legislation for the protection and promotion of the health," and I say if you deleted the words "public health," and inserted the word "health" merely, a more general term, I think you'll have adequate provision there.

LARSEN: I think we'll have adequate provision. The only thought is, perhaps we'll have too much provision. Right away it opens it to this pet little phrase that I've heard here now half a dozen times, "socialized medicine." However, we'll take it into consideration and I'll discuss it with the committee.

PHILLIPS: Dr. Larsen, I'm not particularly afraid of any of these things that you have in here or even in the manner which you have them, but what I am afraid of is the fact that we have and we know that the biggest problem of the whole -- of every one of the 48 states in their constitutions has been the verbosity that you refer to as being in that State, I mean, in the Model State Constitution, on which I disagree with you, which is neither here nor there. But my problem is this, that if we are going to include this 175 words in the State Constitution, don't you feel that the federal government, which has been able to adequately provide for the same and defend, under the General Welfare Clause, defend themselves even against other provisions of the Constitution which restrict and hamper and completely take away the rights of the people, in the promulgation of legislation which would conserve and promote public health.

Now, I'll make that a little more succinct because I would like to establish the fact that I'm dubious of the value of placing 175 extra words in here when we could say it in two words, "general welfare." I would like very much to see that in there, and we know we have confidence in the development of government, we know how far state government has advanced. We know that the legislators are very much aware and very sensitive to public health, that they have provided very adequately in the past for us. There have been recent reforms which have caused them to do it. We also know that we have in progress right now state constitutional conventions which are reconvening for the purpose of eliminating this superfluity, this verbosity, which you referred to, out of their constitutions because it tends to hamper them.

I offer to you in evidence something that you said yourself in regard to this Section B. You said that in the next ten years there may be a different way of promoting health, a different method, a different means. Now doesn't that itself prove that this is an ephemeral law which -- man is constantly trying to solve and he does it best with the device known as the legislative process. Wouldn't it be better that we leave it up to the legislature to take up these problems of public health and have them work them out as they have been doing anyway and which is absolutely necessary to let them do, because only they can set forth the standards that are in there? Wouldn't it also be better -- and finally, wouldn't it be better to have in there under the general welfare clause that one thing, that "provide for the general welfare," rather than all this 175 words? Wouldn't it be better to let the State -- I mean let the future State of Hawaii have an opportunity to change these institutions as the need arises? We know that perhaps this problem as set forth in B may have all manner of differences before the thing is over, I mean, before ten years is over, as you referred to.

I'm trying to get down to this one final point which keeps eluding me, and that is that in the event you place 175 words in here and then the legislature chooses not to pay any attention to them, there's nothing—unless we have an automatic clause in our Constitution—that would mean that they would go ahead with this thing and carry it out in the manner that you see fit.

LARSEN: May I answer? In the first place, I appreciate knowing that there are 175 words, thank you.

In answer to this, it's so easy to start an argument on false premise; I think your premise was false, that they have been adequately cared for. The objection, and why so much has gotten in constitutions, is that whole groups of our people are not only suffering from inadequate care, but there are no provisions that care for them. They are the nidus for much of our crime, our disease, many of our difficulties, juvenile delinquency. It's the hope that this future State of Hawaii shall recognize the inadequacy that has actually been flourishing under our past state constitutions and make corrections for this group of people who are unable to help themselves, and to have us recognize that we do need a little more than the statement, "general welfare," because under general welfare they were allowed for the century to go on and suffer. However, I will take it up with my committee and ask them whether they would prefer three words or be able to shorten their 175.

WIST: I'd like to comment with reference to the statement made by my colleague from the fourth. He used 645 words to state that we were using 175.

I'm a little disturbed about the talk here about a brief Constitution or a long Constitution. What difference does it make whether our Constitution is so long or so brief? After all, our Constitution is to provide a frame of reference so that our legislature can enact laws under which we can live. Now, if it is necessary in order that our legislature shall enact the kinds of laws under which we can live well to state that we are to have legislation with reference to public health, with reference to general welfare, with reference to these other matters that are listed here, then why worry about the fact that it takes 175 words to do it? Why try to compress it into 30 words? That to me is not the significant thing at all. The significant thing is to get into our Constitution an adequate frame of reference for future legislation.

PHILLIPS: I'd like to answer this, Mr. Chairman.

CHAIRMAN: I recognize Delegate Phillips.

PHILLIPS: I'd like to answer this. I would say that I may have spent an awful lot of words. I don't believe there were -- there might have been in there more than 600 words, but I say that there are three words in the Constitution that protect my right to say that and thank goodness for that. And it only takes three words, "freedom of speech," to permit me to use as many words as I want.

In any event, I would like to say this. In using all those 600 words, I attempted to induce evidences that would prove the very premise on which he based his arguments. I would say this, that there are at present many state reforms -- there are many state constitutions which are constantly going under reform simply because there was an individual among the group who thought that that particular provision could go in there with hundreds of words instead of having it confined down to two.

LARSEN: May I answer that just a moment. I'd like to compliment the delegate from the fourth on the fact that it seems to me that what we are trying to do is not to find out what other states have done. That always annoys me a little. We are a good cross-section of Hawaii. We want Hawaii to do something. My answer is merely there are people who haven't been protected and we believe, in the philosophy of today's thinking, they should be protected and given constitutional rights.

MIZUHA: I move that we go on to the next section, C, and debate be limited to two minutes per person under the rules.

A. TRASK: I am seconding that motion made by Jackson [Mizuha] from Kauai. I'd like to say with respect to the splendid statement made by Dr. Larsen that we should remember also, that as brief as the Federal Constitution is, that the development of the law and the understanding was largely a judicial review, judgment; that it wasn't really the written word. Let us understand that the judiciary had a powerful shaping of this Constitution in the way it went, and John Marshall, who fought and was in the Revolutionary Army, and these people had a great part in welding this language to mean it the way the country developed. So there is no respect for words, and I would say, and join everybody in saying, that the delegate from the fourth district, Mr. Phillips, his conduct was not contumacious.

CHAIRMAN: Motion before the house and seconded by Delegate Trask - -

CASTRO: Before the motion is put, is it my understanding that the committee will reconsider the use of the word "responsibility," Dr. Larsen?

LARSEN: The committee is reconsidering everything. I've tried to emphasize the fact that nothing here is final, that we opened this for exactly what we're getting, the feeling of a large number. This is just what we wanted. Now we will reconvene, now we will reconsider all the matters that have been brought up.

CASTRO: But as to my question, have you noted the point about the "responsibility of the State" to be reconsidered?

LARSEN: Yes.

CASTRO: Thank you.

FUKUSHIMA: I'm not coming to the defense of Delegate Phillips, but Dr. Larsen did suggest that Delegate Phillips proceeded on the wrong premise that the promotion of the public health, etc. are adequately provided for. Now, if they are not at the present time, what difference will it make, Doctor, whether we have all these provisions in if you have nothing to enforce the mandate, which is exactly what I brought forth when I spoke first. Now, if you don't have any mandates what's the difference?

LARSEN: May I answer?

CHAIRMAN: Yes.

LARSEN: Of course, I agree with the gentleman from the fifth here. We really don't need to do the job we are doing. We should have quit the first day and accepted the United States Constitution. Let it go at that. Copy it down. But in the usage of time, in the various states of the United States, the constitutions have indicated the philosophy and thinking of the people in that area. As I read these, and as we worked them out, I feel this is the line of thinking of most progressive states in the United States, that it wasn't adequately provided. Why? Because there was no path of philosophy along which the legislature could provide legislation. It's true they don't have to do it, but I believe the Constitution very definitely indicates a pathway on which - - along which we might march. And also, gives us, perhaps, a handle or a suggestion along which, if we are really interested and we find a group of people unprotected, where we can ask for protection under the Constitution.

PHILLIPS: I might say this, that in all deference to you, Dr. Larsen, that there are two things there that I can't help but bring out. On the one hand you said just previously that we do not need to look at other state constitutions in order to determine our course. Now I disagree with that and I find - -

LARSEN: I agree with you. We should look at them but not follow them.

MIZUHA: I rise to a point of order. There is a motion on the floor.

DELEGATE: Question.

CHAIRMAN: Ready for the question? The motion is that we move to the second - - the next section and the debate be limited to two minutes.

MIZUHA: Per section.

PHILLIPS: Mr. Chairman, I still have the floor.

MIZUHA: The motion was debate be limited to two minutes per speaker per section.

PHILLIPS: I yield the floor, Mr. Chairman.

CHAIRMAN: All those in favor of that motion, signify by raising your right hand. Contrary minded. Carried.

KAWAHARA: I rise to a point of order. In Cushing's Manual here on page 182, Section 305, when we sit in the Committee of the Whole, under Section 305 I understand it's unlimited debate and the person may rise any number of times to speak. Maybe my interpretation is not quite correct.

CHAIRMAN: Will the chairman proceed with his next section?

LARSEN: The second section, or rather the third section, "The State and its political subdivisions may, in accordance with law, provide or assist in slum clearance and rehabilitation of substandard areas including housing for persons of low income."

May I just explain the thinking of the committee on this? The source of much of our crime, juvenile delinquency and disease, is in our slum areas. The reason for slum areas are people of low income who are unable to provide better, tend to crowd in more and more into the poor areas where they can get shelter cheap. When we discussed this, it was evident that today no private industry can actually clear out a slum area and build low cost income houses without assistance from the State. If we are going to help this particular area of disease breeding, which is present in all our cities, the committee felt we have to assist that group of people who will continue to live in these disease-producing houses unless the community helps them to build houses in which they can live. That's more or less the thinking. We put in the words "assist in or provide" with the thought that sometimes an industry might be able to clear and build if the community perhaps would give them tax free for a certain length of time, or perhaps help them to provide, and we felt in all due respect to private interest which we feel should not be inhibited, free enterprise, we left in the words "provide or assist. Any questions?

FUKUSHIMA: Is that why the word "may" was used instead of "shall," making it directory instead of mandatory?

LARSEN: That's right.

SHIMAMURA: May I respectfully suggest that if we added one small word in the second line there, after the word "provide," the preposition "for," it may be more accurate and more grammatically so. In other words, "in accordance with law, provide for or assist in slum clearance."

LARSEN: Thank you, I think that's a point well taken. Any others?

CHAIRMAN: Will the chairman move to the next section, D.

LARSEN: Section D. "The natural beauty, parks and objects and places of historic interest and the public sightliness and good order of all property adjoining public highways shall be conserved and protected by the State and its subdivisions." I grant you there is discussion in this paragraph.

AKAU: I'm wondering if we might add at least one word before subtracting some other words. We do have many scenic points of interest here while they may not be exactly historical. I'm wondering if we might add the word "scenic." "The natural beauty, parks, objects and places of historic and scenic interest." That was one point.

The second point I'd like to raise is, "and the public sightliness and good order of all property adjoining public highways." Is it absolutely necessary to put that in? I think there may be some confusion in the minds of some of us as to the word "sightliness" whether it means unsightly or whether it means the positive side of it. I wonder if you could explain that phrase and also the possibility of inserting "scenic." Those two, please.

LARSEN: Number one, I would assume that "natural beauty" includes scenic, and I think the one word would cover that. However, we'll put it down for discussion. "Public sightliness and good order" was inserted after meeting with a group representing the Architects Association, the Engineers Association, the Parks Board and the Outdoor Circle. They feel, and I think they feel rightly and I think they are to be complimented on the thought, that we hope some day to produce the "Hawaii Beautiful." Today we don't do it. Public sightliness is something that does seem to be of public concern. In many of the cities, of course, it's still operating.

BRYAN: Dr. Larsen, I noticed that you asked the opinions of many people except the property owners of "property adjoining public highways."

LARSEN: May I tell you, they were all heavy property owners.

BRYAN: Well, I just think that this provision might be slightly out of order. In other words, the State is to protect the sightliness of all property on public highways, private or otherwise?

LARSEN: Private or otherwise.

BRYAN: I disagree with that.

LARSEN: O. K.

BRYAN: Thank you.

LARSEN: In this country we have the right to disagree in any way we want.

NIELSEN: I'd like to ask Dr. Larsen a question. Would this mean that the State would take care of the clean-up of vacant lots and various things along the highway at the expense of all of the people?

LARSEN: It might be - - No, it might be as is done in some states. If you are living in a very nice section and you own a lot there and it looks like the back end of somebody's trash heap, the State can notify you that you shall take care of it; if not, then they send you the bill.

NIELSEN: But it says in here that "all property adjoining public highways shall be conserved and protected by the State."

LARSEN: That's a little diffuse. We'll consider that. I see what you mean.

ASHFORD: Dr. Larsen, during the Victorian era, we had a type of construction that is no longer regarded as the last word in beauty. I was very interested to hear you say that the architects advised on this. Suppose you had an Hawaiian type of architecture on all the houses abutting on the public highway except some Victorian monstrosity, does that mean that the owner of that might be obliged to change his architecture and do away with his house?

LARSEN: That wasn't intended. If you as a lawyer would interpret it that way, we'd have to consider it carefully.

SMITH: Dr. Larsen, I'd like to ask, in a democracy there are a lot of individuals and if each individual has a right to do as he sees fit, if he has his own idea as to architecture or what he'd like to grow in his yard, would this prevent him from doing as he pleases?

LARSEN: Well, again, we - - I would not interpret it in that way. I think the whole philosophy behind this is how can we develop a more beautiful city or a more beautiful state than we have; and I would remind you that in a democracy individual rights are frequently submerged in the right of the greater number.

KELLERMAN: Dr. Larsen, might I suggest that your committee consider the following wording in lieu of the present provision. If you will start with the words, "shall be conserved and protected by the State and its subdivisions," delete that part and insert in lieu thereof, "are matters of public interest and as such are subject to reasonable regulation and control in the public interest."

LARSEN: Very good.

KELLERMAN: That doesn't impose upon the State the obligation of paying the bill.

HOLROYDE: Dr. Larsen, as a member of the Bill of Rights Committee, which you and I are, aren't we invading personal rights of some individuals when we can restrict what they do in their own yard, what they grow?

LARSEN: If it abuts on the public highway, I wonder if we shouldn't. We tax all individuals to make a sidewalk in front of their houses; we tax all individuals to pay for our school taxes, for our garbage and our other disposals. Why shouldn't we possibly begin thinking in terms of at what point should the individual be helped to think for the total good.

HOLROYDE: Idealogically I agree with you, but I'm wondering whether we're constitutionally correct or not.

LARSEN: Well, you word it and we'll consider it.

PHILLIPS: Dr. Larsen, I would like to ask one more thing. Could you define the "public highway" for me. I mean, I have gotten into accidents myself and any little parking area or even any little road that any person besides the owner travels on is considered a public highway, isn't it?

LARSEN: That's right, but I would expect the legislature and my good friends, the lawyers, to interpret the meaning of that.

SHIMAMURA: May I ask Dr. Larsen what distinction was made between public sightliness and private sightliness?

LARSEN: Private sightliness, I think, is well indicated, bringing up Holroyde's objection, that certainly we don't want the State to go in and interfere with how you keep your back yard if it doesn't bother anybody else. The public sightliness is that which affects the total public.

CHAIRMAN: If there's no other discussion, we'll move on to the final section.

PHILLIPS: I have one question. I'm dubious as to whether this should actually go into the health provision in our provision - - I mean in our Constitution.

LARSEN: May I answer him?

PHILLIPS: May I just finish it? I'll make it very short. I assure you I won't give you 600 words.

I was wondering if you could make by a constitutional provision any of these things have a quality that would be indicative of the people. I mean, if you had a park, it would be a park and it would be as provided in the Constitution, but the quality of how that park is arranged, et cetera, et cetera, can you really provide for that, Dr. Larsen?

LARSEN: I don't think we are arranging for the quality here. Why this belongs in the Health System, I think we accept health today as emotional health as well as physical health. I think natural beauty, parks and the public sightliness do affect health. I think people living in a community that looks like a trash heap are affected, both emotionally and physically. I believe that these parks also include playgrounds. I would assume it also includes all the other areas for recreation, even the hunting grounds, if they are put aside.

KAWAHARA: In regards to the section over here, the last two lines, in the last two lines, you use the words "conserved and protected." And in the other provisions, in

the first provision, A of the Health and General Welfare section, there is the word "promotion." I wonder if by using just the words "conserved and protected," you would limit the creation of new parks, new beach areas, and the setting up of historic sites that people might discover in time to come.

LARSEN: I think that's a good comment. I was inclined to lean toward the wording of the delegate from the fourth, "are matters of public interest and are subject to reasonable control." I think that perhaps would cover better and perhaps we can reword that.

CHAIRMAN: Will you move on to the last section.

LARSEN: "The legislature shall promote preventive measures, treatment and care, of dependents, delinquents, criminals and psychopathic personalities, when necessary, in the interests of social welfare." You might want to ask the definitions there. I'd be happy to try to give them.

AKAU: In connection with "psychopathic personalities, when necessary, in the interests of social welfare," have we left out dependents, physically handicapped? I'm speaking of sight conservation and that group. If we use the word "dependents, physically handicapped," wouldn't that take care of those people?

LARSEN: In Clause B, we use "mentally and physically handicapped" and that would take care of that.

CASTRO: Dr. Larsen, I have the same quarrel with Section E as I do with B and D. There is a little bit too much responsibility and mandate placed upon the State to the point where someone who might have at a later date a quarrel with the manner in which the reasonable policing was being carried out, might point to the Constitution and indicate that the legislature must promote certain measures whether they be preventative or by way of treatment.

LARSEN: What is your suggestion?

CASTRO: Well, I really believe that the whole thing could be encompassed under the general welfare provision, but the suggestion is to delete the words "shall promote," and to possibly provide something that would allow the legislature - -

LARSEN: "May provide"?

CASTRO: "May provide"?

LARSEN: "May provide"?

CASTRO: "May provide," like the - - perhaps using the word "may" instead of "shall" would be acceptable.

J. TRASK: Dr. Larsen, the words "preventive measures," does that include birth control? Would it?

LARSEN: It might, but I don't think so. I don't consider that preventive measures.

J. TRASK: But it could mean, couldn't it?

LARSEN: It could, perhaps, if the community rises to the point where they feel that is a preventive measure. At the present time we have laws in some 26 states along that line where the legislature interpreted it, where they may. In most of those states it has not been carried out. I believe again we come back to interpretation and the will of the people.

MIZUHA: I move that the committee rise, recommend that the tentative proposals be referred back to the Committee on the Public Health and Welfare for further study.

CHAIRMAN: Is there a second to that motion?

J. TRASK: Has the delegate from Kauai some place to go?

MIZUHA: I don't have any particular place to go. If there is further debate on this subject, I would then like to ask the Chair to declare a short recess. The clerks are kind of tired over here.

J. TRASK: There has been no second, so may I ignore the remark of the - -

MIZUHA: There is a second to my motion.

LARSEN: Let me remind you, we're almost at the end here. We are on the last section.

MIZUHA: I will withdraw my motion inasmuch as to give Dr. Larsen his last one more chance.

NIELSEN: I would appreciate Dr. Larsen indicating what "preventive measures," just what that would mean or could be construed in this section.

LARSEN: In talking to the men that we had before our committee, like Mr. Vance and several of the others who are thinking in terms of today's thinking, most of our criminals, for instance, delinquents and so on, should be considered as sick people. They are produced by their environment. They are curable. In the past thinking, it's been the question of putting them away. In this newer thinking, we are trying to promote every way possible of keeping these suffering individuals from becoming handicapped and returning them as well people to the community.

May I call to your attention the last one, "psychopathic personalities," suggested by Mr. Vance. We have a group of people who today are not under any care; they cannot be declared mentally ill, but they are personalities who are not responsible under certain circumstances for their behavior. Many of our sex crimes, many of our murders, are this type. Today, they cannot be taken care of in the interests of social welfare. If they are definitely declared as such, they - - society can be protected. That's part of the thinking behind this.

But I would like to call your attention, and I see the thinking here, which I appreciate, is—and I hope I can have one plea here—to think in terms of this newer concept, and it is new, but it's rising, it's growing rapidly, that in all the terms of general welfare, the usual connotation of our various laws of our various legislatures have not been along this line of prevention, treatment and then care. That whole section of our community, which has been actually a burden on the community, could, under certain ways which we hope the legislature may promote, be rehabilitated. So the thinking here is to interpret general welfare into the newer concept of prevention, treatment and care of many conditions that actually interfere with the public good and the general health.

BRYAN: I'd like to make a short statement for consideration by Dr. Larsen. I notice that he has included criminals, psychopathic personalities, people who are mentally ill, in the category of - - very similar to those with which he speaks of people who are physically ill, and maybe by providing for them as he has here, he is getting socialized medicine through the back door.

LARSEN: Of course, I realize I am thinking of them in terms of illness.

If that's all, I want to express my appreciation, and I'm sure my committee does, for the excellent discussion and the breadth of thinking that our group gave us, and I think it's clarified the air considerably, and I think it was an experiment well worthwhile to see how we think. I must say, if we are going to spend this long on each little section, we'll have to speed up our thinking, and I hope we can, perhaps with the next discussion, each one of us try to go over the clauses to be discussed and make little notes so we go down through perhaps, with a little more speed.

NIELSEN: As a member of the Kaneohe Democratic Party, I want to thank Dr. Larsen.

A. TRASK: I join in that great expression. We're certainly very happy to have the Doctor, altogether.

LARSEN: May I hope this augurs the great day when the Waikiki and the Kalihi will unite in happiness again.

CHAIRMAN: If that is all, will someone move that the Committee of the Whole report back to the Convention?

BRYAN: I so move.

CHAIRMAN: Any second to that motion?

DELEGATE: I second the motion.

CHAIRMAN: Seconded. All those in favor of that motion signify by raising your right hand. Contrary minded. Carried.

Chairman: EDWARD B. HOLROYDE

MAY 24, 1950 • Morning Session

CHAIRMAN: Committee may be at ease.

The problem before this committee this morning is consideration of Committee Proposal No. 1 relating to health and general welfare. I would like to suggest as a procedure that we consider each section individually. However, in voting the approval in substance of each section, we do not preclude a later motion to combine in any way the sections. If that meets with the approval of the committee, I would suggest that we proceed in that manner. The first section, section on public health. I recognize Dr. Larsen.

LARSEN: Fellow delegates, if you would bear with me, I feel we should explain what we are. I'd like to have you all feel, whatever prejudices or whatever feelings there might be, to leave them out, that I'm not speaking as a doctor, I'm speaking as a representative of 11 individuals who worked very hard. We've had in with us a great many different authorities, and I feel that as I speak, it is with the idea that I'm speaking for these 11, who have worked hard to try to do the thing that we are all interested in, to make a clear concise document that speaks well for Hawaii. I've often been told by my friends that when I talk to anybody, I sound as though I am trying to bludgeon them into agreeing. I want you to all realize if it sounds that way, there's no meaning behind it, because what I feel I want you to do is lend me your minds so that together the 63 of us can write this particular little section into something of which we can be proud.

We first considered this question, and we have much precedent on anyone of these, should it be a Constitution of five pages, of five paragraphs, of five sentences or five words. Our five page one could well be illustrated by the New York Constitution with its 72,000 words. The five paragraphs could well be illustrated by the Model Constitution. I want to call your attention that ours - - that the Model has over one hundred per cent more words in describing these functions than ours. The Federal might well be illustrated as the five word type.

But what we were pondering was how can we make a clear concise proposition that covers the fields that we should express. We started off with ten fields, you might say ten paragraphs. We kept working these down, and as the experts came from these various fields, we considered and weighed, is this statutory or is it constitutional, and we came to the conclusion that we don't want anything statutory here, we want it constitutional. We think our five sentences are constitutional. Realizing, as a doctor, perhaps I had a little edge on some because I'd been in this field for a good many years, I tried as far as possible to start from scratch, and I feel my committee members started from scratch. We tried to build up what is constitutional, not what is it that a doctor might want into a document. We, of course, at all times had the help of the Reference Bureau.

Only yesterday I heard from a number of these experts and I feel it's only right that you should have the benefit of these on these propositions that were sent to them.

Wilbar wrote of the Board of Health, and that has to do with Section A, "I believe what has been written is excellent. I think it adequately covers the subject and any more detail would be getting into the field of legislation." The next one was from the Department of Public Welfare, Mr. Fox. He felt that his section as far as possible—and we agree with him perfectly—as much as possible make them concise and put in, if the meaning is clear, as few words as possible. He writes,

> It is a rare privilege to help formulate a statement expressing the responsibilities the people through their government should assume in advancing the health and well-being of all. I should be disappointed if this document fails to convey the great democratic concepts of human welfare which stand as achievements of government in the twentieth century. The statement which your committee has adopted permits Hawaii, when it becomes a state, to carry on the health and welfare activities it is now engaged in in the territory.

The Hawaii Housing Authority took our section on slum clearance and felt we didn't say enough. They felt it should be clarified. We have a communication from Mr. Guild and I would like to show you, and then I ask for your indulgence if that particular section doesn't combine—I think it does—what he suggests. He suggests that we make it into three sections. This is Section D on slum clearance. One, "To provide for public housing and housing undertakings by such means and on such terms and conditions as the legislature may prescribe." And Section 2 of that particular section, "To provide for the clearance, replanning, reconstruction, development, redevelopment and rehabilitation of blighted, substandard or insanitary areas in such manner and by such means and upon such terms and conditions as the legislature may prescribe." And 3, "To provide recreational and other facilities incidental and pertinent to both of the above."

Then he goes on to say if we adopt only one paragraph on that particular section, then he suggests—and this I would like to read simply to get your thinking on a great deal of this, and when we come to sections, I would like to ask your indulgence again, because we felt we wanted to save you as much time as possible. So in the course of the last four days, we have talked to a good many and we have had a good many suggestions; and my friends the lawyers—that I frequently wonder as they talk about words, whether they are like the story of the old maid, they always see a burglar under the bed—but I've been convinced that a good many times I had to agree with them. I realize that the statements some of them that we made, that they actually, when they put it in their own legal language, it did clarify it and made it less possible to confuse the issue. However, and then I'm wondering as I read this one whether it isn't a great deal of legislative language which we tried to avoid, when they make this recommendation for D. "The State and its political subdivisions may provide for, engage in and assist in any manner public housing and housing undertakings, slum clearance, development, redevelopment or rehabilitation of blighted, substandard or insanitary areas including recreatio al and other facilities incidental thereto."

I'm going to leave that to my friends the lawyers when we get that. But what I wanted to bring out was if it's a question of language—although I will present, as we take each

section, some of the language suggestions made by some of our lawyer friends—that if it's only a question of language you have, remember we have our Committee on Style, and Committee on Style will decide for instance, whether the "State shall have the power," "the State shall be empowered" and expressions of that type. It seems to me we can save a great deal of time if we accept the fact that perhaps our expression, which the 11 of us felt were as good as we could come up with, isn't what might go into the final. We still have our Committee on Style to correct that.

So, I also want - - I've heard from these various members. I've also heard from the architects and the engineers, the Outdoor Circle, the Parks Board, and the City Planning Commission, and the City Planning Commission sent one in this morning which they recommend that we try. They also recommend that we accept that longer article of Archie Guild on slum clearance. In the field of the engineers, architects and so on, they are quite interested in making something that is outstanding, and they would like to suggest that we at least keep this thought of sightliness and good order as part of the general health of the community. I won't read these other communications, but they are there.

Now I also want you to, just to illustrate that I had some pet ideas—sure, I had some pet ideas, but the committee wouldn't let me put them over—I just want to read you one because it's still a pet idea. Of course I'm not asking you to accept it, but I want you to realize how I was beaten down in committee. I want you to - - this is what I wanted, "The State shall, in such manner as the legislature may provide, subsidize all or part of the stand-by cost of standard needed eleemosynary hospitals. Because of such subsidization, government may have a voice in, but not the control of the governing board of these hospitals." I felt there was a new principle there that's been more or less accepted, but I assure you my committee didn't even let me present it to you. That's why I shoved it in the back door here, but I'm not asking for its acceptance. But I wanted to show you that this is not my proposition. I want to assure you the eleven, really everyone of them, took an active part.

Then of course, the question is always should we enlarge, and for the sake of clarity, we felt we should designate, and if you read the accompanying text with these articles you will realize that we tried to show why we decided on five sentences, for the sake of clarity. Well, the senator reminds me we called them sections, but I want to remind you that when you read them, each section was reduced to one little sentence, with a subject, a predicate and a period. Those are the sections that I want to take up, the object I'm trying to get over right now.

So, for the sake of clarity then, I want to call to your attention that this is five major fields of great attainment in Hawaii. One, and each one of these five are separate distinct fields which have accomplished something in the protection of health through the territory and are quite separate. We have had called to attention that there is some overlapping between 1 and 2. I accept that; there is a little overlapping in 1 and 2, the others are entirely separate. But why I felt it was still important to separate was, one is, it's actually prevention and the other is actually treatment.

Now I just want to give you a little sketch because it's terribly important to keep in mind what's happened. The other day, Delegate Hayes gave me a book from 1882. In this book, I saw the analysis of Hawaii, the health of Hawaii in 1882, and I want to tell you it was something that was terrific. The infant mortality was frightful. 155 people died that year of smallpox. The maternal mortality was frightful. And so on down through. Then I skipped up into 1900, and I call your attention to a book called "Hawaii, Off-shore Territory" by Helen Pratt in which she describes the conditions of health in Honolulu in 1900, and I want to tell you they were something terrific. The death rate alone from tuberculosis was 350. Infant mortality was way up, maternal and so on.

Now I want to also call to your attention, in the last 25 years there has developed in Hawaii, due to a great many different people working at it, something that should be a beacon light and is a beacon light of health and welfare in the Pacific area. We have become the pride of the Pacific. Now I think it's a mistake when a State has accomplished something as outstanding as has happened in the last 25 years, in this total field of health and welfare, that we shouldn't designate it, and that with this we feel we can designate it in these five fields.

I might call to your attention for a moment that way back in 1805, there was a certain Britisher here who wrote up, and he studied the Pacific fairly well, but he wrote and said this, "The Hawaiians have a reputation throughout the whole Pacific area for their amazing knowledge of herb lore." Today, the Hawaiian Islands have an amazing standing in the field of health and welfare throughout, not only the whole Pacific area, but throughout the whole United States.

I also want to tell you - - call to your attention, this is an indication of our advance in civilization. When we are knocking at the door in Washington and say, "Gentlemen, we are, and we have developed the right to become a State," there is nothing that those men will look at with more interest and with more assurance that we have arrived than, "what are you doing in the health work."

If we leave it with five sentences, let the State have the responsibility to promote and advance health and welfare, we're not telling those fellows anything. They look at that document and say, "Why these birds haven't advanced in health any more than they did back in 1776," and then conditions were terrific. We want to indicate we have gone ahead. We want to be proud of our State, and when we knock at the door in Washington, we want to say, "This is an indication that we really have advanced; we know what you are talking about; we are giving our people the total health protection up to the very maximum of the enlightment of today."

I've taken two trips around the world, looking at just this thing in the various countries, and I can assure you, I could give you the level of civilization as soon as I went to the health offices of the doctor and said, "Give me the record of your health; what are you doing on this, that, and the other thing," and it always runs parallel.

So, I feel one other point why I'm anxious to have it in, and it's not because I'm anxious—I'm like you are. We want a Constitution that the people will accept. We want them to feel we have done a good job, but we want them to recognize that Hawaii does stand for something, and when we come to sell it to the people of Hawaii, I believe those five sentences that we are suggesting are going to be a better selling point than almost anything else.

Now, if we're willing and if the lawyers and the others are willing to stay by the Federa. Constitution and accept six words to tell how everything shall be organized, that's one thing. But I've read these books on state constitutions and they tell me that doesn't belong in a state constitution. It should be an indication of our advance, it should be a directional thing as to how we are traveling and on what road we are traveling. And I believe we try to say it in the clearest, the most concise and the shortest way in which we could say it.

Now just to show you, yesterday a doctor called me and said, "Why do you write it so long? Why do you put so many sentences?"

I said, "Okay, I'll bite; what do you suggest?"

"Well, there's a Model Constitution, why don't you copy that."

"Well," I said, "it just happens that the Model Constitution, to express in less clear terms than we have expressed these five separate fields, they have taken more than 100

per cent more words to express it than we have in our five sentences."

Gentlemen, we haven't copied anything. We've tried to make it concise, clear, to the point and certainly something that Hawaii can be proud of. So, we feel, and we recognize there are 63 different ways in which you can say something. There are 63 different ideas on every question, and I know there are 63 objections to every question. I think the real $63 question is going to be, "How can we get through on time and get a good Constitution." That's what I want you to be thinking of. Well, we are using 63, my dear colleagues, because we know there are 63 different ideas here, and I can assure you as I sat with the 11, there are 11 different ideas, and I'm sure there are just as many outside.

I want to also call to your attention that some of our ancestors, and one of my good friend colleagues in the law gave me a most amazing book that gave me a great thrill to read, that was the first constitution written by Massachusetts. And a great deal of discussion came up, and I think this is going to hold right through. Shall we mandate the legislature, shall we suggest to the legislature, shall we indicate to the legislature? Let me read you how the dear sweet things in Massachusetts in their first constitutional assembly suggested it to the legislature about such an important thing as the liberty of the press. "The liberty of the press is essential to the security of freedom in a state. It ought not, therefore, to be restrained in this commonwealth." Did you ever hear any more gentle language?

Now, we are trying not to mandate. We recognize that in this whole thing, unless the people of the territory are with us, unless the people of the territory become one and all part of this government, nothing that we write will have any influence whatever. Remember, we had a Huey Long and a few other high-binders under the wonderful document of the U.S. Constitution. So, we have to recognize, we believe and we will trust and we will have faith in our legislature, and whether we put a word in, as one suggestion came in, that we should "vigorously" defend so and so, I feel the wording isn't the thing.

Here we all are. I'm sure everyone of us are sacrificing something for the sake of government. Why do we do it? Because we believe in a strong state and we believe unless the citizens take an active part, democracy dies, and we don't want democracy to die. I'm sure that everyone of you feel we want to maintain not only a democracy, we want to maintain that type of democracy that has become recognized as the American form.

So, we feel we are looking forward to a horizon here, and this horizon is something that we hope we'll set it high. We feel in the Health Committee that we have set a horizon. We hope you will accept it, because it is our best thinking, but we want your, naturally your kokua.

We have given you in our text the reasons for this. We would like to carry on now, and take section by section, and I agree with the chairman, I think it's a good idea if we could go through section by section as to content, not as to whether we should combine one or two or shorten a few words. Then as we go through, I would like the privilege, after the Secretary reads the item as we submitted it, I would then like to read just the corrections, as we got it from many of our delegates, that seemed to clarify the intent.

And may I in closing, read just one wonderful little message from George Washington as he finished the Constitutional Convention. He said, "It is too probable," and listen, this is as if the Health Committee were talking to you, "It is too probable that no plan we propose will be adopted, but if to please the people, and to please some of the comments of the delegates, we offer what we ourselves disapprove, how can we afterwards defend our work? Let us raise a standard to which the wise and honest can repair."

The event, gentlemen, is in the hands of the delegates.

ANTHONY: The chairman took a half hour in making the statement. I think it's a wise thing that we have a full discussion like that, but I trust that other committees will have similar indulgence by the Convention.

MIZUHA: I move that the Committee of the Whole -- I recommend to the Convention the passage of Section 1 of Committee Proposal 1.

DELEGATE: I second that motion.

HEEN: I think we ought to have further debate upon this proposal. I'd like to raise some questions here at the present time.

PORTEUS: May I interrupt one moment for a matter of convenience to the delegates? I think if you'll turn, you will find that you have a folder called "Committee Proposals." If you'll turn to that folder rather than to the folder on committee reports, you will have the material before you. There is a special file headed "Committee Proposals," and it's the Number 1 proposal in that book. Thank you for yielding.

HEEN: I take it that this article finally will be entitled "General Welfare," "Article on General Welfare," and of course, included in that would be the matter of public education. The first section there, the word "public health," that is a matter of general welfare. I would like to point this out. The section dealing with slum clearance, rehabilitation and housing, "The State and its political subdivisions may provide for or assist in slum clearance and rehabilitation of substandard areas including housing for persons of low income," they wanted to leave the political subdivisions with -- out of handling the public health measure.

"The enumeration in this article of specified functions shall not be construed as limitations upon the powers of the State government for good order, health, safety and general welfare of the people." I think if they had only that section, it would have been sufficient for all purposes.

I have an amendment to offer to this committee, to amend this article reading as follows:

> Article _____. Resolved that the following be agreed upon as part of the State Constitution: Article _____. General Welfare. The legislature shall have full power to provide for the good order of the State and for the health, safety and welfare of its people by all necessary and convenient means subject only to the limitations prescribed in this Constitution and in the Constitution in the United States.

CHAIRMAN: Delegate Heen, is that offered as an amendment to Section 1?

HEEN: It is offered for the whole proposal.

CHAIRMAN: Well, Senator -- Delegate Heen, we have a motion before the house and duly seconded that we act on Section 1 of this suggested committee proposal.

MIZUHA: Mr. Chairman, inasmuch as I was the mover --

WIST: The speaker who has just spoken used these words, "I take it that we will have a clause on general welfare which will include health and education." I trust he realizes that he is speaking for himself and not for the entire delegation, because I do not believe that we can, at this point, make any such assumptions.

MIZUHA: [First part of speech not on tape] . . . and that the committee recommend passage to the Convention as a whole that this whole article pass second reading. Then in that event, the delegate of the fourth district can make his amendment as he has done previously.

CHAIRMAN: Delegate Mizuha, the Chair suggested that we consider each article individually and there was no ob-

jection. So we shall consider - - we will continue in that manner.

MIZUHA: Then, Mr. Chairman, the amendment is out of order.

CHAIRMAN: That's correct. There's no second to the amendment either.

LARSEN: In discussing this, I agree with Doctor - - Mr. Mizuha, that we can do this article by article to evaluate content and then the other can be discussed. I would like to answer Delegate Heen, that the article is not entitled "General Welfare," but the recommendation we are making is that it shall be "Health and General Welfare." In other words, this whole health field has grown to a point where it is very important. The first one, called "Public Health," as I said in my explanation, has only to do with the functions of the Board of Health, and therefore is something we have accomplished.

The Board of Health is, I might say, some objected to the word "preventive measures" –I want to assure you as the explanation shows, there is no evil connotation there. For instance, if you innoculate people for small pox, you are preventing a possible epidemic. If an epidemic breaks out, then you may have to protect the rest of the citizens. "Promote " does designate that we are advancing along these fields. I feel those three words, to explain what the present Board of Health and which the president of the Board of Health felt did cover it without legislative content, is important.

CHAIRMAN: Delegate Heen, as a matter of reference to your amendment before, I hope the Convention understands that there is nothing to keep an amendment such as this coming in, after we consider each individual article.

WHITE: Could I have the chairman of the committee explain to us the reason for the use of the word "responsible" in the first section as against "conveying power" in all the other sections?

LARSEN: The question of wording of that type–I have discussed it with a number of individuals–I think we should leave to Style Committee. We thought there was a slight difference, and in some of Senator Heen's comments, I feel there is a very distinct difference. As we come to the section, perhaps I can explain them. I realize, having lived in the field for more than 30 years, certain words mean a great deal to me that perhaps should be enlarged upon, and some of my lawyer friends did say that we should enlarge on our explanation. But the question, "The State shall be responsible," or "The State is hereby authorized" or, "The State shall have the power," I would like to feel that they should be, I think, straightened out perhaps into one style, if necessary, by the Style Committee. After the Style Committee has straightened that, as I understand it, we will still have an opportunity to change it if we want. But I think that's correct.

ANTHONY: I'd like to ask the chairman of the Committee on Public Health a question, if I may. That is, does the committee consider that it is necessary to have articles such as are contained in this proposal to enable the legislature to legislate in these fields? In other words, do they think it's essential that we have such an article? Or what is the purpose of it, if they do not think it's necessary, as a deposit of legislative power in the legislature.

CHAIRMAN: Would the chairman of the committee like to answer that?

LARSEN: Yes, Mr. Chairman.

I realize I can't use the clarity of langauge that is used by a lawyer, and therefore, apparently, I don't make it clear. I will try again. That, we believe, a State Constitution has a function; that function is to record certain advances, and these advances should be recorded in our Constitution, because that is what a Constitution is for. That in all these authorities on state constitutions, they recommend, and even our local recommends, that we not just keep the Organic Act, but that the State Constitution should be a re-emphasis of basic principles plus the directional trend, plus the recording of advances we have made.

Now, it's true, these things have evolved without this in the Constitution, but so has everything else. We could leave out the Bill of Rights. As I said at one of our committee meetings, we really could go home; all we had to do was take the first day and pass the Federal Constitution. That gives us a chance, but remember this, in these fields, when we're knocking at the door in Washington, and we have copied the Federal Constitution, I think we just give them the right to believe what many of them do believe–we are just a bunch of natives with a few of these beachcombers who couldn't make good in America, and therefore came out here, and here we are, and we couldn't even have enough originality, but we copied the Federal Constitution.

Therefore, I think this principle holds true, that we should indicate that we really are advanced, and my feeling is, there is no field where anybody who knows–certainly any scientist, and most legislators–will get indication of our advance quicker than in the field of health and general welfare, and we use the term advisedly. "Health and general welfare" connoting the physical, mental and happiness, health, emotional health, if you will, of the people of Hawaii, and we think that these five sentences do that better than if we just use one.

CROSSLEY: I'd like to ask the chairman of the Committee on Health and Public Welfare a question. He just stated that it was his opinion, and apparently the opinion of the committee, that those gains which have been made over the past half-century or quarter-century, that are recognized gains should then be spelled out. I'd like to ask for a little clarity on that. Does he mean gains generally recognized in areas in which there are still no conflict, or areas in which there may be still conflicts of thought?

LARSEN: In these five fields, we have advanced; we are functioning; we are there. I think the principle we are talking about is, should our Constitution give an indication of our advance or should it merely repeat those words of the beginning. Our committee feels that we should indicate the advance, that there is - - these are not controversial points. The controversial point was the one I read about hospitals. My committee didn't let me get away with any controversial points. These five fields are already functioning in Hawaii. Now, we might use the one, but perhaps some legislature will come along and discontinue them. We believe it's important to have in the Constitution our advance and keep the advance.

CORBETT: It's my belief that these advances have been won by the people of the territory over the past 50 years by battles in court and in the legislature, and that if we don't reiterate and re-emphasize them at this time, we might conceivably lose them at some future date. There are people on the floor in this Convention who have taken part in those battles, and I feel quite sure that they want to insure to our people these social gains. We are dealing with people, human beings, who wish some assurance in their document other than the bare bones of the three branches of the government.

CHAIRMAN: Delegate Tavares.

(Clapping)

TAVARES: Thank you. I didn't know I had a claque right in the Convention. I'm very happy. I hope they'll - -

CHAIRMAN: That was for the last speaker.

TAVARES: Pardon me because the applause was a little late and I misunderstood.

It seems to me that the debate thus far boils down to this one thing, which I believe for posterity and for the help of the courts in interpreting this Constitution, should be made crystal clear in the debates, and I hope and understand that these debates are being recorded word for word. It is my understanding that the gist of the arguments in favor of the proposals -- proposal as worded in this manner is not that the more inclusive and general language of our Organic Act which does nothing practically but grant to the legislature power over all rightful subject of legislation, it's not the contention that that wouldn't cover these things, but that they prefer to say it in this manner. In other words, I would want it very clearly understood that when in another section, as we probably will, or in another article we grant to the legislature power over all rightful subjects of legislation, or words to that effect, it will not be considered that those words would not have carried anyway this interpretation and thereby by implication have these specific provisions limit the meaning of the general power.

It's my understanding that we are practically doing this out of an abundance of caution, perhaps, or out of merely a preference to restate in more specific terms some of the things included in the general grant of legislative power over all rightful subjects of legislation. That is one thing, it seems to me, we must make clear as we go along. If we are going to be specific about some things that today we are doing already under a general grant of legislative power, let's be very sure that we are not thereby by implication limiting the meaning of the general grant of legislative power. And if I vote for this, it will be with that understanding, and I believe, unless the members here contradict me, that they will be doing that too. In other words, we do not propose to limit a general grant of legislative power by all these specific enumerations of specific powers.

There are some areas where there is doubt. For instance, in the slum clearance and public housing field, doubt has been expressed in our legislature as to whether under our Organic Act in its general terms, we had all of the powers needed, and for that reason, we got through Congress a number of times, special acts practically ratifying what our legislature had done. Those situations would justify, perhaps, our being more specific in any event, whereas to many of these other areas, my understanding is that if we adopt this, we are not doing it because the general legislative grant of powers is not sufficient, but because we want what the chairman of the committee says, directional emphasis or the other types of emphasis which he has mentioned.

ROBERTS: Our section E or F, the last section in the committee proposal, states very specifically that "The enumeration in this article of specified functions shall not be construed as a limitation upon the powers of the State government for the good order, health, safety and general welfare of the people." I think that the point presented is fairly important.

I'd like to state that when I joined the Committee on Health and Welfare, I took the general position that we have one broad clause in the Constitution. The language was similar to the language presented by Senator Heen. After sitting through with that committee for 16 meetings, after hearing the individuals who came in to testify before us on the specific functions and problems of their particular areas, I for one finally accepted the proposal that there be five specific sections outlining fairly broad fields in the public health and welfare areas, and then put a general proviso at the end that this does not limit the State in its general powers to perform its functions.

I believe that with regard to two of those sections, the section on slum clearance and the section on public sightliness, there was a very distinct and definite problem in terms of the actual power of the State to act in those areas. I believe, if you examine some of the literature in that field, that in some states the question has arisen as to whether or not the legislature could properly act in those areas without a specific grant of power. Questions had come up in the courts with regard to the expenditures of funds. In those two particular areas you need some specific safeguard in the Constitution to permit the legislature to act in case of any question of constitutionality.

In the other three areas, the public health, the social security and the question of general welfare, which really gets down to the problem of the treatment of mentally and physically handicapped persons, in those particular areas, it was felt that sufficient progress had been made. The areas have been pretty clearly and well-defined as a matter of receiving public support for the final adoption of the Constitution, and in terms of specifying these things directly that that be included in the total section.

I believe we can establish without much difficulty that some states have gone to extreme lengths with regard to spelling out these powers. We have felt they ought to be specific, they ought to be simple, but they ought to indicate what the interests of the community are with regard to those fields. I believe that for those reasons, we ought to adopt the six sections proposed there. I believe we ought to continue with our specific materials on each of the sections.

I might point out, for those who are arguing generally about the necessity for a specific one sentence grant of power, that those particular areas can apply to any section of this Constitution. I have in mind particularly the Federal Constitution with regard to the judiciary. It seems to me that all we have to say with regard to that problem, if we adopt this general proposal, is that the legislature shall have the power, after you establish your supreme court, to set up such inferior courts and set out their jurisdiction. I am sure that when that committee reports in to us properly that we will have specific language, perhaps on the number of actual supreme court judges, in the Constitution, perhaps on the specific grants of power and jurisdiction, perhaps on the question of tenure, perhaps on the question of retirement. We could just as well leave all those matters for the legislature. It seems to me our Constitution ought to indicate where we are, or to indicate the things that we believe in, and the things that are fairly fundamental both as to our form of government and as to the accomplishments that we have already made.

MAU: Before I discuss this proposal I'd like to ask two questions of previous speakers so as to clarify the matters discussed. The delegate from the fourth district who raised some question as to whether the specific enumeration of powers in this proposal might act as a limitation upon the general legislative powers of the State, after having the other delegate from the fourth district speak on the last section in this proposal, is he satisfied that that limitation does not exist?

CHAIRMAN: Delegate Tavares, would you like to answer that?

TAVARES: The answer is yes, but I wanted the record to reinforce that very strongly.

MAU: I would agree with the delegate of the fourth district; that would be my stand also.

I would like to ask the chairman of the Health Committee with respect to his suggestion which did not get into this proposal concerning subsidizing hospitals, now, is there any record in the minutes or in the committee report which could be used in interpreting this proposal, this proposed constitutional provision, which would limit the State from subsidizing hospitals?

MIZUHA: I rise to a point of order.

CHAIRMAN: State your point of order.

MIZUHA: This movant for the recommendation of the adoption by the Convention of the Whole of Section 1, asked the question as to whether we were speaking on Section 1 or on the whole article. If we want to speak on the whole article, I'll be willing to move that we are -- this Committee of the Whole recommend to the Convention the adoption of the whole article, and then we can go into the whole shebang. Now we are going from one section to the whole article and back and forth and we don't know where we stand here.

CHAIRMAN: Delegate Mizuha, I understand the meaning behind these questions or the reasons behind them. They want to get clarification so they can start through the different sections. I think their questions relate to, not only Section 1 maybe, but 1 or 2, but I think they are in order.

MIZUHA: But the question that was propounded by the previous speaker was on the subsidies to hospitals, as to why it wasn't included in the whole article here. I believe we are discussing the first section at the present time, and in order to expedite business, if we consider the whole article all at one time, then all these questions can properly arise and we can go to bat and even consider the delegate of the fourth district's proposed amendment.

CHAIRMAN: I think the delegate is just seeking clarification. I think he's in order.

BRYAN: Mr. Chairman.

CHAIRMAN: Delegate Mau still has the floor.

MAU: I wonder if the chairman of the committee on health could answer the question I raised.

LARSEN: I think it's included in the minutes, without any question. It's also noted in the minutes that it was overwhelmingly defeated.

MAU: Of course --

PHILLIPS: Mr. Chairman.

CHAIRMAN: Delegate Mau still has the floor.

PORTEUS: May I ask Delegate Mau whether or not he will not get a further clarification of that. To me, that is not an answer that I am satisfied with. Members of the legislature confronted in the future with a question of whether or not this article on health and public welfare will authorize or permit legislation whereby there will be either stand-by costs or so much a day paid to hospitals that are part of our hospital system of this territory will not be able to know from that answer whether or not it is clearly intended by the chairman and that committee that there is such power, but that the failure to express it specifically is not a rejection of the power of the legislature.

LARSEN: Mr. Chairman, I apologize for seeming to be facetious. The committee felt that this was such a new field that it shouldn't be in the Constitution. It was also expressed, and I think we had one of our legislative members in, who said that they had already gone on record to do this. In other words, they had accepted under the Constitution the idea that subsidization of hospitals could be done under our present -- that was a question raised, the question that I raised, I wondered could they go that far, but they . . . [Not clear on tape.]

MAU: As I understand it, the record of the proceedings in that committee do not indicate that because the subsidizing provision was not proposed in this Proposal No. 1 will create no prohibition against the State or its legislature from appropriating monies to subsidize hospitals. If that is correct, I want that to be in the record, and if there is any objection to that, any of the delegates should now make those objections known. I want the record to be clear on that. My interpretation of several of the sections in this Proposal No. 1, these provisions being broad, reading these provisions alone, do not indicate any such prohibition against the State or the future legislatures.

WHITE: May I state for the benefit of the delegate from the fifth district that that subject is now included in the proposal of the Committee on Finance and Taxation, so that the delegates will have the opportunity to pass on that subject at that time.

MAU: I would like at this time to amend the motion made, that this committee adopt Proposal No. 1.

CHAIRMAN: I believe that's the motion before the house. Will the Clerk -- We'll get clarification now, I think.

MAU: No, Mr. Chairman, the motion is limited to Section 1 of the proposal, as I understand it.

CHAIRMAN: Do I understand you to be amending the motion to include the whole proposal?

MAU: The whole proposal.

MIZUHA: I rise to a point of order. Again, that is what I've been harping on for the past half an hour. If this Committee of the Whole decides to consider the article as a whole, then we can expedite business; but you have limited us to just the consideration of the first section, and everybody that has spoken heretofore has been speaking on the whole article and all its ramifications.

MAU: By that proposed amendment, I am asking the delegates to consider that; consider its action that they will consider only section by section and take the whole proposal together.

MIZUHA: The Chair had ruled that the Committee of the Whole had decided that consideration shall be only on Section 1. You cannot reconsider -- You must first reconsider the action of the committee before you can entertain the delegate from fifth district's amendment.

HEEN: The Committee of the Whole did not go on record as to considering the proposal section by section. That was a suggestion made by the Chair. Now in order to clear the decks, there is a motion pending to recommend the passage of this proposal in its present form as a whole. I move that that motion be tabled.

MIZUHA: I had agreed -- I had informed the committee and the chairman that I was willing to restate my motion to include every -- the whole article --

ASHFORD: Mr. Chairman.

MIZUHA: -- and then if the committee wanted to consider that, the whole article, they could do so.

CHAIRMAN: To review the --

ASHFORD: Mr. Chairman.

MIZUHA: I withdraw my motion, Mr. Chairman.

ASHFORD: I second the motion of the delegate from the fourth district, Mr. Heen.

ROBERTS: Mr. Chairman, Mr. Chairman. Before that motion to table --

CHAIRMAN: May I ask clarification from Delegate Ashford?

TAVARES: Mr. Chairman, I rise to a point of order.

CHAIRMAN: State your point of order.

TAVARES: There was no second to the motion. There is nothing to table.

CHAIRMAN: That's correct.

TAVARES: And may I say this. Let's not be too technical starting out. It seems to me that when we are discussing

Part 1 of this proposal and we mention the other, doesn't it mean just this, later on when the others come up, we've had our say, we're not going to say it over again. So that we are really making progress. We illustrate our points, we bring out other things, we compare and so forth. But in the long run, I still think we are saving time even if we jump the fence once in a while, and it seems to me, if we do that, we are going to get ahead a little faster.

I just want to make two explanations that I think need to be made. One is with reference to the explanation of the chairman of the Committee on Taxation and Finance. It seems to me this really is the result -- this is the situation, that the ability or the power to subsidize private hospitals is implied in the general grant of legislative power, unless in our Committee on Taxation and Finance we place a limit upon it, and that is what is now being considered in the Committee on Taxation and Finance, whether we shall limit the power to apply government funds or property to the aid of other institutions. If we don't put that in, then I think the general grant of legislative power will include what we are doing today probably, unless the Constitution of the United States is later held to forbid it. If we do place a limitation, that will answer the question. I wanted to make that clear. That seems to me the situation.

The second point of explanation is this. In the Style Committee we have already tentatively decided that we are going to try to put subtitles to each section for convenience. Now putting a subtitle in is a very dangerous thing, because it's usually one word or two words or a few words, and it's impossible to compress all of the meaning of a section into one short subtitle, unless you make the subtitle almost as long as the section. Therefore, it seems to me dangerous if this committee, as I want to point out later, is including in its subtitle a word which is not included lower down with the idea that it will explain that. I think it's a little dangerous to do that and I'd like to have that borne in mind. I'm jumping the fence again, with apologies to the delegate from the fifth district, but those two explanations, it seems to me must be borne in mind.

MIZUHA: I wish to withdraw my motion.

ANTHONY: I think that the debate on this proposal is going to set a very important precedence in this Convention. This Constitution will have three principal articles. As a matter of constitutional law, whether as a matter of language, whether you are going to divide it into more, plus a Bill of Rights, everything that is in this proposal properly is a matter of a legislative grant of power. Now, I am not at this point opposed to any of the statements that are contained in here, but I'm just wondering whether or not we wouldn't advance our work faster if we should have the report of the Legislative Committee which will deposit a full grant of legislative power. Adopt that, and then after we have that before us, then after we have the executive and judicial branches of government before us, we can then proceed to sort of fill in the interstices by these other proposals that relate principally to matters of legislation. Now under the Organic Act, we're got simple language. Section 5: "That the legislative power of the Territory shall extend to all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States locally applicable."

DELEGATE: Section 55.

ANTHONY: Now there is no doubt about it that everything that's stated in this article could be done as a matter of legislative grant, under the language -- the simple language of the Organic Act. I have a great deal of sympathy with the chairman of the Health Committee that we should record our advances, but what I want the Convention to fully appreciate is that this is not adding anything, this is not adding anything to a general grant of legislative power.

Now it seems to me it would be more appropriate if we'd get our legislative article in shape and then we could discover after that how far we want a -- to make a declaration of advances, and how far we want to express specific items in the legislative section of the Constitution.

Now there is the danger, as a matter of constitutional law, the minute you start to enumerate these things you have the questions raised whether or not by the very act of enumeration, are you not saying that in substance and effect that these are the specific fields, and no further. You express one and you exclude another. That's the danger, I think, in the enumeration.

As I said before at the outset, I don't find any particular objection to any of these statements, but it does seem to me that we've sort of got the cart before the horse, where we're filling in without having the basic skeleton of the Constitution.

BRYAN: I actually agree with what the previous speaker has said as to the placement of this and the time of consideration, as far as the legislative section of the Constitution goes. I would like to heartily disagree with what he, and I think two or three others from the fifth district have said, and that is that I don't think the Constitution is to be made a history book. I think the Constitution is to set forth permissive powers, restrictive powers and give authorizations in these various fields; but I don't think that it's the place to put the history of the territory, or the history of any philosophy, and I'd like to make my stand very clear on that particular matter. I think, procedure-wise here, it might clear up the debate a little bit if we were to consider the substance of this report and ask that it be referred to the Legislative Committee. I won't make a motion on that, but I'll throw that out in line with what Delegate Anthony has said.

PHILLIPS: I'd like to speak on this business of history and what the American Constitution meant to us, as was set forth by Dr. Larsen. Dr. Larsen warned us that we should be against being unoriginal—by following the American Constitution. Therefore, I'd like to read here what another great legislator had to say about the American Constitution, and that is William Gladstone.

> The American Constitution is, so far as I can see, the most wonderful work ever struck off at a given time by the brain and purpose of man. It has had a century of trial under the pressure of exigencies caused by an expansion unparalleled in point of rapidity and range. And its exemption from formal change, though not entire, has entirely proved the sagacity of the constructors and the stubborn strength of the fabric.

Now, therefore, I believe it's important for the record that rather being unoriginal, we are actually being intelligent enough to follow this document which has proven so well down through the ages. And I would like to say in support of that that one of the committee members in his talk, Dr. Roberts, brought out the fact that it ought to be specific and simple, and I don't believe you can find anything more specific or more simple nor more advantageous than those -- the health provision that is contained in the Federal Constitution.

KELLERMAN: I think we might all keep in mind with reference to Mr. Phillips, the gentleman from the fourth district's statement and others, that in dealing with a state constitution as compared with the Federal Constitution, we have two entirely different approaches. The Federal Constitution is a grant of specified powers by otherwise sovereign states, and the Federal Constitution limits the powers that can be expressed or exercised by the United States government to those powers specifically delegated. The Constitution of the United States also contains certain restrictions

upon the powers of the state, which are binding upon all. But that is all the Federal Constitution is supposed to do.

Now we are dealing with the Constitution of a sovereign people limited only by those expressed grants of power or the limitations of power expressly given in the Federal. It seems to me that we could very well say, "Since we are sovereign people, we do hereby grant or recognize that our legislature has all power within any reasonable subject of legislation that is not specifically prohibited by the Federal Constitution," and go home. We do have all the powers; we are not arguing about the full power in the legislature to deal with all rightful subjects of legislation not limited by the Federal Constitution. But it seems to me, we are here to draw up more than an organization of government; we are here to express in our Constitution, the policies, the purposes and the hopes of our people within their State's sovereign power which no one denies them. For that reason, I do not believe in the concept of curtailing a state constitution to the three branches of government and general grants of power.

Now as to the matter of waiting until the legislative proposal comes out to see what it grants, we know it will grant full legislative powers. We don't need for such a proposal to appear on the floor to know that, and if we are going to wait for these proposals from the three branches of government to appear on the floor before we discuss these other proposals, I don't think we'll leave here until September, because we know that some of these committees are not anywhere near ready to bring in their final proposals and meanwhile we have to consider the reports of 14 different committees. So it's my suggestion that we go ahead with the proposal which has reached the floor first and discuss it on the basis that I brought forth.

SILVA: As I get it, the only thing before this Committee of the Whole is Committee Proposal No. 1.

CHAIRMAN: That's right.

SILVA: And that we're supposed to discuss this proposal section by section, or all the whole matter as far as that's concerned. Now my way of thinking is, do we or do we not in Committee of the Whole agree to the principle that "The State shall be responsible for the protection and promotion of the public health including preventative measures for all of its inhabitants." That's the only question before the committee now. Do we or do we not agree, and if we do, we don't have to vote on it. We can say we agreed to the principle, then we go on to the next section and so forth. Then if we care to refer this to some other committee, to the Committee on Legislative Powers, it can be referred to that committee. But going all over the place and talking about the rights of man and the Constitution and so forth is highly irregular and out of order at this time.

ARASHIRO: In line with the suggestion of the delegate from the second district, are we now discussing the proposal in its entirety?

CHAIRMAN: The motion still before the house is relating to Section 1, Public health.

ARASHIRO: And then, are we to act on that motion or are we going to discuss it? If we are going to act on that motion - - has that motion been acted upon?

CHAIRMAN: Motion has not been acted on. It's been seconded.

ARASHIRO: The reason why I ask this is that we have Proposal No. 1 before us, and if we are to discuss on the entirety, I feel that the chairman of the Health Committee has only presented his view as to the actions and the work that the Health Committee has taken and they have carefully worked on this proposal. I think they have worked for over a month now, and I think that there is all the reasons for having all these five sentences as the Chairman has stated I think we haven't had the presentation of the other four sentences and I think that if we are going to discuss on the entirety of the proposal, then we should listen to the presentation of the other members of that committee to give their views for the reasons of having the other five sentences. But if not, and we are only going to discuss on the one section, then we should act upon that motion that is before the house. And if so, I refer to the previous question - - I move to refer to the previous question.

CHAIRMAN: You move the previous question?

TAVARES: Before that motion is seconded, may I just say this. It is my understanding that when a matter is taken up in Committee of the Whole which includes several items and we approve each item, that does not bind us even to approve it on the final hearing. It is a tentative thing, and at the end, then we have to vote whether we adopt the whole thing anyway, or recommend the adoption of the whole matter. I hope the legislators will correct me if I am wrong. So that even if we tentatively approve each of these measures we are still reserving the right to have a reconsideration of everything as a whole when we get to the end. That might expedite matters a little bit.

WIRTZ: Before we vote on any of these proposals either individually or as a whole, I'd like to ask the chairman of the Health Committee whether certain suggestions that were made during informal discussion of this proposal have - - and amendments have been made or are going to be made? Or put the question the other way, is the proposal in its final form now?

LARSEN: No. We did have a meeting and I wonder if you would turn to your pages, we can rapidly show the type of suggestions and perhaps it will save some discussion. For instance, Section A remains as is. Section B, our lawyer friends urgently asked us and we agreed to remove the word "adequate" in the second line. We also suggested to put a comma after "measures" and a comma after "rehabilitation" to make it clearer. We also suggested that instead of the word "care," which seemed to be not quite clear, we add the word "service." Those are all suggestions made by fellow delegates. In Section C, one of our lawyers suggested, and there seemed to be no disagreement, that in the second to the last line, we cut out "in such manner and by such means" because he felt that was self-understood. So that was eliminated. Could I just go through? I might say that this is merely suggestions that you can vote on because we - - naturally we have to submit the committee report as it was, but I'm giving you the thinking of a large number of delegates and therefore as you vote you can make those corrections if you want, but just to save discussion I'm merely mentioning the changes that were suggested.

In Section D, it remained as is except the Housing Authority suggests this longer section which, if you come to it and feel it's clear, why I would be glad to submit the two of them. The committee report, as I say, stands as is.

On the Section E of public sightliness, there are two suggestions made by delegates and not several of them. In the reports that you have, we left out - - we left in the title "Public Sightliness and Good Order," and left it out in the body. The suggestion is, unless we put it in, it shall read something like this - and of course this is where - - I didn't read it this way but I can see how it can be read that way—"The State shall have the power to conserve and develop public highways and beaches." Well, that was not the intention at all. The intention, of course, was to put in that last line, "parks, public highways and beaches in the interest of public good order and sightliness." Also one suggestion was made that "cultural interests" were so broad that "historic and cultural" should be "historic and cultural importance."

If you make these notes, then when it comes to voting you can ask for such suggestions. And the final one in E and F, if you would mark it down, this also was - - I forgot who made this suggestion but I'm putting it down and it seemed to read a little more clearly as it was suggested. "The enumeration in this article in the fields specified shall not be construed as a limitation of possible future activities in these areas."

SAKAKIHARA: Point of order.

CHAIRMAN: State your point of order.

SAKAKIHARA: I don't think the chairman of the committee has answered the question propounded by the chairman of the Rules Committee.

WIRTZ: I'm concerned, not with all the suggestions that were offered, but the suggestions that were acceptable to the Health Committee. Are those - - all those suggestions that you have enumerated, Mr. Chairman, are suggestions acceptable to the Health Committee?

LARSEN: No, they are not. We found out yesterday that - - we questioned as many as possible, but we weren't able to meet since some of these suggestions were made. That's why I'm leaving them to those members who made them. If they want to make amendments, they may do so.

WIST: The question has been asked whether or not this article on health and general welfare will be adding to the grant of legislative powers. Personally, I don't think that that's the purpose of this section. The purpose of this article, the five sections in this article, is primarily to state principles, principles that we, the representative of the people, believe are sound. They are principles that are accepted. I think the issue really before this group this morning is not so much a question of the substantive matter of these various sections, because I think most of the delegates would agree that all of these things are sound, wholesome and good. I think the basic question is do we want to streamline it, to telescope it into a single short paragraph or do we want to state these principles in the order that the committee has recommended. I, for one, believe that there is certainly nothing wrong in stating them section by section. If we are going to state the principles, why not, if we believe in them?

FUKUSHIMA: I don't believe any one of us here entertains any doubt that the Committee on Health has done a lot of work, put out a splendid piece of report, but I feel like some of the delegates from the fourth district that we are not adding anything to the Constitution or to the legislative grant of power by spelling out these five sections. Then we have a final section which says that the enumeration shall not be construed as limitations. To me that doesn't sound like a constitution at all. It sounds more like some statutes, instead of a constitution.

In that regard, I attended a hearing of the Health Committee and the opinion was expressed by Mr. Fox that as far as he was concerned, these articles on the health and welfare sections should be as concise as possible, and in fact stated that perhaps one sentence would do it. And at that time he got a tremendous applause from the 100 people that were gathered there. I was just wondering whether the committee took that into consideration.

I also spoke to one of the other speakers, Mr. Tajima, who appeared before the committee, and he had a proposal in his hand which also had only one sentence for the entire thing. I believe the Health Committee relied somewhat on the speakers, especially Mr. Fox and Mr. Tajima.

In that regard, I also have an amendment to offer which I have here and I'll offer it at the proper time. I'll also have the men here distribute the amendments which I have had printed. This is in line with the provisions in the United States Constitution. It has been facetiously stated that if we copy the Federal Constitution, then we'd just as soon have copied the entire thing and have gone home the very first day. I don't concur with that. The Federal Constitution, as pointed out by Mrs. Kellerman, is entirely different, and for that reason, any section which has already stood the test of time as far as interpretation and construction are concerned certainly should have some bearing on this Constitutional Convention here. I don't believe that we should have in our Constitution merely a statement of principles. We're talking about directional trend and principle. Perhaps we should have it in the Preamble and not in the framework of our government.

LARSEN: I'd like to answer that because I feel we have answered it. We considered very carefully these various - - should it be six words, six sentences or six paragraphs? We have 200 constitutions, state constitutions to consider. We believe in good American practice that the state constitution does give directional trends, that the best authorities on state constitutions suggest we should note these advances.

As far as this applause we heard about, I'd like to give - - as we all know, six of us can look at one accident and will giv six different interpretations. My idea of the applause was, Mr. Fox is a very keen person and he gave a very good speech. The applause wasn't to include six sentences, because I've just read you here a series of letters that I got from the experts who were at the meeting suggesting not only that we limit it to what we had, but they even want more paragraphs to make sure that the legislature shall have a full avenue of advance.

ROBERTS: I'd like to answer the statement made by the speaker before the last on the question of the public hearing. In addition to that public hearing, we had 16 meetings of the committee. At that public hearing, Mr. Fox spoke on the general problem and there was tremendous applause, the only applause of the evening. I subsequently put the paragraph, the one sentence which Mr. Fox had proposed, which he was expounding, and as soon as I put that particular paragraph the answer was "No," and objections. It was his paragraph, the section that he had sold in his speech. Yet, when it came to actual specific language, that group would not support it. They would not support it because that language and that speech was put concretely in terms of a section of the Constitution. Each person there was looking to his own particular problems and his own particular needs.

The second point raised as to whether or not the Federal Constitution should be adequate for our needs, I find no section on initiative and referendum in that Constitution; I am sure that there are people going to be here who are going to argue for that. It seems to me that we're writing our State Constitution, and if we need to put things in there, then we write them in in terms of our own problems and our own concerns.

There's been some statements that this thing does not grant any power to the legislature. I suggested in my opening speech this morning that there were two specific fields where I believe that such grants have been given. One is in the public sightliness, on the question as to whether you can or cannot pass legislation dealing with billboards. That' a legislative grant. That's a grant of power to the legislatur The second one, it seems to me, is in the question of the field of housing. That question is an open field. A number of states have amended their constitutions – New York, for example, in 1938 – specifically on that point that the legislature be given that grant of power. So in those two areas you'll have specific grants of power to the legislature.

In the other three, I indicated perhaps there is no need to spell that out. It doesn't give them any power, but it does indicate the areas in which the State is now functioning. It seems to me that this Constitution has to go to the people for ratification. If there is sufficient support and concern and need about those areas, we have a problem of recogniz-

ing that need. It seems to me if no damage is done, it seems to me that we have a responsibility to consider those areas. The committee did and the committee suggested their inclusion.

On the last question, on the question of enumeration of powers, we have stated before that enumeration of powers in those five areas do not limit the State in such other areas as they may deem necessary to go, provided they are not in violation of federal law. It seems to me that the legislative grant is there; that was discussed at the opening part of our presentation this morning.

BRYAN: Nearly everyone who spoke has intermingled the idea of the substance of this and the procedure and whether or not it goes into the constitution. I think that to make any progress we'll have to divide that in some manner, and as I understand the motions that are pending—the motion to the previous question was not seconded—the only motion that is pending is for the adoption of Section 1 - -

CHAIRMAN: That's right.

BRYAN: I would like to amend that motion that the proposal be considered in substance section by section and when that is through we can discuss whether or not it goes into the Constitution in that form, whether it goes in as a paragraph or whether it's referred to the Legislative Committee. I would like to state on that point that by considering the substance only, we'll clear up this presumption that's been made that everyone is in agreement with it. Several speakers have said everyone thinks the substance here is fine but we don't know what to do with it, and there is argument on that point. Let's clear up the point of substance first.

I therefore repeat my motion that we consider the substance of this proposal section by section and when that is through we can consider further whether it's going to be referred, adopted for the Constitution, modified or whatever else can be done with it.

ANTHONY: The delegate from the University has touched on a point which I think is basic in this discussion. He stated that this - - some of these sections constituted an affirmative grant. Now I consider that that's an erroneous statement. I don't think that a single one of these sections would add anything to the simple statement depositing the legislative power to all rightful subjects of legislation. I don't think that this Convention should be voting on this proposal under the mistaken view of the law that this is an affirmative grant that goes beyond the existing power of the legislature. Now certainly that expression, "rightful subjects of legislation" has been interpreted by the highest court of the land, and in *Balzac against Puerto Rico* where the very words were interpreted, the Supreme Court said that that is a grant of power as broad as words can make it. Now let's not be misled by thinking that we're adding anything to the grant, the general grant of legislative power. If we want a constitution that is going to declare certain objectives, certain advances, then we'll put this sort of thing in. But what I want to make abundantly clear is that you are not adding anything to a general grant of legislative power by enumerating these six sentences, however desirable they may be.

KAUHANE: I'd like to second the motion made by Delegate Bryan.

CHAIRMAN: Ready for the question?

MIZUHA: I wish to withdraw my original motion.

KING: I understood the delegate from Kauai said he desired to withdraw his original motion that we consider Section 1 of this proposal. I believe the parliamentary situation would be then that the delegate from the fifth district, Mr. Bryan's motion would prevail as - - not as an amendment but as an original motion. That has now been seconded by the other delegate from the fifth district, Mr. Kauhane.

CHAIRMAN: That's correct.

KING: It seems to me that's the sensible approach.

With reference to the last speaker, I'm not certain that we are granting additional powers, but we are defining or subdividing the general grant. It seems to me that the argument that's already been made by the chairman of the committee and by the delegate from the fourth district, Delegate Roberts, that in these fields a specific statement of principle and of policy is desired by the public interest in those various areas, and that neither limits nor expands the general legislative powers. I feel that the committee proposal is an excellent one and would like to see the motion prevail that is now pending on the floor of the Committee of the Whole that we go ahead and discuss the sections item by item as to substance, and then vote on the whole either by approving it and requesting the Convention to approve it, or by voting it down, or by substituting one of these brief amendments that have been suggested, or by referring it to the Legislative Committee.

Now, the committees that are working on various provisions of the legislature, their final work might be incorporated in major divisions of the Constitution, but if we are going to wait until the Legislative Powers and Functions Committee report or the Judiciary Committee report or the Executive Powers and Functions report comes out, as another delegate has said, we'll be here until September. These provisions that these specific jurisdiction - - committees having a specific jurisdiction are going to make to us can be acted on, and can be coordinated in the Committee on Style, and can be so revised as to language as to fit in the reports of the other committees as they come out. So I would certainly like to see the adoption of the motion made by Delegate Bryan and seconded by Delegate Kauhane.

CHAIRMAN: To clear the record, the Chair would like to state that he recognizes the withdrawal of the delegate's motion, and the only motion before the house right now is the one of Delegate Bryan.

PHILLIPS: I move the previous question.

KAUHANE: Second the motion.

CHAIRMAN: Who seconded the motion?

KAUHANE: Second the motion.

CHAIRMAN: Previous question is before the house. All those in favor signify by saying "aye." All opposed. The ayes have it. Would you restate the motion, Clerk, please, before the house? Mr. Bryan's motion.

CLERK: "I would like to amend that motion that the proposal be considered in substance section by section, and when that is through, we can discuss whether or not it goes into the Constitution in that form, or whether it is referred to the Legislative Committee."

HEEN: That motion is not in proper form at the present time because the previous motion had been withdrawn; therefore the motion should be not one by way of amendment but a straight motion.

CHAIRMAN: I think that's correct. Renew the motion, please.

BRYAN: I wish to declare that as an original motion.

CHAIRMAN: Will the second accept that? All those in favor please signify by raising their right hand. There is enough. Motion is carried.

HEEN: Dealing with the section on public health, I would like to ask the chairman of the Health Committee why it was that the committee decided to use the words "be responsible"?

"The State shall be responsible for the protection and promotion of the public health." In the very next section, by way of explaining my statement, "The State shall have the power to make adequate provision." Why didn't they use uniform language; in other words, the first section should have read, "The State shall have the power to provide for the protection and promotion of the public health." I'd like to ask the chairman of the committee why there was that difference in language. There must have been some purpose for using different phraseology.

LARSEN: I'm afraid unless we get Freud in here, we probably can't quite explain why we made some changes. I thought, as I look at it and as Senator Heen spoke of it -- I think we used "responsible" in the first section because the State does have the responsibility. In the second one, "The State shall have power," now we are dealing in fields where they might or might not function and therefore, they have the power to work in those fields. However, as I called attention before, if the Style Committee feels that those reasons are not valid, they certainly shall change it. For instance, some feel that we shouldn't use the words, "The State shall have power," but "The State shall be empowered to," and use it uniformly in all sections. I think the committee has no objection to changes like that, but I think we feel it should go into Style.

PORTEUS: I think that that matter can perhaps be brought to a head. The Chairman has answered that question to a certain degree. To make it more specific, does the chairman of the Health Committee agree that it is a matter of style whether or not the language of the first section provides "The State shall have power" or "The State shall be responsible"? If Style Committee were to come out with entirely consistent language, would you feel that that made a difference in substance?

LARSEN: We, of course, felt that "responsible" was -- had a little different connotation than "The State shall have power." However, it seems to me --

PORTEUS: Well, Mr. Chairman, may I get a specific answer to the question because --

LARSEN: The specific answer is, if the Style Committee comes back with it, we'll probably be outvoted, but we did feel it was a little different. But our feeling is that such things probably would be for the Style to report back.

PORTEUS: I wish to make a distinction under our rules. Under our rules, after the Committee on Style has reported back, or rather the Committee on Style may make changes in style, not in substance. If this committee thinks that that change is a matter of substance, then I want to get at those words now. If the Committee on Health and Public Welfare will accept such amendments as being within the province of Style, then I don't have the concern with the particular language which is used.

LARSEN: I'm wrong on that. I agree that that's correct. I think the only two that we felt were different was number 1 and 2. The others, "shall have the power" or "shall be empowered to," we felt were style. But "shall be responsible," it seems to me, is more of a mandate than "shall have the power"; and "shall be responsible" I would consider substance.

PORTEUS: I think that's a very satisfactory answer. There is only one more matter within that first section which I have some concern with, and that is, the utilization of the words "including preventive measures for all its inhabitants." It would appear to me that if the Committee on Style were to come forward with a report that "The State shall have power to provide for the protection and promotion of the public health," period, it would cover the substance of that section. Now, is it in the minds of the Committee on Health and Public Welfare that the omission of the words "including preventive measures for all its inhabitants" is a change in substance? To me, it is not a change in substance, and within the province of the Committee on Style.

CHAIRMAN: Will the chairman answer that?

LARSEN: I gave the illustration. If, for instance, the people were vaccinated against smallpox, that's preventive. If an epidemic suddenly strikes us, and then those people are isolated and put aside, that's protection. When it comes to the question of whether prevention could come under protection, it's a question that in my own mind, I don't believe it does. But, if the Style Committee would assure me that there is no change in substance by leaving out that last sentence, I would agree. I don't feel that's an important point.

CHAIRMAN: If there's no opposition, I would like to declare a five minute recess. So moved.

(RECESS)

CHAIRMAN: Committee will come to order.

HEEN: As I understand it, we're dealing with the first section entitled "Public Health." Now, I would like to suggest an amendment and if it seems agreeable, I will change that to a motion. Amend the first section by deleting from the first line the words "be responsible," and insert in lieu thereof the word "provide." Then in the second line and third line, delete all the words commencing "including," and the rest of that sentence; "including preventive measures for all its inhabitants." So that with those amendments, the section will read: "The State shall provide for the protection and promotion of the public health" period. In that form then it's a mandate upon the State to provide for the public health and promotion of public health.

BRYAN: I'd like to second the motion to amend.

LARSEN: I believe there is a definite difference here. Certainly in my connotation, prevention is quite different from promotion and protection. Now, maybe we could use promotion for everything. But it seems to me that the three great fields of public health as it developed over the past 100 years in America have been number one, promotion, that has to do with advertising, education and all that; then comes protection, which means that you have to protect the people within the community from certain things; and the third great field is prevention, where you innoculate and so on. Now, the committee here is not too adamant about it, but it seems to me that it does carry a distinct meaning and a recognition of the three great fields under which public health now serves.

PORTEUS: I can appreciate the doctor's point of view, although in dealing with sections with respect to the good order of a community it's always been to me the legislative point of view that measures designed for the protection of a community included, of necessity, preventive measures. When you are dealing with crime, it's not necessary that you wait until the crime has happened and then attempt to protect the community; the way you attempt to protect the community is to try to prevent crime from happening. Consequently I think that the word "protection" is one of the broadest words that you can use and I think certainly when it's used in a constitution it should receive a broad construction rather than narrow construction. To my mind the word "protection" is all-inclusive.

DELEGATE: Question, Mr. Chairman.

ANTHONY: I'd like to ask Doctor Larsen a question, and that is, in my opinion -- In the first place, I agree with this

last speaker that prevention is included. If the matter was referred to the Committee on Style and that committee, we will say, eliminated that phrase on the basis that it was already included within the word "protection," would that satisfy your committee, Dr. Larsen?

LARSEN: That would satisfy us perfectly.

ANTHONY: I second Delegate Heen's motion.

CHAIRMAN: It's been seconded.

KING: Well, merely a parliamentary point. The delegate from the fourth district, Delegate Heen, offered it as a suggestion and would offer it as an amendment if it were agreeable. I request that he now make the motion.

HEEN: That's correct; I made it as a suggestion.

CHAIRMAN: Is that correct? I understand it was an amendment.

HEEN: It seems to be agreeable to some of the delegates. I therefore move that the first section of this proposal be amended by striking from the first line, the words "be responsible" and insert in lieu thereof the word "provide"; and delete the words "including preventive measures for all its inhabitants" appearing in the second and third line and insert a period after the word "health." So that as amended, if the amendment is accepted, the section will read, "The State shall provide for the protection and promotion of the public health."

BRYAN: I'd like to second that motion again.

CHAIRMAN: Motion is made and seconded.

TAVARES: Before that motion is voted on, I'd like to move an amendment, that we add at the end of the motion, change the period to a comma, and add the following words: "upon the ground that this amendment does not change the substance of the original provision." So that if we adopt it, it'll be the sense of the Convention that that is the point.

DELEGATE: I second the motion.

CHAIRMAN: Seconded.

HEEN: That might get into the records by my stating that the amendment proposed by me does not change the meaning of that section.

KAWAHARA: In the original phrasing, the word "inhabitants" is included. As proposed in this amendment, the word "inhabitants" is excluded. Does the amendment tend to change the intent or meaning of that section?

PHILLIPS: The word "public," I believe, covers that there. "Public health" would mean - - the public being everybody, therefore you wouldn't need to specify the people.

TAVARES: In view of the clarification by the proponents, original proponent of the motion, I withdraw my motion to amend upon the understanding that if we vote in favor of this motion, we will be accepting that interpretation of it.

CHAIRMAN: You withdraw your second? The amendment is withdrawn.

ROBERTS: I'd like to talk in support of the proposal up for consideration now on the express understanding that when this matter is reported out from the Committee of the Whole, that that committee report, on the floor, that the intention is not to exclude preventive measures nor to eliminate the idea that it is applicable to all inhabitants.

PHILLIPS: I can't help but feel again that within this one small section there is an enumeration, the promotion, the protection and the prevention. In showing that there are three broad fields of health, it looks to me like it is a memo down to all health officers to remember that there are three broad fields. "To provide for the general health," would, to a health officer who is familiar with what he had to do and was going before a legislature, to get that would state or would be mindful of the fact that all those three are - - must be considered in forming any legislation. Therefore, to put it in, to keep on piling in even in this small section an enumeration of promotion, protection, prevention, you could go on forever, is only to make it more redundant. It is my contention there and I move that - - I move to amend the motion that the protection and promotion be deleted and therefore, it will then read: "The State shall provide for the general - - for the public health," and leave it there for this section. Later on I would like to say, "and well-being or welfare."

CHAIRMAN: Hearing no second to that amendment, are you ready for the question before the house? All those in favor signify by raising their right hand. Motion is carried. Any opposed?

ANTHONY: Section - - the next section - -

KING: Will the gentleman yield just for a minute. As a matter of procedure, is it necessary to adopt the first section as amended, or does the adoption of the amendment automatically adopt the first section as amended? I raise that as a point of information.

HEEN: I think the result of that motion carrying means this, that that section has been amended.

CHAIRMAN: That's the question the Chairman considered was before the House. I don't know.

KING: The question I raised was, does that now adopt the first section as amended?

LARSEN: Wouldn't it expedite matters to wait until all the sections with the amendments have gone through or not gone through and then have one motion to adopt all?

BRYAN: No. I'd like to speak to Dr. Larsen's suggestion. That's going to tie us up in a rather complex argument about whether we agree with the substance of the whole thing or whether we agree with the form of having it in five sections. Therefore, I would like to move that we adopt Section 1 in substance as amended.

ROBERTS: Second that motion.

CHAIRMAN: I think that is in keeping with our earlier motion that we were going to proceed in that manner. The motion is duly moved and seconded. All those in favor signify by saying "aye." Opposed. Motion is carried.

ANTHONY: I'd like to speak to the second section, and suggest this amendment: "The State shall have the power to," delete the words, "make adequate provision," and insert the word "provide," so that that section will then read: "The State shall have the power to provide for the development of preventive measures for treatment and rehabilitation as well as domiciliary care for mentally and physically handicapped persons who are unable to provide such care." I make that in the form of a motion.

CHAIRMAN: Is that a motion to amend the present proposal?

WHITE: I'll second that.

CROSSLEY: Point of order.

CHAIRMAN: I recognize the second by Delegate White first.

CROSSLEY: There's no motion to amend; there has to be a motion on the section itself before you can move to amend it.

CHAIRMAN: That's correct.

LARSEN: I move it be adopted as is, and then have the amendment come in.

DELEGATE: I second the motion.

CHAIRMAN: Motion is duly made and seconded. Delegate Anthony, would you repeat your amendment?

ANTHONY: I have two amendments to that section. First, I move that the title be deleted to get a new title for that. I think the chairman of the committee has a title.

Second, I move that the substance of the section, the first sentence, be amended to read as follows: "The State shall have the power to provide," and delete the words "make adequate provision," so it will then read: "The State shall have the power to provide for the development" and so on, the rest of the section.

DELEGATE: I second that.

CHAIRMAN: The amendment is seconded.

PORTEUS: May I ask the person making this motion whether or not he feels there is an addition to this -- an important addition to this section, by the retention of the words, "for the development of preventive measures"? Would it not cover his idea to say that "The State shall have the power to provide for treatment and rehabilitation as well as domiciliary care," et cetera?

LARSEN: It seems to me again we come up to rather basic principles. If, and I might say this section is quite different from the first section, the first section provides public health for everybody, this second section provides care for those who are unable to provide it themselves, care, treatment. And we hope the program of prevention shall develop to the point where we will not need as much treatment and rehabilitation or domiciliary care as we now have. I feel it's quite broad there.

I would also like to add to the amendment, if I may, that the last line—this also comes from suggestions from delegates—I'd like to add, "who are unable to obtain such service except at public expense." And the title that we're suggesting is, "Care of the Handicapped." I'd also like to explain that "physically handicapped" includes all those who are ill, and that will be made clear in the explanation.

CHAIRMAN: That title is included in your amendment, I take it?

LARSEN: Yes, it was.

TAVARES: I think a clarifying question here is in order. Within the last four years, our legislature did a revolutionary thing; it adopted the principle of caring 100 per cent for tuberculosis patients, whether they were able to provide the expense or not, on the theory that it was a sickness that took such long duration and it was so dangerous that we were justified in incarcerating these people against their will in sanatoriums. As a result of that, in order to prevent the contamination of the public or the -- whatever you want to call it, infection of the public, we were justified in doing so; and as a corollary to that, we said, "Since we are going to compel you to go through this long course of treatment, since the rehabilitation takes a long time, the government is going to stand all the expense, whether you can pay for it or not." I am wondering if this provision is too restrictive to take care of the tuberculosis question. I think it's very important that it be properly cared for.

LARSEN: May I answer that? Under our present laws, tuberculosis is taken care of under Section A. Also, I think the criticism is perhaps valid, but I want to call your attention that a person who is well able to take care -- most people, at least 95 per cent, are unable to take care of one and two years of hospitalization. At the present time, they are allowed to pay what they wish. We have the same at the Territorial Hospital. However, I will accept the fact that that should be clarified, and we hadn't clarified it.

WIST: I think I can speak for the Committee on Health in saying that it is not our intention to exclude provision for tuberculars; therefore, this problem is really a matter of style. Secondly, in my judgment, this question of subtopics, or that titles -- subtitles is also a matter of style, and certainly that was recognized in the Health Committee.

LEE: I'm not sure whether I agree with Delegate Wist as to the matter of style and the matter of substance.

However, I want to ask Dr. Larsen this question, whether or not in providing for this section, entitled the "Care of Handicapped Persons," and in view of the fact we're running into this problem raised by Delegate Tavares, whether or not the first sentence in its broader terms and its broader aspects covers the care of the handicapped persons? It would seem to me that it does. I may be wrong on it.

TAVARES: Just one more thing and then I'll try to subside. It seems to me that, perhaps in their laudable zeal to see that this Constitution is not the Constitution of a so-called welfare state in its worse sense, they have put this qualifying provision, and it seems to me this is one of those qualifying provisions that might be too dangerous. Perhaps it would be better to take the chance that the legislature in this small field would err on the side of over-liberality and take out the qualification, "who are unable to provide such care," so as to just leave it an empowering section. I wonder what the chairman or the members of the committee would think of that. Since the field is so limited—it's only the handicapped— you're not going into too big a field in giving a legislature pretty broad powers, and not limiting it to only those who can't provide. Otherwise you have the question then of to what extent must a person be unable to provide for himself before he falls under the constitutional ban. That's a pretty hard question. If he has two radios, does he have to sell one? If he has a little home, does he have to sell a part of it? Or just how far do you have to go before you say he is unable to provide.

LARSEN: May I answer that? Number one, of course our public welfare, our City and County emergency, is all the time, every day, determining whether you can or cannot provide. That's a standard procedure.

However, I've talked to a few of my committee members here. I'm inclined to go along with Delegate Tavares. I have a feeling it's the one sentence that is perhaps closest to legislation that we have; I would accept that as a second one. However, I would like to make it clear what the intention of this committee was, and accept the fact that we did indicate that this State shall always stand for responsiblity to the State; that whatever rights are granted always go with responsibilities and therefore, if we make that clear, I think this correction would probably eliminate much of the objection to this.

TAVARES: To bring this matter then to a head, I move to amend the existing motion to amend, by adding thereto, a further motion to delete the words, quote, "who are unable to provide such care," unquote.

LARSEN: May I ask, why not delete the whole section? That would be safer.

DELEGATE: I'll second that motion, Mr. Chairman.

TAVARES: Well, if it's the -- With the understanding that by deleting that whole section we are not eliminating the power to take care of this situation under the preceding one which we have already adopted, I think I would -- I will second that motion.

ROBERTS: I think that the deletion of that section raises a question which ought to be discussed on the floor. In committee, the intention was that those individuals who are able to provide for their own care should do so; that those who are unable to provide, then the State had some responsibility

toward it, if it is made sufficiently clear in our report as we come out that that is the intention. The suggestion then made by the chairman was for its complete elimination. Now I think it would be preferable to leave that section in, but make it quite clear that the intent is that those who are able and can provide for themselves shall do so, but that does not limit the kind of situation which was presented to us on the matter of tubercular care.

ANTHONY: I think there is a great deal in what both Mr. Tavares and Delegate Roberts have said, and I want to call the Convention's attention to this fact. I stated earlier that the minute you start to enumerate things, you are going to get into trouble. Now here the gist of this trouble is that with the deletion - - the amendment proposed by the delegate on my right, there is a feeling apparently on the part of that committee that that would open the way for socialized medicine. Now we know that that committee is not in favor of it, but that's the very point that I drove at earlier. The minute you start to enumerate these things, you are going to have some interpretation of that kind. Now I think it - - I agree with the chairman of the committee it might be well to delete the entire section on that ground.

CHAIRMAN: Is the motion amended before the house? Are you ready for the question?

DELEGATE: Question.

CHAIRMAN: Will you read the motion as it is now amended, the amendment.

KING: The last motion, as I understand it, was to delete the whole section. Is that correct? That was the motion suggested by Dr. Larsen, and I believe seconded by Delegate Tavares.

CHAIRMAN: Yes.

TAVARES: I seconded it. If I didn't, I thought I was seconding it.

KING: As a point of information, the motion that is pending before the Convention is, I believe, a motion to delete the whole section.

CHAIRMAN: That's correct. I just want to have it stated to clear up any misunderstanding. I may have - -

HEEN: In deleting that whole section, then that problem included in that section can be taken care of under the general provision of the grant of full legislative power to the legislature. Well, this might not include public - - be included in the matter of public health, because you take a person who is blind, I don't think that is a matter of health; he's a handicapped person. So therefore, this problem here can be taken care of under the broad general grant of power to the legislature.

LARSEN: I have to withdraw my suggestion, as I talk to my committee members here, and I'm reminded of the discussions we had that this is an important section. It has nothing to do with public health, as Senator Heen has suggested, but it does have to do with treatment of a very broad section of people. It's a treatment proposition that's only come in recently in to this whole field of health, but I feel we can cover without - - I don't feel it's spelling it out as long as we indicate this is what its intention is. And remember, we are doing this right now; we're not limiting here, and our last section also makes it clear we don't limit. I would like to merely amend it to include the section, that would - - merely the word that makes it very clear it doesn't mean to limit legislation for certain people who are chronically ill.

KING: I would like to speak in opposition to the motion to delete the section. I'm not sure if I understand Delegate - - Dr. Larsen, the chairman of the committee - -

TAVARES: A point of order. Dr. Larsen has withdrawn his motion and I agreed to the withdrawal.

KING: Then that answers my question. Then the - - May I ask as a point of information, the motion before the Convention now, the Committee of the Whole, is on the amendment to the amendment - -

CHAIRMAN: That's correct.

KING: - - to strike out the last few words, "who are unable to provide such care." Is that correct?

CHAIRMAN: Is that correct, Clerk?

KING: If the sponsor of the original amendment accepts that amendment, then we have only the one motion before the Committee of the Whole, that is, to change the title to "Care of the Handicapped," and to have the section read, "The State shall have the power to provide for the development of preventive measures for treatment and rehabilitation as well as domiciliary care for mentally and physically handicapped persons," period. Is that correct?

DELEGATE: Question.

PHILLIPS: I would like to move that we further amend that section by - - in lieu of that section that we attach to Section 1 above, "and general welfare." I repeat that, that in lieu of Section 2 or B that all that be included in the two words by attaching to the "1" above, "and general welfare." "Public health and general welfare." Section above, our Section 1, and just put "and welfare," or "general welfare."

CHAIRMAN: Hearing no second - -

LARSEN: It seems to me we've gotten a little bit off the beam here. As soon as we leave this wide open, it does spell out no limitation at all. The committee felt very keenly that there should be limitation here, that we believe that there is a very great danger to the feeling that a great mass of the people of a community shall have complete benefits without working for them, actually. Now, perhaps if the committee members agree, as long as we make that clear in our explanation, that the intention is merely to provide such care for those who are unable to obtain such service except at public expense, that thought, I feel, is extremely important, and I still feel it can be clarified.

CHAIRMAN: Hearing no - -

KAUHANE: I would like to be somewhat clarified on some of the matters that were brought up in the discussion. I feel that the committee's intention is to provide treatment or rehabilitation for people who are mentally and physically handicapped. I'm also wondering whether or not the committee's intention is to take care of people who qualify as mentally ill, as well as those who are physically handicapped, as expressed by Delegate Heen when he said blind persons are classified as physically handicapped; or whether the words "mentally and physically handicapped" means that an individual must meet such requirements, he must be physically handicapped and mentally ill before such provisions shall be granted him by the State in this care, and also for treatment and rehabilitation.

CHAIRMAN: Mr. Chairman, would you like to answer that?

LARSEN: In our explanation, I had this added note under handicapped, because somebody raised the question, "which includes all those who are incapacitated by illness or from other cause." As far as the "mentally and," it could read perhaps "mentally or." I think it would be perhaps clearer to the delegate from fifth district. I think, perhaps that would make the intention much clearer.

KAUHANE: I'm only trying to help those who may have to qualify under the requirements in order that they may be given such aid by the State, and I think the word "and" is

rightfully used, but I think it should also read "or/and." That will take care of the people and groups of people that the committee intents to take care of.

TAVARES: The word "and/or," although we lawyers are using it, is one of the abortions of modern legal terminology, and we want to get away from it as far as possible. I think the word "or" will take care of the situation because it can then mean "or/and" in itself. If one is either physically or mentally handicapped, he comes within the definition. If he is both, he still comes within the definition. So I think the word "or" will cover the situation.

Now to bring that to a final head, I move then that the section in question be amended to read as follows: "The State shall have the power to provide for the development of preventive measures for treatment and rehabilitation as well as domiciliary care for mentally or physically handicapped persons."

And in that connection, I would like to say that if the chairman of the committee feels that by eliminating the provision about people unable to provide such care we are doing something that we shouldn't do, then the proper motion is to move that that section be referred back to the committee for further report and amendment.

SILVA: It would seem to me that about the only thing that's necessary in that section would be this, it should read thus: "The State shall have the power to provide for the development, treatment, rehabilitation as well as domiciliary care for mental and physical," without the words "preventive measures." Seems to me that you're going to buy a man a pair of crutches before he breaks his leg; that's what you are going to do.

ASHFORD: May I ask the chairman of the Health Committee a question? Isn't it the contention of modern psychiatrists and psychologists that we are all mentally handicapped?

LARSEN: I think the modern conception is that Democrats think that all Republicans are mentally handicapped and all Republicans, Democrats are. But, Mr. Chairman, could I speak to this?

CHAIRMAN: Delegate Larsen still has the floor.

LARSEN: Who has the floor? Do I have the floor?

CHAIRMAN: You do.

LARSEN: It seems to me the question of preventive, of course, is entire -- The new concept of today is, let's prevent these things that have handicapped the State so much in the past. It has nothing to do with treatment and rehabilitation. We hope as we look forward, eventually, if we use enough of the preventive measures, we won't need either treatment or rehabilitation. That's really a sound concept, I believe.

But when we leave out, "persons who are unable to obtain such care" except at public expense, now maybe the legislators feel that that can't be misinterpreted, but to me that would be a very dangerous sentence in our present economic stage.

HEEN: If you leave that provision in there, or rather that clause, "who are unable to provide such care," then you might not be able to take care of tubercular people without expense, without providing for their own care, because a tubercular person is a person who is physically handicapped.

LARSEN: I think we answered that in that we added the provision, "shall not interfere with the care of the chronically ill."

SILVA: I move we defer action on this section, go on with the next section, and when proper corrections are made to this section, we carry on.

ANTHONY: I'd like to second Mr. Tavares' motion. It hasn't been acted upon, and I second it. In seconding it, I think we should -- I would like to make the statement [that] by the deletion of the words, "unable to provide such care" -- "who are unable to provide such care," it is not the sense of this Convention that we are therefore opening, and thereby opening the door to socialized medicine, but we are simply not attempting to curtail the powers of the legislature in certain specified fields. I think with that explanation, it would satisfy the medical profession.

LARSEN: All right, we accept.

DOWSON: Question. I'd like to ask Mr. Tavares to repeat the amendment, the clarification.

TAVARES: By way of amendment to the original motion, I move that Section B be amended to read as follows -- What was the subtitle? "Care of Handicapped." "Care of the Handicapped," that's the subtitle. That the section itself be amended to read as follows, quote, "The State shall have the power to provide for the development of preventive measures for treatment and rehabilitation as well as domiciliary care for mentally or physically handicapped persons," period, unquote.

DELEGATE: Since it wasn't seconded before, I now second that motion.

BRYAN: I'd like to ask the delegate from the fourth who just made that motion, if he would consider a further amendment to specify "mentally ill or physically handicapped"? Is that in there now? I beg your pardon.

Mr. Tavares, I'd like to ask him a question. Would you consider a further amendment to put the words "mentally ill" rather than "mentally or physically handicapped"? "Mentally ill or physically handicapped"?

TAVARES: I would accept that. I'll accept it. Will the seconder accept that?

CHAIRMAN: Does Dr. Larsen --

TAVARES: I wonder what the chairman of the --

LARSEN: Well, I feel it's an extra word. When a person is mentally ill, he's certainly mentally handicapped, even in the terms of --

PHILLIPS: Mr. Chairman.

CHAIRMAN: Delegate Tavares has the floor.

TAVARES: Well, in view of the statement of the chairman of the committee, who is also a physician, then I would like to ask the person who suggested the word "mentally ill," to withdraw that and delete from my motion.

CHAIRMAN: Delegate Bryan, will you withdraw that?

BRYAN: It wasn't an amendment of your motion and I refuse to withdraw my suggestion.

TAVARES: Well, then, may I withdraw my acceptance of the motion -- of the suggestion.

RICHARDS: I think there is considerable difference between being "mentally handicapped" and "mentally ill." Personally, I feel mentally handicapped in dealing with the "Supreme Court" over here in some of the problems in the discussions, but I certainly don't think I'm mentally ill.

PHILLIPS: The word "handicapped" has been bothering us a great deal and I had a chance to refer to Webster, and he said that it was "any disadvantage that renders achievement more difficult." Now I would like to ask the Convention, wouldn't that include colds, itch, arthritis, hangovers, or almost anything that would render us all a little bit less - more difficult of achievement?

LARSEN: That's okay. And if somebody has an itch that handicaps him and he can't pay for help, I think the State should help him and the State helps him right now.

CHAIRMAN: Question before the house. Are you ready for the question?

CASTRO: I have a question about wording here, of the chairman. The second line, "preventive measures for treatment and rehabilitation." Does "preventive measures" refer to rehabilitation or should it be "for preventive measures" comma "for treatment and rehabilitation" comma "as well as domiciliary care"? That's not quite clear to me. That's -- it's not a matter of style, I don't think, because it could very well be a confusing point if someone were to believe the "measure" referred to "rehabilitation."

LARSEN: We did have -- suggested rather, a comma after "development of preventive measures" comma "for treatment and rehabilitation" comma "as well as domiciliary care."

CASTRO: Well, then, I suggest that that be added to the amendment, if that's acceptable to the --

MIZUHA: I rise to a point of information before the question is put. There was a delegate in the fourth district who made a second to the motion with the understanding that it was this; he was seconding the motion to exclude socialized medicine. Now I'm just wondering whether that is part of the record and the understanding of the -- in the acceptance of the motion as originally put. Now, doesn't -- I, as a delegate here, I believe that we cannot exclude that sort of thing when the first section is all inclusive. If in future generations we find that is the desirable thing to promote the general health, the public health of the community and the State, I believe just by that insertion of a remark in the record to foreclose legislation on the part of the State to promote the public health will be something that the future State legislatures will be confronted with and will hamstring the legislature in promoting the first section of this article. I want that clear before the delegates of the Convention, in accepting this second section that they are voting for something that will permanently hamstring the legislature of the State of Hawaii as far as the first section is concerned in the promotion of public health, and it's a point -- it's a constitutional point which must be argued before we accept the second section, if that second and the condition to that second is inserted in the records.

ANTHONY: The purpose of my making the statement that I did was in order to satisfy members of the medical profession that by the deletion of the words, "who are unable to care for themselves," we were not thereby making an expression, an affirmative expression that this Convention was authorizing any socialized medicine. In other words, I wanted to put their fears at rest. If at some future date a legislature, a hundred years from now, would desire to go into a socialized state and socialized medicine, then of course, under the general powers of legislation which will be incorporated in the Constitution, there would be ample power to do just that.

MIZUHA: Then it is my understanding that the first section will grant -- will be the constitutional provision upon which that future State legislature may legislate for that type of a program, if the public health of the state so deems it necessary. Thank you.

FUKUSHIMA: I believe we've been wasting a lot of time --

CHAIRMAN: I agree.

FUKUSHIMA: -- without following the rules. I believe Mr. Heen and myself, in introducing or offering our amendments, were the only two delegates who followed the rule as to put in writing all amendments to any proposal.

KAUHANE: Mr. Chairman. Mr. Chairman.

CHAIRMAN: Wait, he hasn't finished. Fukushima still has the floor.

KAUHANE: Will you yield the floor, Mr. Delegate? Mr. Chairman, he having yielded the floor, I think it is only proper then, upon the reading of the rule by the delegate from the fifth district, that this proposal be recommitted to the Committee on Health for further study.

PHILLIPS: Second that motion.

TAVARES: Point of order. I don't think the point of order is well taken. We are sitting in Committee of the Whole. Everything we do here is advisory. There will be no amendment of this section until we have come in -- back in to the full meeting of the Convention, and at that time, there will be a written report of the Committee of the Whole which will have those written amendments. So that in my opinion, and I submit that's correct, there is no requirement now that in Committee of the Whole we place these amendments in writing.

CHAIRMAN: That's correct.

FUKUSHIMA: I believe when the rules were drafted specifically we did include Rules for the Constitutional Convention of Hawaii 1950. I am referring specifically to Rule 59.

CHAIRMAN: I think, Mr. Fukushima, Rule 23, "All amendments made to proposals, reports, resolutions and other matters submitted to the Committee of the Whole shall be noted and reported."

SILVA: To prevent the arguments over that point, I move we suspend the rules and now that we go into Committee of the Whole --

DELEGATE: I second the motion.

CHAIRMAN: The motion --

CROSSLEY: I move that the committee now rise, report --

SILVA: Mr. Chairman, there is a motion before the house. Motion has been made and seconded the rules be suspended and it's been duly seconded.

CHAIRMAN: I think the motion to rise is always in order.

CROSSLEY: It's always in order. Committee rise and report progress and beg leave to sit again.

MIZUHA: I second the motion.

CHAIRMAN: All those in favor of the motion signify by saying "aye."

PHILLIPS: Point of information.

CHAIRMAN: Opposed? So moved.

LARSEN: What's the motion.

CHAIRMAN: Pardon?

PHILLIPS: What was the motion, Mr. Chairman?

CHAIRMAN: Motion was to rise, report progress, beg leave to sit again. Carried.

Afternoon Session

CHAIRMAN: The Committee of the Whole will come to order. Please make yourselves comfortable.

To clarify the situation as it stands at the present moment, there is a motion duly seconded before the committee to adopt in substance the second section of the proposal. There is an amendment which has been seconded and that amendment reads -- it's in two parts, the first part is that the title shall be changed to "Care of the Handicapped." The section shall read, "The State shall have the power to provide for the development of preventive measures, for treatment and rehabilitation, as well as domiciliary care for

mentally or physically handicapped persons." That amendment was made by Mr. Tavares and has been seconded. We start from that point.

LARSEN: I'm going to ask Mr. Anthony if perhaps he wouldn't be willing to accept the amendment as it was reworded during the recess lunch hour. The title, "The Care of the Handicapped," and then it shall read as it was passed out to you: "The State shall have the power to provide for the development of preventive measures, and for treatment and rehabilitation as well as domiciliary care for mentally or physically handicapped persons whose resources are inadequate to provide the same." The group who were talking felt if we didn't put that in, any small pressure group could demand sudden community expense that they otherwise couldn't have. And it seemed to me it was so all-inclusive that it wasn't restrictive in any way.

I wanted to answer the delegate from Kauai, that we tried very hard not to put in a restrictive clause, that if sometime in the future, be it the legislature or the people, if they want a medical-welfare state, they're going to have it whether we write it here or not. I don't think that's the important point. The point is we're trying to indicate here those things that we believe in as a principle in the care of our sick people.

May I clarify a little more, also clarifying Mr. Tavares' point, that the question of the care of tuberculosis and so on comes under Section A. That's a provision that takes care of everybody. The tuberculosis or infected people out in the community are - - the rest of the people have to be protected against them. I didn't make that clear. Section B takes care of those - - all those others who might be even temporarily sick. If, may I ask - - we could expedite it perhaps if Mr. Anthony would accept that as an amendment.

CHAIRMAN: The Chair would like to point out that it's Delegate Tavares' amendment.

LARSEN: Well, as I understood it, you said there was an amendment that had been seconded on the floor regarding this section and I think Mr. Anthony made that amendment. Now, either - - I'm not asking him to do anything, of course, against his desire, which I know he wouldn't do anyway, but I was just wondering if he agreed on this second one, then perhaps he'd be willing to withdraw his first.

CHAIRMAN: The record shows that the amendment is by Delegate Tavares and not Delegate Anthony.

TAVARES: I accept the amendment to the motion which I originally made. I think as the last speaker read it, he didn't read it exactly as stated in the written revision which we have before us, but it was substantially correct. He put in one "the" where it doesn't exist in the present draft. I just want to make that clear because we are recording this argument along with the consideration of the written amendment.

As I understand it now, it is the opinion of the chairman of the Health Committee that under Section A, which we have already tentatively approved, the treatment of tuberculosis patients would be taken care of, that it is a part of the protection of the public health. I am willing to accept that; I think in the broadest sense of the term that is correct. Under those circumstances, it would not be necessary to remove the exception which I tried to remove from Section B.

CROSSLEY: May I ask one of the associates of the "Supreme Court," what difference is there in the language, "who are unable to provide such care," which the delegate from the fourth district moved awhile ago to delete, and, "persons whose resources are inadequate to provide the same," which he now accepts.

TAVARES: It seems to me that there might be this difference. The word "resources" I think, is quite frequently used in connection with assistance to various groups of persons who are now being assisted either for health or other reasons, and "resources" include the resources available from your relatives as well as yourself, whereas the other thing might be interpreted to mean that you yourself can't furnish the service.

CROSSLEY: Then may I ask further—and this is not facetious—how do you determine? I mean, I was in favor of the deletion of the section because I thought that it was something that was very difficult to determine. How do you determine this then; is it as determined by law or does there have to be another statutory provision to go along to make this operate?

LARSEN: May I answer that for Mr. Tavares? This has been done right along. There's no difficulty about that. We have boards, we have people today getting all kinds of assistance. We are merely - - that part I can assure you has been done so many times that we don't need any more statutes. This is actually recording progress and recording our philosophy in the care of people who are sick and unable - - who can't find resources sufficient to take care of it themselves.

ANTHONY: I think in answer to the delegate from Kauai's question, you've got to take a look at this section and see what you are endeavoring to accomplish. As I read this section, this does not deposit any grant of power in the legislature. All this is, is a declaration, as Mr. Larsen - - Dr. Larsen has put it, of a recorded advance in this specific field; and so whether we have this language or have not the language in the section, it would not curtail the power of the legislature to provide legislative programs. Obviously, this is not a piece of legislation, and if anything is done in pursuance of this declared policy, it would require implementation by statutes. I think that's basic in this discussion here.

In other words, we're not dealing with an added grant of power. We're simply stating a position in the legislative article, and the basic question is whether you want to state those things in the legislative article or do you want to leave it general. I think we should make it clear that we are not endeavoring to restrict the legislature in any regard by this particular section.

CHAIRMAN: The Chair would like to point out that Dr. Larsen made an amendment to Mr Tavares' former amendment which has not been seconded. Mr. Tavares' amendment is still before the house.

ROBERTS: The motion is seconded.

TAVARES: I thought that I had accepted the amendment, which I think took care of the lack of a second.

CHAIRMAN: Thank you.

PHILLIPS: In regard to the word "resources," I wonder if we can be assured in the future that the future legislators or the court will interpret the word "resources" in the same manner that Delegate Tavares did. I have a feeling that they wouldn't do that.

TAVARES: I can give the delegate the same assurance of change or lack of change that I can give him about the interpretation of the meaning of "unlawful searches and seizures." It has changed over the years and it might change again as the United States Supreme Court or the courts decide it. There is no such thing as absolute certainty, but I do believe it lays down a standard which within certain reasonable limit the courts can follow in determining whether a law complies with this provision or not.

PHILLIPS: Then I would like to ask the delegate from the fourth district if he believes that his analogy is good in

making the one word "resources" analogous to the long phrase that he gave, which is a whole doctrine of law. What I mean is that there are certain words that have been interpreted right straight down, such as the word "provide" which you have a great deal of [inaudible] on it and you can rest assured by using that term you will get a given effect out of it. If we confine ourselves to those terms, we can assure that we will get what we want by putting it in here. If we don't, then we'll have to throw it open to the courts to interpret in the future as they see fit.

LARSEN: I would accept very well both Anthony's and Tavares' explanation here, and especially, I think, Mr. Anthony made it very clear that this is actually recording here what we hope for; but notice, "The State shall have the power to provide." We assume a legislature in the future will now make statutes to cover this philosophy.

PHILLIPS: And then in regard to that, I'd like to point out to Delegate Larsen that he further said that since it only says that the legislators "will have the power to provide," meaning that they - - it is entirely up to their discretion to use it or not, and that therefore, he would have much difficulty convincing them to use this because they would not have to use it. And he also pointed out that because of that it would be ineffectual unless the legislators acted. Therefore, why put it into the Constitution at all because they have that power anyway if it isn't in there?

CHAIRMAN: The question before the house is the amendment which I'll read.

HEEN: I would like to ask the chairman of the Health Committee just what is meant by this language, "The State shall have power to provide for the development of preventive measures for mentally or physically handicapped persons"? What is meant by that language, "preventive measures for mentally or physically handicapped persons"?

LARSEN: Preventive measures are coming more and more into vogue. We now, for instance, know that a great many people who are mentally handicapped and badly handicapped so they cannot even earn a living, if we applied certain preventive measures in their childhood, later on through life, environmental and otherwise, much of this that we now keep in the hospitals could be prevented. It's the idea that we should emphasize the preventive program just as well as the hospital care. That's the intent.

HEEN: May I ask this pointed question? Rather, may I ask the speaker to illustrate one preventive measure for a mentally handicapped person?

LARSEN: I would give you perhaps two or three. One, for instance, there are certain things that will blind the child. If we put in certain preventive measures, we can prevent that blindness.

From the standpoint of mental, for instance, we now know about certain repressive things in a child's environment. They have in certain schools, for instance on the mainland, they have psychiatric help that they feel quite sure prevents mental breakdowns later on. The whole preventive program is the hope of the future.

But if some of the men wondered, does that mean sterilization program, I feel it has nothing to do with that. If sometime in the future, the community or the legislature feels that such a program would be important, perhaps it could be worked in, but there's nothing inhibitive here, and there's nothing suggestive to produce such a program.

That's why I feel we're leaving it so wide open that the legislature can go along this way, but it does give them the right to develop what is coming more and more into vogue, a preventive program for these various conditions that formerly we kept endlessly in the hospitals.

PORTEUS: I had some question on that that was raised by my colleague from the fourth district, the development of preventive measures for mentally handicapped persons. If the person is mentally handicapped, it isn't preventive measures, it's treatment that they need. Preventive measures, therefore, are designed, I thought, to stop something from occurring. So it seems to me that that is an inappropriate modification, "preventive measures for mentally or physically handicapped persons." If you want to say "preventive measures in order to prevent people from becoming mentally or physically handicapped," I might agree with the good doctor; but it seems to me once those people are mentally or physically handicapped, then it's treatment, not preventive care that's necessary.

LARSEN: I think he is correct. The intent was there but I think he's correct. I think that if you may, and since the intent was there, I think a very short rewording would cover that, and I think perhaps the Styles would correct it so as to carry that meaning.

DELEGATE: No.

LARSEN: No? All right, then we'll do it right here.

CHAIRMAN: Five minute recess while they reword that.

(RECESS)

CHAIRMAN: The Committee of the Whole come to order.

TAVARES: I wish to withdraw my motion for amendment with the consent of the second.

LARSEN: I so do.

KING: In consultation with the chairman and other members of the Committee on Health and Public Welfare, and with Delegate Tavares, we have agreed that the following language covers the purpose of this section and I offer it as an amendment to the existing language.

[Part of speech not on tape.] . . . and proposed in the amendment offered by Delegate Tavares which has now been withdrawn. That is, it will be - - the section will be entitled "Care of the Handicapped." The section will read: "The State shall have power to provide for treatment and rehabilitation, as well as domiciliary care, for mentally or physically handicapped persons." Now, in support of that language, I personally feel that the grant of this power to the legislature carries with it the authority to engage in preventive measures and also carries with it, by implication or even by the greater grant of power than other sections of the Constitution, the authority to limit this care to those who are unable to provide it for themselves. So I feel that the purpose of the committee is carried out by this briefer language, and would like to offer it for adoption in place of the existing language.

CROSSLEY: I second the motion.

CHAIRMAN: You have heard the motion and the second. Is there any discussion?

PHILLIPS: Would you repeat that motion, please?

CHAIRMAN: Will the Clerk read the motion please, the amendment rather.

KING: The language would be "Care of the Handicapped. The State shall have power to provide for treatment and rehabilitation, as well as domiciliary care, for mentally or physically handicapped persons."

CHAIRMAN: You have heard the amendment. Are you ready for the question? All those in favor signify by saying "aye." All opposed. Passed.

I will now entertain a motion - -

BRYAN: I move the adoption of Section 2 in substance.

CHAIRMAN: Section 2 as amended.

BRYAN: As amended. Correct.

CROSSLEY: I second the motion.

CHAIRMAN: The motion is duly made and seconded. All those in favor signify by saying "aye." Opposed. Passed.

LAI: I would like to have a clarification on the words "provisions" and "persons" in this section. Does the word "provisions" mean social security, mean old-age pensions, or pension for the disabled veterans, or institutions who care for the same? And the word "persons," does that take in unemployed people, too?

ANTHONY: I'd like to move an amendment that will take care of delegate's - -

CROSSLEY: Which one is he on, C?

ANTHONY: They are on C.

CHAIRMAN: Point of order. There's no motion to adopt C yet, so it can't be amended.

ANTHONY: Well, for that purpose I'll move for the adoption of C.

LARSEN: I second the motion.

CHAIRMAN: Thank you.

LARSEN: And may I add the amendment. Have you got this amendment?

ANTHONY: I am now moving the amendment. I move that C be amended to read as follows: "The State shall have the power to provide," and then we would delete the words "be authorized to make provisions," and continuing, "The State shall have the power to provide for persons unable to maintain a standard of living compatible with decency and health" period, and delete the remainder of the sentence.

BRYAN: I'll second that motion to amend.

CHAIRMAN: Motion is seconded.

FONG: I want to further amend that by striking out the words "Social Security" and adding the word "Public Relief," I mean word - -

CHAIRMAN: You mean as the title?

FONG: "Social Security" and add the words "Public Relief." I think this is really public relief rather than social security.

CHAIRMAN: You are referring to the title?

FONG: The title, yes.

LARSEN: May I suggest, we are trying to leave out words like "relief" and "handout," "Lady Bountiful." We're trying to express it in terms, and why we left out "public relief" was the feeling that relief has gotten the connotation of Lady Bountiful throwing out a nickel, whereas what we wanted was a sound policy of state that those who are handicapped, if they are helped, will again become good citizens. I mean that was the idea of "social security."

PHILLIPS: I second Delegate Fong's motion - - the amendment to the motion.

AKAU: May I ask the delegate from the fourth district, the "Bar Association," as to the difference between "have the power to provide" and "be authorized to make provisions"? Delegate Anthony had made that change and I wonder if he would clarify it because I just wonder if there is a difference.

ANTHONY: The amendment is a little shorter and is in conformity with the section that immediately precedes it.

TAVARES: May I again add a word of caution that I added before and I think it's being forgotten, and that is, it is very dangerous to depend on subtitles to determine meaning. They should not have a determining effect on the meaning of the provisions, and therefore, I think they are very immaterial. I think it should be left largely to the Committee on Style, with the understanding that the subtitles should not control the interpretation.

FONG: Under those circumstances I'll withdraw my motion, but actually it is not social relief. It is social and economic relief rather than social relief, and I hope the Committee on Style will consider that.

CHAIRMAN: You withdraw your amendment?

ASHFORD: What is the difference, if I may ask the chairman of the Health Committee, between "the legislature" and "the State"? Does he mean by - - does the committee mean by "the State" more or less than the legislature? Can other functionaries of the State aside from the legislature make these provisions, in the opinion of the Chairman?

LARSEN: Our thinking in that was that the State was a little broader, but we don't know. Some time in the future perhaps the governor would be the State or somebody else.

DELEGATE: Heaven forbid.

LARSEN: Yes, I know. I'm not saying it will be, I'm just giving a very vague supposition. You see our response here. Well, that's very healthy.

But the point was, and I will turn to them and just say, isn't it true that the term "the State" possibly has a little broader connotation than "the legislature"? The committee is not adamant on either one. If the group prefers "legislature," I'm sure we would go along.

LEE: I think Delegate Ashford has raised a very good point. There should be only one branch of government who would be able to provide for this clause, health and general welfare, and that's the legislature. I think we are using the terms here instead of using "the State" in order to preclude Congress from construing our Constitution as meaning that we are implying a possibility of a dictatorship government in a new State of Hawaii, that we'd better use the word "legislature."

A. TRASK: I think the chairman of the Committee on Health is correct. "The State" is the proper term. Obviously, the State is composed of the legislature plus the governor. He has the right of veto. Now, this doesn't leave him out of the picture even though certain persons of us must have some certain ideas. It is the State, and it's a cooperative situation that affects the passage of a bill, an act, which would provide public health for this purpose.

ASHFORD: I disagree with the delegate from the fifth. I don't think the State is composed of the governor and the legislature. We have three branches of government in our government setup. And as a second point, I suggest that the Constitution of the United States, which after all is the form of all constitutions, provides that "the Congress shall have power" and so forth.

FUKUSHIMA: I believe the word "State" is correct because we may still have the initiative.

TAVARES: Again I think we're straining at gnats. This is obviously a provision that has got to be given effect by legislation. When the legislature provides that, then all the agencies of the State will follow that law and the State will be providing what this provision says it will do; and in that respect, I think it's sufficient and definite enough.

PHILLIPS: I was reminded by another of my colleagues from the fourth district that when you say "State," you include all the branches of government; therefore, you include the executive. Then he, through his executive orders, could issue out something, and then there would be a danger here,

in my mind, that a governor, being elected, might use this to make himself look a little good rather than really for the purposes that we intended it to be provided for.

CROSSLEY: I'd like to ask a question of the chairman on this committee. "The State shall be authorized to make provisions for persons," does that refer to those mentally or physically handicapped? If so, should it be repeated?

LARSEN: This section is entirely different. The previous one, B, has to do with ill and handicapped. This group has to do with those who are unable to live on the level of decency capable of maintaining health. If we don't give them care, they will undoubtedly slip into B, but we are hoping by these preventive measures to prevent them from becoming ill. I think the two are two entirely different groups of people. That's our thinking.

CHAIRMAN: There is an amendment before the house. Are you ready for the question? All those in - -

WIRTZ: Point of information. I don't think all the delegates got the full amendment. Could we have the amendment read again, please?

CHAIRMAN: Will Delegate Anthony restate his amendment.

ANTHONY: I'll read it as it's proposed to be amended. "The State shall have power to provide for persons unable to maintain a standard of living compatible with decency and health."

CHAIRMAN: You ready for the question? All those in favor of the amendment say "aye." All opposed. The ayes have it.

The motion is in order to move the passage of this section.

BRYAN: I move that we accept Section 3 in substance as amended.

DOWSON: I second the motion.

CHAIRMAN: Moved and seconded that we accept Section 3 in substance. All those in favor indicate by saying "aye." All opposed. Passed.

Ready to go to Section 4.

DOWSON: I move for the adoption of Section 4.

SAKAKIHARA: Second it.

CHAIRMAN: Moved and seconded.

HEEN: I move that the words "its political subdivisions" be deleted, "and" - - the word "and its political subdivisions" be deleted.

TAVARES: I second the motion. The reason for this - -

SAKAKIHARA: Point of information. Will the Delegate from the fourth district at large explain the reason of the deletion of "its political subdivisions"?

HEEN: If you have that in there, then by leaving that same phrase out from the other provisions, it might be implied that no political subdivision can deal with health or other matters.

LARSEN: The committee members accepted that amendment.

TAVARES: A further explanation. By the words "The State may provide for" and so forth "slum clearance," that leaves it open for the State through the legislature to authorize the subdivisions to do this. You don't need to put them in specifically.

SAKAKIHARA: I now move that Section 4 as amended be adopted.

CHAIRMAN: Wait, there's an amendment before the house. Will you - -

RICHARDS: I would like to ask a question of the chairman of the committee as to why this should now read, "The State may provide," instead of following the language of the other sections, "The State shall have the power to provide"?

AKAU: I think "may" is permissive. There may be a time, either ten years hence or sooner than that, when we'll have no slum areas and no substandard housing, so it gives a - - it doesn't mean it's mandatory with the "shall" and the "must," but a permissive thing which is a little bit different since rehabilitation and substandard housing and that sort of thing isn't exactly like public health or general welfare or that sort of thing.

BRYAN: I think that the words, "The State shall have the power to provide" are equally as permissive as the word "may," and in view of keeping these consistent, I would like to further amend the motion to include that wording.

ANTHONY: I accept that amendment. I might point out to the delegate from the fifth district that as amended that is permissive. You compare that with Section A which we have already adopted. That is mandatory. Now when you say that "The State shall have the power to provide for," then that is simply a direction to the legislature in its discretion in the future to provide or not to provide, but the other is mandatory, Section A.

CHAIRMAN: Delegate Anthony, read the section as amended now. Delegate Heen.

HEEN: I withdraw my motion.

CHAIRMAN: So ordered.

HEEN: Amend the section to read as follows: "The State shall have the power to provide for or assist in slum clearance and rehabilitation of substandard areas, including housing for persons of low income."

ROBERTS: Second the motion.

CHAIRMAN: Who seconded that? Delegate Roberts, did you second that amendment?

ROBERTS: Yes.

CASTRO: May I ask a question of the chairman of the Committee on Health, the intent of the words, "assist in"?

LARSEN: The reason for that was, and we gave it in an explanation that we made, the interpretation of "provide for or assist in" would permit the legislature to make appropriate laws allowing for, for instance, tax immunity for a certain number of years to private corporations who may be able to help in this work. A good example of this, for instance, was in New York City when the Metropolitan Life Insurance Company cleared certain slums and built apartment houses for low rental use available to people of moderate income. We believe that this section allows the legislature to pass appropriate enabling acts to cover such assistance.

CASTRO: I gather then that the intent is one regarding tax exemptions rather than outright grants and participation in private enterprise through grants of money. Is that correct?

LARSEN: Could be either, as I read it.

AKAU: May I ask the gentleman from the fourth district to - - ask him if he feels that "slum clearance" is not the same as "substandard areas." If we use the word "substandard areas," isn't the implication that there are slums? The reason I say that is that to some people the word "slums" has a very peculiar sound. If this goes to many states in the Union and people read it, I'm wondering if they are going to feel that Hawaii is full of slums or that sort of thing. I just raise that question about the word "slums" as being also the same as "substandard areas."

LARSEN: I believe truth can never be put under the table. I believe when we look at a thing, look it straight in the eye. We have slums. Let's say we have come to the point where we're going to get rid of them, and we also believe we can assist people in low areas to live more decently and prevent the development of future slums. I don't feel that we should -- I don't like the word pussy-foot, but I mean something along that line.

SAKAKIHARA: Correct. I wish to second the motion to adopt the amendment proposed by Senator Heen.

CHAIRMAN: It has been seconded.

MAU: I just want a point of information. In the deletion from this section of the words "political subdivisions," there is no understanding amongst the delegates that cities, even though not mentioned here and even if not directly authorized by the legislature, would be prohibited from taking into the field of activities including slum clearance, because all of the big mainland cities are doing it now. I want a clarification on that.

TAVARES: I think if that section stands, it will be up to the rest of the Constitution, in case there is a home rule provision that's broad enough, or else up to the legislature by general legislation or specific legislation, depending on what we decide to do about local government, to provide that. I don't think it prohibits the legislature from allowing counties to do so. In fact, it permits the legislature to do that, and unless and until we have laid down a policy of how much home rule we are going to give to the subdivisions, which I think is a separate question, I think it would be inadvisable to try to decide it here. Otherwise, we'd be deciding home rule, it seems to me, through the back door.

SAKAKIHARA: I move for the previous question.

DELEGATE: I second the motion. I also ask for the previous question.

CHAIRMAN: All those in favor of the previous question, signify by saying "aye." Opposed.
All in favor of the amendment signify by saying "aye." All opposed. Passed.

BRYAN: I move for the adoption of Section 4 in substance as amended.

CHAIRMAN: Any second?

SAKAKIHARA: Second it.

CHAIRMAN: Second is recognized. All in favor signify by saying "aye." All opposed. Passed.

DOWSON: I move for the adoption of Section 5.

IHARA: Second it.

CHAIRMAN: Moved and seconded.

LARSEN: There is a very strong suggestion here of an amendment, and the amendment is this. Again coming back to what's been argued here that public sightliness and good order is the intent here, some of our lawyer friends again showed if we left it as it was, we would say something like this, "The State shall have power to conserve and develop public highways and beaches." That was not our intent at all. Our intent was, and it's supported by a great deal of interest in this, that "The State shall have the power to conserve and develop objects," and so on, natural beauty, parks, highways, beaches, in the interest of public good order and sightliness. And I would like to move the amendment, "in the interest of public good order and sightliness."

ROBERTS: Second the motion.

CHAIRMAN: Delegate Roberts seconds the motion.

LARSEN: I'll read the whole section. "The State shall have the power to conserve and develop objects and places of historic and cultural interest and the natural beauty, park public highways and beaches, in the interest of public good order and sightliness." "Public sightliness and good order, yes, that was it. I read it backwards. I'm probably left-handed.

KELLERMAN: May I ask a question of Dr. Larsen?

CHAIRMAN: You may.

KELLERMAN: This morning, did you not suggest to change the word "interest" to "importance"?

LARSEN: Yes, I did, and if you want to move that amend ment, why that's O.K.

KELLERMAN: I move that amendment.

CHAIRMAN: Will you repeat --

KELLERMAN: I move to amend the motion made by Dr. Larsen. For further amendment, the word "interest" appearing on the second line be deleted and in lieu thereof the word "importance" used. "Historic" -- and it would read "historic and cultural importance" rather than "historic and cultural interest."

CHAIRMAN: I understood the doctor to say that he accepted that amendment. Is that correct?

HEEN: I'd like to make this contribution to this discussion. Just wondering whether or not that section might read as follows: "The State shall have the power to conserve and develop the natural beauty, historic associations, sightliness and physical good order of the state, and to that end private property shall be subject to reasonable regulation and contro

LARSEN: I think that comes from the Model Constitution and the committee discussed that at length. We believe that the legislature had the power to condemn and so on and so forth, and, therefore, didn't need to be stated. After much discussion, we felt that it was better to put the clause which Senator Heen has suggested at the end rather than at the beginning. We feel it's largely a question of wording and the one that Senator Heen just read is a little bit longer than the one that we have. I think the intent is exactly the same.

HEEN: As it now reads, that section does not extend to the regulation and control of private property. As I understand, the idea was to prevent perhaps unsightly billboards which are placed on private property. It's not a question of eminent domain at all.

LARSEN: Well, again, I would bow to -- if that isn't the meaning, the intent was there and the explantory notes show the intent was there. Our feeling was when "The State shall have the power to conserve and develop," that it seems to m that gives the legislature full power, eminent domain or any other of the things that are necessary to control the thing we are after.

TAVARES: I think that we can probably save a little time if we take another little short recess and let these gentlemen talk it over among themselves. I move for a short recess subject to the call of the Chair.

BRYAN: Before we recess, I want to give one thought out that you might dwell on while you recess, that is, the "power to conserve and develop . . . public highways and beaches in the interest of good order and sightliness," I don't think conveys quite the thought. I think there's a fine point. I think that "conserve and develop the order and sightliness" should be inserted before the word "public highways and beaches."

CHAIRMAN: I suggest that Mr. --

BRYAN: Does the chairman of the committee get my point?

LARSEN: Yes, I think I did.

CHAIRMAN: I suggest that Mr. Bryan take that up with the committee during the recess. There's no second for a recess.

BRYAN: I second the motion to recess.

CHAIRMAN: Five minute recess is declared.

(RECESS)

CHAIRMAN: The committee will come to order.

LARSEN: I withdraw my amendment and turn it over to Senator Heen.

CHAIRMAN: I recognize Senator Heen.

SAKAKIHARA: I object.

HEEN: I move that this section be amended to read as follows:

> The State shall have power to conserve and develop its natural beauty, objects and places of historic interest, sightliness and physical good order, and for that purpose private property shall be subject to reasonable regulation and control.

I move the adoption of the amendment.

BRYAN: I suggest that that be printed for each delegate and in the meantime we consider Section 6.

LARSEN: Could I ask -- Senator Heen, a moment. Senator Heen, would you mind, because it was suggested on a number [of occasions] and it was shown that it might be important, that where you have "historic," just add the word "historic and cultural interest"? We are thinking of things, for instance, like the Academy of Arts, a very marked cultural thing that we might want to assist.

HEEN: I accept the amendment.

NIELSEN: I would like to ask Delegate Heen a question. Would that so regulate private property so that the legislature would feel that they had an O. K. to restrict you as to the type of sign or the size of the sign you put on your building?

HEEN: I think it would.

NIELSEN: Oh, I think that would be kind of invading private rights, wouldn't it, of the citizens?

HEEN: Well, if it is invading private rights, the court would hold that invalid. There are things where private right give way to public interest.

ANTHONY: I'd like to answer that further for the benefit of the delegate from Hawaii. That if in the public interest, it is to the interests of this community, for instance, that we have no billboards over in Kona; the legislature should pass such a statute; they would point to this section and say, "There is an affirmative statement in the Constitution which authorizes just this sort of thing." Of course, it would be debated in the legislature whether or nor it was too great an invasion, and if it amounted to an actual taking of the property, then there would have to be compensation paid.

ASHFORD: I'm in entire agreement with the gentleman from the fourth who has just spoken. The purpose of writing this into the Constitution is to subordinate private property rights.

LOPER: I would like to second the motion made by the delegate from the fifth district that this be printed, but I'd like to ask that it be read once more before we go on.

HEEN: I withdraw my last motion and I now move that this section read as follows: "The State shall have power to conserve and develop its natural beauty, objects and places of historic and cultural interest, sightliness and physical good order and for that purpose private property shall be subject to reasonable regulation."

SAKAKIHARA: I now second the motion to adopt the amendment.

CHAIRMAN: Moved and seconded. I think the motion by Delegate Bryan was out of order. There is a motion before the house. The Chair so rules. Delegate Heen, you requested the floor?

SAKAKIHARA: I now move for the previous question.

DELEGATE: Second it.

CHAIRMAN: Moved and seconded, the previous question. All those in favor signify by saying "aye." All opposed. Carried.

All those in favor of the amendment as read, signify by saying "aye." All opposed. Carried.

BRYAN: I move the -- Is that already pau?

CHAIRMAN: Yes.

BRYAN: Move the adoption in substance?

CHAIRMAN: Yes. Ready for the question?

CROSSLEY: I move the adoption of that Section E, I believe it is, or 5, as amended.

DOWSON: Second the motion.

CHAIRMAN: Second. You ready for the motion? All those in favor signify by saying "aye." All opposed. Ayes have it. Passed.

We are ready to proceed with Section 6.

ROBERTS: I'd like to talk to Section 6. There has been some suggestion made that perhaps this section might be left out until all other sections are in, and then have a general statement on the question of the powers of the legislature.

BRYAN: In order that the delegate will not be out of order, I'll move the adoption of Section 6 as written.

ROBERTS: Thank you. I second the motion. The section reads: "The enumeration in this article of specified functions shall not be construed as limitations upon the powers of the State government for the good order, health, safety and general welfare of the people."

HEEN: May I ask the last speaker the question, why was the word "government" put in there, "powers of the State government"? Why put in the word "government"?

ROBERTS: I believe we could eliminate the word "government."

HEEN: I should think so, too.

ROBERTS: "Power of the State."

SAKAKIHARA: May I offer an amendment? I desire to offer an amendment at this time to delete the word "government" and insert in lieu thereof the following: "in providing for the good order."

CROSSLEY: I'd like to second the motion of the delegate from the fourth district who, as I understand it, moved that this section be deleted for the time being, and that perhaps an all inclusive section be drawn at a later date.

ROBERTS: Well, perhaps I ought to clarify that. It was suggested that that be done. My thought would be that to leave it in, and then the Style Committee, if that same section appears in various other parts, may then have one section to cover all of it. I believe the section ought to go in.

CHAIRMAN: The Chair might point out that there is a motion before the house and seconded to adopt this section.

SAKAKIHARA: I desire at this time to offer an amendment to Section 6. In the third line, insert the words "in providing." As I understand, the word "government" has been deleted.

CHAIRMAN: There is no second to that.

DELEGATE: I'll second that.

HEEN: Mr. Chairman.

CHAIRMAN: Delegate Sakakinara has the floor.

HEEN: Mr. Chairman.

SAKAKIHARA: I am very glad to yield the floor to Senator Heen.

CHAIRMAN: Senator Heen.

HEEN: I offer this amendment. Delete the word "government" appearing in the third line of the section, and insert in lieu thereof the words "to provide," so that the section will read as follows: "The enumeration in this article of specified functions shall not be construed as limitations upon the powers of the State to provide for the good order, health, safety and general welfare of the people."

SAKAKIHARA: I second the motion.

PORTEUS: I move that the amendment be further amended so that the section will read, "The enumeration in this article of specified functions shall not be construed as limitation upon powers of the State" period. In my mind when you refer to the enumeration in these articles and say that they are not to be construed as limitations, I think you've done the job. You don't have to go further with descriptive words.

DELEGATE: Second the amendment.

KELLERMAN: I would like to move a further amendment to delete the word "functions" and insert the word "powers." It seems to me each of the sections has referred to a "power." The word "function" has not been referred to at all.

PORTEUS: I will accept that.

CHAIRMAN: The amendment has been accepted by the movant.

HEEN: I accept the amendments which have been proposed, and with those amendments, my motion would be to amend this section to read, "The enumeration in this article of specified powers shall not be construed as limitation upon the powers of the State " period.

CHAIRMAN: Does that meet with the approval of those who amended?

SAKAKIHARA: I accept the amendment and I desire at this time to second the motion to amend as proposed by Senator Heen.

A. TRASK: Will the chairman of this committee explain why this provision or section was deemed necessary? I ask the question because I am just afraid that this type of section is just too hazy, indefinite and not specific. The Constitution should be an embodiment of specific rights and restraints. We have this situation that says it "shall not be construed as limitation."

Now, specifically I have in mind this situation. In the Taxation Finance Committee under Chairman White, we have the situation, and it was debated yesterday, that there shall be no specific grants given to any organization in particular reference to sectarian hospitals. That was the immediate consideration. Now, you are dealing with a question of health in the previous sections; you are dealing with the question of slum clearance; you are dealing with general welfare; you are dealing with safety. Now, to what extent and how wide or how brief or how limited or how unlimited is the supreme court to consider these previous sections? In other words, I am fearful that in the enumeration of specific functions we wind up with such a catch-all, apologetic grab bag of power, I feel we are not doing the magnificent job we are doing with the detailed attention given the previous sections. So I would want to know from the chairman whether or not - - why he has this section in.

LARSEN: I assure you all, we are not grabbing power, we are not trying to limit function, but my worthy colleague, Dr. Roberts, felt that this was essential, and I'm going to let him explain it.

ROBERTS: I think we discussed this problem in part this morning, that whenever you have an attempt made to spell out and to list certain powers, the implication given in interpretation is that those powers are limited to those specific areas spelled out. It was a purpose of this last section to assure the power of the legislature to act in the interest of the health and general welfare of the people even though in our enumeration of the five articles, we might possibly have left something out which in the future the legislature may want to act on. It was, therefore, important to put a proviso in which would permit the legislature - - which would indicate that the legislature had that power. Therefore, we have stated that the enumeration in the previous five sections of specified powers shall not be construed as limiting the powers of the State. That was the basic purpose. It was not to say that we have five sections and these are the only areas in which the legislature may act.

I would like to, also, while I'm on the floor, to suggest that we retain the language, "for the good order, health and general welfare of the people." We have no place in the previous five sections mentioned the general - - the concept of general welfare, and I believe in a section dealing with this that we ought to retain the words "general welfare."

BRYAN: I think the records should show, and possibly it might clear the question raised by my colleague from the fifth district, that this paragraph which actually grants license refers to this subject alone. Would that clear up your objection?

A. TRASK: No, it does not, Mr. Chairman, and my colleague from the fifth district. Who is to say what is a limitation? Who is to say what is not a limitation? In other words, we are going into the realm of saying, "Well, we have set these various things specifically in a very fine manner and we think we have done a good job; but just to excuse ourselves, we're going to throw in this grab bag construction as to how it's to be construed." I don't know, other than the Model Constitution, that such a provision as this is in any other constitution. I don't remember having seen one. I know it is in this Model State Constitution, but I am altogether fearful of something in a basic document which is so indefinite as this.

Now construction. This language is more or less repetitious in ordinary legislative work, and laws are drawn up with this type of clause and section, but in this Constitution, I think consistent with the work done on the previous sections I see no reason and cannot go along at all with the thought that the enumeration of these articles shall not be a restraint and limitation upon the full powers of the State. You have outlined the powers of the State. There is such thing as the powers of the State being restrained, and that is all - - to me altogether vital. It is the dignity of the individual, and I go along with the delegate from Kona on the question of private property and its limitations by sightliness and orderliness, as Judge Heen's amendment in the previous section provided.

We in Hawaii are probably the only jurisdiction under the United States flag which have extended our right to limit orderliness and sightliness by saying that there shall be a ban on signs, like that thing down here on Kapiolani, which I think is a positive disgrace, this Kodak. I think it is.

We all subscribe to it, but it is not a part of the law. I think it's good that it's in there, but we can certainly foresee that it is interfering with the rights of the individual. I see no historical support for such a section. I see no -- I'm fearful of it because of its indefiniteness, and I think our job here is to take something very definite and certainly to restrain the power of the government where that is possible and fair for the general welfare.

ANTHONY: I don't know whether Delegate Trask was here this morning or not when we discussed this matter. We decided to enumerate, or at least tentatively had decided, to enumerate certain recorded advances in the field of public health and general welfare. Now the reason -- the legal reason why this last section is put in here—it will probably come at the end of the legislative section of the Constitution—is a matter of law. When you start to enumerate all of the specific items, the reason or the result that the courts might reach, as Mr. Trask as a lawyer knows, that by enumerating specified fields or areas, the intention of this Convention was to limit the powers of the legislature. Now presumably, we will have a general grant of legislative power in the legislative section, depositing legislative power to all rightful subjects of legislation. Now, if we stop right there, the legislature could do anything within the limits of the due process clause. Now we start to enumerate these things, and as a matter of constitutional law, if we don't have some such section in that, then you'll cut down the breadth of your initial grant of legislative power. I think that's the reason for it, Mr. Trask.

In addition to that, when we get to the actual restraints on the legislature—that will come in the Legislative Powers and Functions Committee—they will be specific. "The legislature shall not do so and so," enact no divorces. And then the Bill of Rights, of course, will have specific restraints against State action in favor of individuals.

KING: The language is very simple and I think—in explanation to the delegate from the fifth district, Delegate Trask—is merely to safeguard the point raised by Delegate Anthony. And as was explained in the original by Delegate Roberts, if a similar or stronger provision is incorporated in some other committee report, it will replace this and the Committee on Style will be charged with the responsibility of merging the two similar provisions. So, there seems no objection to adopting this as a further grant in order to safeguard the possibility that the health and public welfare grants heretofore mentioned shall be considered as exclusive of any further grants.

SHIMAMURA: I agree with Delegate Anthony that where there is an enumeration of specific powers, there should be a reservation of general or other powers, and this is in line with the Federal Constitution where reservation is made under the Bill of Rights, at the end there.

HEEN: This particular provision was taken out of the Model Constitution where you find specific powers granted or made in this particular article on public welfare. Now, in an explanatory article on that particular article we find this.

> The Nebraska Constitution . . . specially authorized certain types of schools and institutions for children of a certain age. The State Supreme Court, on the basis of established standards of constitutional construction, said that in the absence of any provision the state would have had complete powers and that therefore the provision itself must be construed as forbidding the State to establish institutions for persons except those within the specified age group. Protection against such a contingency is provided by Section 1007.

That is the section that is now being considered.

CROSSLEY: Do I understand now that the adoption of this section would be on the basis that when we adopt other articles, that where it's possible to do so, that this section will be used to cover all such articles?

ANTHONY: This is a -- this properly would go in the section relating to legislation, legislative powers and functions, and I believe it will be proper some place at the end of that section on the powers granted to the legislature to have this particular section which we are now debating, and it should be put in in such a way that it would apply not only to what is immediately before us but it would apply to public health, labor, industry, education and everything else.

CROSSLEY: That's the point of my question and I don't believe that the motion, as it's so stated, does that.

PORTEUS: May I suggest that the motion does not do that, but that we are not in a position to make amendments, or suggest other than matters that are concerned to this proposal before us. Therefore, that will be the province of the Committee on Style in relating it over to all the other sections when they have everything before it.

KING: It seems to me the explanation made by Delegate Roberts at the beginning covered that point, that the suggestion that the committee wished to have this approved as a part of its report with the understanding that the Committee on Style would incorporate it in a broader provision that would be applicable to other committee reports. I feel that it would have a rather temporary value until such time as other committee reports have been discussed with similar blanket powers so as not to limit the defined powers of such committee report.

A. TRASK: If that's the view --

CHAIRMAN: I recognize Delegate Doi.

A. TRASK: Oh, I'm sorry.

DOI: I agree with Mr. King here that we should vote on this question here before us because it would be an expression of this group here that, insofar as health and public welfare is concerned, we believe that these specific statements of powers do not limit the broad powers on health and general welfare. Then later, if the Style Committee wants to combine that under the legislative powers, I see no reason why the Style Committee cannot do that. Therefore, at this time I would like to move for the previous question.

CROSSLEY: Second the motion.

HEEN: Mr. Chairman.

CHAIRMAN: No debate on the previous question.

HEEN: In order to clarify the situation --

CHAIRMAN: You withdraw your second, Mr. Crossley? The previous question has been moved and seconded.

HEEN: Kindly withdraw that motion for a moment.

CHAIRMAN: Crossley or Doi.

A. TRASK: Point of information.

CHAIRMAN: Point of information. State the point.

A. TRASK: "The enumeration in this article," the specific word is "this article." From the discussion here made, what is the meaning of "this article"? Obviously, it means just to this health, welfare and safety situation. Doesn't it, Mr. Chairman?

HEEN: This article deals with the problem of general welfare.

CHAIRMAN: Senator Heen, I'm afraid you are out of order. They have not withdrawn their motion and the second.

HEEN: He asked for a point of information. I gave the information.

CHAIRMAN: I call for the vote at this time on the previous question.

HEEN: If the mover of that motion will withdraw that for a moment, I would like to make a little further amendment that will clarify the whole situation.

CHAIRMAN: I recognize Delegate Crossley.

CROSSLEY: I'll withdraw my second.

SAKAKIHARA: I withdraw my third.

CHAIRMAN: Delegate Heen.

HEEN: As we all know this article deals with the problem of general welfare, and certain sections have been agreed to dealing with the general subject, general welfare. Now, my motion to amend this particular section is as follows: "The enumeration in this article of specified powers shall not be construed as limitations upon the powers of the State to provide for the general welfare of the people." Here you've got the whole thing.

ROBERTS: I'll second that.

LUIZ: I would want to ask a few things here for my own clarification. The word "good order," if I understand Delegate Garner [Anthony] right, he said that this would cover the whole situation. Now, what bothers me is this. Will this take in or cover the grounds of strike? In other words, I would be clarified in this fashion. If the sugar industry should go on strike, can this portion of the Constitution stop it from going on strike because it's in good order for the welfare of the people?

HEEN: My amendment has left out the term "good order."

LUIZ: Was your amendment seconded?

HEEN: My amendment was that it's not to be "construed as limitation upon the powers of the State to provide for the general welfare of the people."

LUIZ: Was it seconded?

ROBERTS: Yes, I seconded it.

CHAIRMAN: It was. You ready for the previous question? I mean, are you ready for the amendment? The previous question has been withdrawn. You ready for a vote on the amendment? All those in favor signify by saying "aye." All opposed. Carried.

BRYAN: I move for the adoption of Section 6 in substance as amended.

WOOLAWAY: Second.

CHAIRMAN: Seconded by Delegate Woolaway. All those in favor signify by saying "aye." All opposed. Carried.

PORTEUS: I think I was recognized. It's now six o'clock. At seven thirty there are other committee meetings. There has been the disposition on the part of some of the members of this Convention, as expressed to me, that they would like to have this article printed and on their desks before taking a final vote. I think there is also to be offered, at least there was an announced intention by some of the delegates, to offer other amendments which would make a combination of all these. In order that we might have everything before us, I suggest that we rise, report progress, ask leave to sit again, and in the meantime, have the article as amended printed and placed on their desks.

DELEGATE: I second the motion.

KAUHANE: Mr. Chairman.

CHAIRMAN: I recognize Delegate Crossley.

KAUHANE: Point of order.

CHAIRMAN: State your point of order.

KAUHANE: I think, according to rules of the Convention, Mr. Crossley has talked too many times.

CHAIRMAN: Your point is out of order. He can speak any number of -- twice on each subject. Delegate Crossley.

CROSSLEY: This is the first time I've spoken on this subject. Inasmuch as it was only a suggestion, I now move that the Committee of the Whole rise and report progress, and ask leave to sit again.

DELEGATE: I second that motion.

KAUHANE: I rise to point of information. Section 3 of the proposal is somewhat left hanging without any qualifying statement. If we read Section 3 as amended, "The State shall have the power to provide for persons unable to maintain the standard of living compatible with decency and health," that is what we have agreed upon as to the wording of Section 3. Now, what are we providing --

CROSSLEY: Point of order.

CHAIRMAN: Point of order.

CROSSLEY: Section 3 isn't before this committee at this time.

KAUHANE: I'm raising Section 3 on a point of information and I think I am proper in raising this question on a point of information.

CHAIRMAN: I think Section 3 has been passed by the Convention and I think you're out of order at this time.

KAUHANE: Having agreed with that, Mr. Chairman, in the movant's hurry to move the previous question and the Chair's ruling, and also recognition of the previous -- the movant of the previous question was taken with sincerity and cutting out all other debates, those of us who have never had the opportunity to answer or give any testimony regarding Section 3 were cut off by the movant and the motion for the previous question. Certainly my rising to a point of information would also include the reconsideration of our action taken on Section 3, so that we will clarify the matter. As it now stands, we are not providing anything in Section 3 to take care of the things that you yourself agreed upon that Section 3 is valid.

ANTHONY: I believe that is exactly the purpose of -- one of the purposes of Delegate -- the Secretary's suggestion that we have a clean print and vote on this tomorrow. We can certainly vote for or against any particular section when we get the full print before us. That's my understanding

KAUHANE: Well, rather than do that and to expedite matters, my only feeling is this, that since much talk is being made that committee proposals and reports ought to be sumitted by the 26th of the month, and in order to help get this issue out of the way so that other matters can be brought up for Committee of the Whole meeting, that if each of us look at Section 3 the way we have agreed, Section 3 shall be reported out and accepted, and we leave Section 3 hanging without providing something. You say that you shall "provide for persons unable to maintain a standard of living compatible with decency and health." Now what are you providing for them? Some care, some aid, or some support so that they will be able to live, in the very words that you now agree in adopting, the adoption of Section 3?

LARSEN: Mr. Chairman. I tried to answer that.

CHAIRMAN: I recognize Delegate King.

KING: The delegate from the fifth district, I think, has made a point, and although he made it as a point of information, I don't believe we can go back and clarify it today. I would like to suggest that the committee rise and when we have the clean print tomorrow, the delegate from the fifth

district can remake that point. In amending that Section 3, we left it hanging in the air. It says they "shall have power to provide" without saying to provide what. Nevertheless, it's not a matter that I believe we can settle this late in the afternoon. And there was a motion, I believe, that the committee do rise, report progress and request permission to sit again, and by that time we'll have clean print. Is that motion pending? I'd like to second it.

CHAIRMAN: The motion has not been seconded.

KING: I'll second it.

CHAIRMAN: I recognize the second. All those in favor of the motion, signify by saying "aye." All opposed. Carried.

MAY 25, 1950 • Morning Session

CHAIRMAN: Committee of the Whole will come to order. At ease. When the Committee adjourned yesterday, we had approved in substance the several sections of the report on health and public welfare as contained in Proposal No. -- Committee Proposal No. 1. There is called attention to the Convention that the first section was in error; and should read, "The State shall provide for the protection and promotion of the public health" period.

BRYAN: In view of the remarks that were made at the close of our Committee of the Whole yesterday, I would like to move that we reconsider our action on Section 3.

CHAIRMAN: The Chair would like to state that -- or ask the delegate whether he intends to make a change in substance or a change in wording.

BRYAN: I believe it could be interpreted either way. The wording leaves us without any substance as it stands now, if you want to look at it that way. Actually, what we wish to do is to write in what we intended when we wrote Section 3 yesterday. Does the Chair feel it would be unnecessary to reconsider our act?

LARSEN: I've gone over this with Mr. Bryan, and it's just to clarify it. There was a point that Delegate Kauhane brought up yesterday. It reads such as this: "The State shall have the power to provide for persons." The committee felt that that was rather all inclusive.

DELEGATE: Point of order.

CHAIRMAN: State the point of order.

DELEGATE: There was no second to the motion for reconsideration, so I second the motion.

CHAIRMAN: The motion has --

LARSEN: Thank you. Oh, I see. Better carry the motion; otherwise I can't go on.

CHAIRMAN: Are you --

LARSEN: I said you'd better carry the motion; otherwise I can't go on.

CHAIRMAN: All those in favor of the motion as made and seconded signify by saying "aye." Opposed. Carried.

LARSEN: It's an insertion after "provide" of "assistance for." "The State shall have power to provide assistance for persons unable" --

HEEN: Point of order. There's nothing before the committee.

CHAIRMAN: That's correct.

PORTEUS: To get this before everyone then, I now move that subsection or Section 3 of this proposal be adopted.

LARSEN: I second the motion.

PORTEUS: I now move, or I'm willing to second the motion. Now, you move now that it be amended.

LARSEN: All right, I move it be amended to insert the word "assistance."

PORTEUS: I second the motion.

CHAIRMAN: You've heard the motion; is there any discussion? All those in favor of the amendment signify by saying "aye." All opposed. Motion is carried.

NIELSEN: I now move that the word "assistance" be inserted after the word "provide."

CHAIRMAN: That was just carried.

NIELSEN: It wasn't specified where it would be put.

CHAIRMAN: I think it was. The Chair feels that the Doctor stated, "to provide assistance for" indicated where it was to go. I think we passed on the motion that --

BRYAN: I'll move the adoption in substance of Section 3 as amended.

KAUHANE: So that the records and the motion be well understood by the delegate who raised the question as to where the word "assistance" was placed, I humbly request that we turn to the wire recording to satisfy the gentleman.

DELEGATE: I second the motion. I second Mr. Bryan's motion.

CHAIRMAN: Mr. Bryan's motion?

LARSEN: I move we table that.

CHAIRMAN: Which motion are you moving is tabled? The only motion before the house, moved and seconded, is Bryan's motion.

LARSEN: The one that Kauhane moved; I didn't hear another one.

KAUHANE: It wasn't a motion, it was a suggestion.

CHAIRMAN: The only motion before the house is the motion to approve in substance Section 2 --

LARSEN: Three.

CHAIRMAN: -- Section 3 as amended. All those in favor signify by saying "aye." All opposed. The motion is carried.

A. TRASK: For clarity's sake, will the Secretary please read both sections?

PORTEUS: May I have the Chief Clerk read it.

CHAIRMAN: The Chief Clerk read the section as amended now. Section 3 as amended.

CLERK: Third section as amended reads as follows: "Section _____. Social Security. The State shall have power to provide assistance for persons unable to maintain a standard of living compatible with decency and health."

TAVARES: I now move that when this committee rise, it recommend the passage of -- on second reading of Committee Proposal No. 1 with the amendments which have been approved by this Committee of the Whole.

APOLIONA: Will the good Dr. Larsen -- I mean Delegate Larsen move for the approval of Section 5, or anybody else so I can put in a -- add an amendment to Section 5?

DOI: I second the motion.

CHAIRMAN: Thank you. I think the Chair will rule that a motion for reconsideration must be put first.

APOLIONA: Then will the good doctor please move for that reconsideration?

LARSEN: Just to expedite things, could we just go right down through 1, 2, 3, 4, 5, and then it'll clarify it, because right now, we're confused as to what we're talking about, I think. I am, at least.

BRYAN: I don't understand the proposed procedure here. It seems to me that yesterday we amended each one of these sections and adopted in substance each section in this proposal. There was a correction in Section 1 this morning because of an error in printing. Section 3 has been amended this morning on the reconsideration of our actions yesterday. What the reference is to a change in Section 5, I have no idea, but if that's to be further amended, we should reconsider our actions and make the changes and then approve that in substance. Then the whole committee proposal will be before the house.

CHAIRMAN: That's correct. Delegate Apoliona was attempting to, I believe, add an amendment to Section 5, but so far nobody has moved to reconsider it.

APOLIONA: I understand if I - - believe that I understood the motion yesterday that these different proposals as was so amended and corrected yesterday to be printed, and left before - - and placed before the delegates so that we can study it. I have studied - -

TAVARES: Just to clarify the situation, I withdraw my motion, and I move to reconsider Section 5 in order that Dr. Apoliona may have a chance to suggest his amendment.

DELEGATE: I second the motion.

CHAIRMAN: The motion to reconsider Section 5 has been made and seconded. All those in favor please indicate by saying "aye." All opposed. The ayes have it.

APOLIONA: I have an amendment to offer.

CHAIRMAN: I would like to point out to the delegate that he is out of order. Somebody will have to move the adoption.

LAI: I move for the adoption of Section 5.

APOLIONA: I second the motion.

CHAIRMAN: The motion for adoption of Section 5 has been made and seconded. Any discussion?

APOLIONA: In Section 5 I have the following amendment. Between - - in the fourth line, between the words "private" and "property," insert in their lieu, "and public" and change the word "property" to "properties," so the section with this amendment shall read as follows: "The State shall have power to conserve and develop its natural beauty, objects and places of historic and cultural interest, sightliness and physical good order, and for that purpose, private and public properties shall be subject to reasonable regulation."

CHAIRMAN: I recognize Delegate Tavares.

TAVARES: There's been no second to that - -

CHAIRMAN: Correct.

TAVARES: - - but in deference to the movant, I would like to explain what I believe would indicate no necessity for that amendment. If it's public property - -

KAUHANE: Point of order.

CHAIRMAN: State the point of order.

KAUHANE: If the motion is not seconded, there is nothing before the house, so - -

CHAIRMAN: That's correct.

KAUHANE: In order to allow the delegate from the fourth district an opportunity to explain his stand, I second the motion.

CHAIRMAN: I recognize Delegate Tavares.

TAVARES: If the property is public, the government has a right to regulate it anyway, so that all you need to do is to have "private property." That's - - I believe that's correct, and for that reason, I don't believe the motion is well taken.

APOLIONA: I believe that to be true, and I agree with the delegate from the fourth district. But it seems to me that when your public - - when your property is private, everybody else has something to do with your private property, but when it becomes a government property, everybody else is afraid to touch it. I could see unsightliness in lots of government property as far as the buildings and projects is concerned, but why they do not go after the government property, I don't know, but they pick on the small fellows, they pick on private property. It is my wishes that what is good for private property, whatever regulations should be made against private property, it should have the same effect as against public property.

LYMAN: On the island of Hawaii, you have over in Kona one of the ancient heiaus that during the past six months - -

DELEGATE: We can't hear, I'm sorry.

LYMAN: - - during the past six months has been used as a rock pile for road building. Eighty per cent of this heiau has been torn up and conveyed to government rock crushers to be used as road surfacing material. During the past two weeks, you have read articles on Kalapana Beach, whereby the county has used such material for road purposes.

HEEN: I rise to a point of information. I'd like to ask the delegate who spoke last whether that heiau is on public property or private property?

CHAIRMAN: Delegate Lyman, would you like to answer the question?

LYMAN: That I could not answer, but I may be able to get that information for you by noon.

HEEN: If it's on public property, the legislature has power to prevent any further desecration of that heiau, or even the Board of Supervisors may enforce some regulation in connection with it.

CORBETT: I'd like to say that in our opinion that would be taken care of under the specified mention of the historic monuments that we have in this same section that we are discussing.

NIELSEN: I don't think that this is in order, that we should regulate private property. It violates the Constitution of the United States, and I don't think we should start our Constitution in this manner. And furthermore, I've never heard a satisfactory definition to the word "reasonable." "Reasonable" can be whatever the legislature wants to make it, and we're simply mandating the legislature by this, that private interest can lobby bills through and directly violate the Constitution of the United States.

TAVARES: I hope my friend, the delegate from the fourth district, will forgive me if I, in order to bring this to a head because of shortness of time, if I move to table his amendment. I so move.

DELEGATE: Second it.

CHAIRMAN: Motion to table the amendment has been made and seconded. All those - -

NIELSEN: What is the amendment?

CHAIRMAN: The amendment is to insert after the word "private" and before the word "property," "and public"— "and public properties." There has been a motion made and seconded to table the amendment. All those in favor signify by saying "aye." All opposed. Carried.

DELEGATE: The noes carried.

CHAIRMAN: The motion before the - -

TAVARES: I now move that when this committee rise - -

CHAIRMAN: I think there's a motion before the house now that has to be passed on before - -

TAVARES: Oh, yes. Well, then I think there is a motion. I will move again. I move that Section 5 be adopted.

CROSSLEY: As amended.

CHAIRMAN: In substance.

TAVARES: Yes, in the original form prior to the recent motion.

CHAIRMAN: Is there a second to that motion?

DELEGATE: Second the motion.

CHAIRMAN: All those in favor of this motion, please signify by saying "aye." All opposed. Motion is carried.

TAVARES: I now move that when this Committee of the Whole arises, it report recommending the passage on second reading of Committee Proposal No. 1, Redraft 1, as amended.

SMITH: I second that motion.

CHAIRMAN: The motion is made and seconded. Is there any discussion? All in favor of the motion, please signify by saying "aye." All opposed. The motion is carried.

CROSSLEY: I move that we now rise and report the findings of this committee.

CHAIRMAN: Any second to the motion?

PORTEUS: I wonder whether this procedure would be satisfactory to the Committee of the Whole. I think it combines all these various ideas. That is, that when the committee rise, that it ask leave of the Convention to present a written report the following day, tomorrow, because under our rules amendments have to be placed in writing. Therefore, I think we have to give the chairman of the Committee of the Whole time in which to put this in proper form in writing and present it as an amendment. Then, at the time that he presents that, he can ask leave to, at a later time, present a more complete report from the Committee of the Whole. That is to say, he'll place this in writing for tomorrow, recommending passage, but then, for giving all the reasons, we could wait until next week and gain a little time within which to prepare it.

At the same time, I think it's also necessary, since there was referred to this Committee of the Whole the report of the Committee on Health and Public Welfare, that it would also be well for us to recommend to the Convention as a whole in that report that the report of the Committee on Health and Public Welfare be accepted and placed on file. If that is satisfactory, I'll so move.

CROSSLEY: I'll second that. I was just trying to say it in a few hundred less words.

CHAIRMAN: The motion is made and seconded.

LARSEN: Before that's passed, we had a subsequent sheet here that made corrections in spelling, punctuation and insertion of words to clarify, and if there are no objections, our report will contain those few additions.

CHAIRMAN: I believe that that will have to be - -

SILVA: I couldn't get the Secretary's motion. It's quite a long one. I prefer to have Mr. Crossley renew his motion in less words. Do you mind renewing your motion?

PORTEUS: Well, the advantage that I might point out of making it in the long way, is you finally get everybody so confused, before long - -

CHAIRMAN: Delegate Silva has the floor.

SILVA: I made that request and I hope the Chair will recognize Mr. Crossley so that he can renew his motion in less words, please.

PORTEUS: Point of order. The maker of the motion does not yield on that matter. Thank you, Senator.

TAVARES: I move the previous question.

CHAIRMAN: The question before the house - -

DELEGATE: I second the motion.

PORTEUS: The motion is that the Committee of the Whole rise - -

NIELSEN: Point of order. That was moved for the previous question.

CHAIRMAN: Point of order?

PORTEUS: The motion has not been made, nor has it been seconded. Until seconded, the motion is not - -

CHAIRMAN: There's been no second to the original motion, so the motion for the previous question is out of order.

PORTEUS: The question is as to what is before the house. The motion is that this procedure be followed: the committee rise, report progress, recommend that as we have adopted this proposal, that it be recommended for passage; that the chairman of this committee be authorized to request the Convention for leave to make his report in writing on Friday; that at that time, in making his report in writing, he also recommend that the report of the Committee on Health and Public Welfare be accepted and placed on file.

DELEGATE: Second the motion.

HEEN: I would make this suggestion, that when the committee rises and reports upon this committee proposal, that - - and makes the recommendation for the approval of the proposal upon second reading, that action be deferred upon that report, the whole report, until the written report is filed, so that all of the members of the Convention may have the opportunity to see what is in that written report, and I so move.

CHAIRMAN: There's a motion before the house duly made and seconded, I believe.

PORTEUS: I think the suggestion that was made by the senator is well taken. I think that that motion is in order, however, once we resolve ourselves back into Convention.

CHAIRMAN: Question? You ready for the question? All in favor of the motion as made by Delegate Porteus signify by saying "aye." All opposed. Motion is carried. Committee of the Whole will now adjourn.

Debates in Committee of the Whole on

EDUCATION

(Article IX)

Chairman: YASUTAKA FUKUSHIMA

June 16, 1950 • Afternoon Session

CHAIRMAN: Will the Committee of the Whole please come to order?

We have for consideration this afternoon in this committee Standing Committee Report No. 52 and Committee Proposal No. 11, relating to education. I shall now call upon Delegate Loper, the chairman of the Committee on Education, to briefly outline the procedure for this afternoon.

LOPER: I would like to make my preliminary remarks very brief, but would ask permission before considering -- taking up of the various sections one by one of Committee Proposal No. 11 to read the committee proposal through. I can assure you that that can be done in a minute and a half because I have just done it in less than that time. There are certain major matters to be called to the attention of the Convention, some of which were controversial in the committee, which will be mentioned after the reading, but I think it will be to our advantage to have before us the provisions of not just one section at a time but all of the sections. If you will turn to Committee Proposal No. 11, submitted by the Education Committee, you will find that there are five sections on two pages and that the first one reads as follows:

> The State shall provide for the establishment, support and control of a state-wide system of free, non-sectarian public schools, a state university, public libraries, and such other educational institutions as may be deemed desirable, including all physical facilities therefor. There shall be no segregation in the public educational institutions of this state because of race, color, or creed; nor shall public funds be appropriated for the support or benefit of any sectarian, denominational or private educational institution.
>
> Section 2. There shall be a board of education to be appointed by the governor, by and with the consent of the Senate, from a panel nominated by local school advisory committees to be established by law.
>
> Section 3. The board of education shall be empowered to establish policy and to exercise full control over the public school system through its executive officer, the superintendent of public instruction, who shall be appointed by the board and shall be ex officio a voting member thereof.
>
> Section 4. There shall be a board, to be known as the "Board of Regents of the University of Hawaii," to be appointed by the governor, by and with the consent of the Senate. The president of the university and the superintendent of public instruction shall be ex officio voting members of the board.
>
> Section 5. The board of regents shall be empowered to establish policy and to exercise full control over the University of Hawaii through its executive officer, the president of the university, who shall be appointed by the board. The board of regents of the University of Hawaii shall constitute a body corporate and shall have title in fee simple to all of the lands of the university.

The accompanying committee report is No. 52, and I believe we will save time if we refer to that report only in the process of answering questions which may be raised in connection with Committee Proposal No. 9. At the outset the Education Committee had a number of matters to consider on which there was little or no disagreement within the committee. For example, there was no serious effort or none at all, I think, made to divide the present single, centralized school system up into county school systems. We were unanimous in our support of a continuation of the present centralized control of the school system.

However, there was a sharp difference of opinion on the question of the election of school board members versus the appointment of school board members, and the minority has considerable argument on their side of that question. That question was resolved within the committee in accordance with the proposal in Section 2.

There was also a difference of opinion within the committee on the question of dual control of school buildings. As the delegates know, the territorial school system is operated in buildings that are constructed by the counties and maintained by the counties and that has been referred to as dual control.

So that the issues that took a lot of our time in attempting to come to the final point of being willing to sign this report, and I call your attention to the fact that all members of the committee have signed it although some did not concur in certain respects, were spent largely on those controversial matters and were resolved as indicated.

Now coming back then to Section 1, I would like to explain that the language in the fifth line, "including all physical facilities therefor," might appear to the casual reader as being unnecessary, because if you say that "the State shall provide" for a school system it might be assumed without saying that it should include all physical facilities therefor. However, the inclusion of those five words is deliberate and it appears in Section 1 instead of Section 2 in order to leave to the legislature the question of settling this matter of dual control.

I would wish to call your attention, also, to the fact that many things that might appear in this Committee Proposal No. 11 have been left to the legislature and have been mentioned in our report. For example, we haven't said how many members there should be on the board of education or the board of regents. We haven't said how many should come from each district, how their terms of office should -- how long their terms should be, that they should be overlapping terms, and so forth. We have left a great deal of the material that was discussed in the Education Committee to the legislature, and for that reason we do have a relatively short committee proposal. However, we have stated in our report, the first few pages of Standing Committee Report No. 52, the point of view of the Education Committee on the matter of a separate article on education and in support of a committee proposal at least this long, composed of five sections. We are quite aware that H.R. 49 requires that provision shall be made for education and that possibly Section 1 of our committee proposal meets that requirement. However, it was the feeling of the committee that we should go a little further than that and to ask that we include in the Constitution the thinking of the people of Hawaii on their public schools as of 1950. I would ask also

that as questions are raised, we be permitted to call on various members of the Education Committee who are specially prepared to speak on one or another of the sections.

In order to open the discussion, then, to delegates, I would move the adoption of Section 1 of Committee Proposal No. 11.

J. TRASK: I second the motion.

CHAIRMAN: It's been moved and seconded that Section 1 of Committee Proposal No. 11 be adopted. Ready for the question?

KAWAHARA: In signing the report and then signing the proposal, I stated that I did not concur with Section 1. No reason was stated. I would like to state my reasons now. As I read the article, I get the inference that a free system, a free educational system shall be guaranteed in the first instance up to the word "public schools"; and after "public schools," it seems to me the words "state university," the words "public libraries," that is, the word "free" does not include those words, a "state university," "public libraries." In other words, in reading that section I get the idea that the common schools are free but the university is not free, and the public libraries are not free. In making the objection, I wanted a clarification on that point. I did not get a satisfactory answer in the committee; for that reason I objected.

Furthermore, as we read along down to the section which reads, "including all physical facilities therefor," the question of dual control comes in. Most of us were in favor of a state-wide system of education. However, it was felt by many of us that as to the details of handling and administering the educational system or the school system, that the counties should have some participation in that matter. For that reason some of us did not concur in that section.

CHAIRMAN: Would the chairman of the Education Committee wish to comment on what Delegate Kawahara just stated?

LOPER: I think it would be proper to restate here the answer, as I recall it, given in the committee to the use of the word "free" and then if there are others that can supplement these remarks, please do so.

As I read the sentence, "a state-wide system of free, non-sectarian public schools," it is true that the word "free" applies to the public schools, not beyond the comma after "schools." The paragraph does not say whether the state university and the public libraries are free or not. We also noted in our discussion and study of this matter that the word "free" may have two meanings. Free, historically, at one time meant open to all; it has come recently to mean tax-supported. I think that it is the opinion of the committee, the majority of the committee, that it probably belongs in that phrase modifying public schools and does not necessarily lead to confusion concerning the state university and public libraries.

On the matter of including "all physical facilities therefor," if that appeared in the second section, it would be deciding the question of dual control one way. It would be to eliminate dual control and place the full responsibility with the board of education. By putting it in the first section, which is a mandate to the State to provide, it leaves it to the legislature to deal with that problem and to delegate responsibility for the physical facilities to the board of education or to the counties, or to study and modify the present division of responsibility there in one way or another.

CHAIRMAN: Does that answer your question satisfactorily?

KAWAHARA: Then by inference I get it that a state university is not free. In other words, a citizen is not free to enter a state university as provided by this Constitution. I may be wrong on that.

ASHFORD: I would like to express my opinion on the matter of "free" not being applied to the university. Anyone who has been around the legislative halls has seen the difficulty in finding money for all the functions of government, and if the university were wholly free, in the sense that no tuition could ever be charged, I think the result would be that we simply couldn't find enough money to run it as we wish it to be run, and that it is solely for the benefit of the students that the additional fees are charged.

WHITE: I question the inclusion of that phrase reading "all physical assets [sic] therefor," because it seems to me that that is a mandate to the legislature that they have to provide all physical facilities. There is no qualification there at all as to whether or not it's a matter of judgment as to whether - - what facilities should be provided. And I also question the part of the section after the semicolon, "nor shall public funds be appropriated." I don't think that that belongs in this section because that's contrary to the policy of public funds anyway.

YAMAMOTO: Being one of the members of the Education Committee, I did not concur on this first section but I would like to ask the Chairman, Delegate Loper, to clarify "all physical facilities therefor." I would like to put up this question because on the island of Hawaii the biggest problem is transportation and that transportation expense covers one-third of the appropriation for the school department. Now, if this committee particularly could clarify this "physical facilities therefor," does it include this matter?

LOPER: In answer to the last speaker, it would seem to me that a school bus might be regarded as physical facilities for public education. It might, on the other hand, be regarded as a service to be hired or let out on contract. As a matter of fact, where transportation is provided at public expense, it comes out of this special school fund which is managed by the counties.

In further comment on the previous speaker, "including all physical facilities," you took exception, Delegate White, to the word "all." Do you mean that some of the physical facilities should be provided by some other agency, other than the state?

WHITE: No, I don't mean that, but I do mean that you say "all physical facilities." There may be a question as to when facilities can go in. For instance, if you have a high school, you might have an auditorium in one place. Now does that make it mandatory on the legislature to provide comparable facilities at each school? That's a very broad term, "including all physical facilities." I don't think it adds anything to the paragraph as long as you are leaving it to the discretion of the legislature to provide it. I think that that part of the sentence is better left off.

LOPER: Well, as I explained at the outset, the reason for including them, these words, is related to the matter of dual control, and I would like to ask the chairman to recognize Delegate Kellerman on that point, but before doing so, I'd like to speak further to Delegate White's question concerning the last part of the section, "nor shall public funds be appropriated for the support or benefit of any sectarian, denominational or private educational institution." We very carefully said "educational institution" to get around the question of hospitals and I would want to know whether you were arguing support for funds for private educational institutions.

WHITE: Well, they are prohibited anyway under the Constitution, so that I say it's just superfluous to have it in here.

LOPER: You mean it's unnecessary here?

WHITE: Yes.

CHAIRMAN: Does Delegate Kellerman wish to be recognized?

KELLERMAN: I would like to speak with reference to the phrase "including all physical facilities therefor." In the first place, it does not say "including all necessary facilities" or "including all adequate facilities," it is not a mandate on the State to provide facilities, more at one school than another or any that it cannot afford to provide. It's simply a statement of all those that there are now, or at any time belonging to the school system, or used in the course of education, shall be considered a part of the state-wide system of the public schools. It is not a mandate on the legislature to provide any degree of facilities. There's no standard set as to how much has to be provided and that was certainly not the intention of the committee in writing that in there. But it was my understanding that the phrase "all facilities" included those that at any one time are used in the course of the public school system, which would include the buses that are used in transportation for children to public schools on the island of Hawaii. That's why the term "all physical facilities" was used rather than "state buildings and grounds," which would by inference eliminate the question of the buses, or would not cover the question of buses used as transportion for public school children.

The reason for writing it into the Constitution is this. We have under Section 56 of the Organic Act simply a provision that the legislature shall establish such counties and other political subdivisions as it shall deem or desire and give it such responsibilities and duties. It has been the practice for the last 19 years, or 18 years, for the counties to draw up their own school budget and to prepare the requests to the legislature for school buildings which they have not felt able to finance out of their own school or county funds. We have a system whereby the department of education, as a State agency, is responsible for the teaching, the curriculum and the school supplies. The county is primarily responsible for the buildings, the grounds, the financing thereof, their maintenance and upkeep. The result is that under four different counties, we have four entirely different standards of school construction, standards of facilities offered.

The reason for writing this into the Constitution was in a sense a restatement of the basic responsbility of the State which it has at the moment delegated; a restatement of the responsibility in the State to provide all phases of the school system; at least a responsibility for how it is being provided, rather than the sense of dual responsibility which has grown up in our community. Had there been no such dual responsibility I would agree that there would be no reason for writing this in, because it is a restatement of law, a statement of the actual responsibility of the State. But it is in a sense to counteract the concept of the existing practice, because dual responsibility in the opinion of many of us who have been deeply involved in the last few years in studying our school building picture, dual responsibility has resulted in a great many disadvantages and inequalities of opportunities to the children of the territory.

ANTHONY: I'd like to ask a question of the chairman of the committee. The language of H.R. 49, the latest committee print, page 9, says that the Constitution shall contain provisions "for the establishment and maintenance of a system of public schools, which shall be open to all the children of said state and free from sectarian control." I'd like to know why the departure from that, and why the use of the word "free" in the place that it appears in the proposal has been incorporated.

CHAIRMAN: Delegate Loper, will you answer that question, please?

LOPER: I'm not sure that I understood your question. I have the language of H.R. 49. It's in our Standing Committee Report 52 on page 2. "Provisions for establishment and maintenance of a system of public schools which shall be open to all the children of the state." It was our concern that the present program of the public schools includes adult education, and there's a rapidly growing demand for that and it is one of the newer aspects of the public school system dating about five or six years ago. For that reason we didn't use the word "children" in our statement. I think that's only part of your question, Delegate Anthony. What was the other part?

HEEN: Another question I would like to ask, that in the system of adult education that you have now, do you charge fees against these adults?

LOPER: Yes. It's supported in part by appropriations and in part by tuition fees.

HEEN: Then, is it intended that no charge shall be made hereafter against these adults, under the language used here?

LOPER: No, it is not.

HEEN: Well, then you've got the word "free" in the wrong place.

HOLROYDE: I'd like to ask Delegate Kellerman whether this phrase, "including all physical facilities therefor," is actually a mandate to eliminate the dual system or whether it's a restatement of the philosophy that there should be no dual control?

KELLERMAN: As I see it, it is a restatement of the philosophy of State responsibility. The State has the authority to delegate such part of it as it sees fit, I gather under this language, "The State shall provide for." But by providing for, it can provide by the delegation of that. You have the same language under the present Organic Act that the State shall provide for a system of free public education, and under the language of the Organic Act, certain responsibility has been delegated to the counties, to take care of the buildings. But we felt that the time was ripe to have a restatement of the concept of State responsibility for all phases of the school system because a contrary thinking has grown up in the community because of the fact of the dual exercise of responsibility over the last 18 or 19 years.

I understand from our senior representative from Maui who was in the legislature in 1931 that up until that time all state school budgets were prepared in the legislature. It was not a matter of dual control, and buildings were approved from the legislature first. They did not come up as a matter of initiative or requests from the counties. But since that time, after the system of mandated funds has grown up, there has also grown up this concept of county responsibility from a legal standpoint, to the extent that in the City and County of Honolulu in the last three or four years, the City and County has been buying the land and taking title in the name of the City and County of Honolulu to school buildings, grounds, and presumably to the buildings erected on them in the sense of legal ownership and responsibility. Thus it was the intent to bring back into the forefront the sense of the state-wide responsibility and support and control of those schools. I gather it can delegate it if it sees fit.

WHITE: May I ask Miss Kellerman another question, and that is, if she's trying to get responsibility into the board of education as against the City and County, then wouldn't that be better covered under Section 2 and referred to as responsibility for the construction and maintenance of facilities, rather than to put it under Section 1 where you are mandating the legislature?

WIST: I think it belongs in Section 1 because in Section 1 we are stating a principle, namely that the State as a state

shall provide these particular educational provisions. Now, we are stating that this responsibility for education shall include responsibility on a state-wide basis for the physical facilities. We're not saying that the State shall or shall not delegate these responsibilities to one group, mainly the board of education, or to the other group, namely the counties. We're leaving that for legislative consideration and action, but we are recognizing here a principle, namely, that the State is the responsible agency, we the people, for providing a system of public education, including the physical facilities thereof. Now, there is one thing that we might do here to resolve part of this issue and that is to delete the word "all" and include the word "the." Then, you'd have "including the physical facilities thereof," instead of "all physical facilities thereof," and that might clarify this issue a little bit.

KELLERMAN: In answering Mr. White's suggestion that we put it on the board of education: as to my personal opinion, I frankly would like to have it there, with the study that I have made of the question. But with deference to other members of the committee and the fact that we felt the legislature more able to go into all angles of the matter, and there are various angles of the matter, we were willing, as agreement among the members of the committee, to leave this to the legislature to make a final determination as to certain delegation. You will find in the committee report that it has been so written that it recommends a certain degree of delegation, the delegation of the maintenance and the care of structures utilizing county facilities, for various reasons, which I think are quite sound, which are set forth therein.

But that is my answer to Mr. White's question. If it were a matter of my own personal opinion, I would have it a direct mandate that it be under State control. But I think the report makes clear the general feeling of the committee and that we at least have concurred.

MAU: I want some information if I can get it. I understood that representatives of the City and County government appeared before the Education Committee to state their views. I'm wondering whether or not this is not true, that the legislature in its biennial sessions places certain mandates upon the City and County government—I don't know about the other counties—to make certain expenditures on the facilities for education under the control of the City and County government, and that, more often than not, the City and County government is called upon by the board of education to spend more than the mandate set up by the legislature. Is that a fact?

CHAIRMAN: Delegate Loper, would you care to answer that?

LOPER: That is correct. The mandate stands at about $950,000 and the City and County spends about a million dollars a year more than that. There was a time, however, not so many years ago when the schools couldn't get an extra dollar without taking it from the fire department, the police department or the roads.

MAU: My next question would be this. Those who support the state-wide theory, including the furnishing of facilities for the schools, if they really felt that the school department or the school children would benefit more greatly through the existing system, why do they ask that the legislature, which has not placed enough money for school facilities, then to take away that power now from the various county governments, because they will have to call upon the county governments to assist them in the way of funds?

H. RICE: In 1919 through to '31 every legislature provided funds for new buildings, for maintenance, repairs and provided for additional grounds and so forth. We set a program of work throughout the territory, and under this, so far as Maui was concerned, we built for instance, Paia School, Wailuku School, Puunene School, Kahului School, Kam III School, and all those schools were provided. Funds were provided by the legislature. And they were in turn, they were used by the county. They were used by the county but the program was set by the legislature, and I think where the funds were provided, there were more than adequate funds at that time provided, and we had a continuing program. If in those days we had left it to the county, they wouldn't have gone anywhere. And this is just returning to the days when we, in the legislature, provided the funds and set up the program so that we wouldn't build these gymnasiums or auditoriums if the ordinary facilities were not provided for.

I happened to go back to Lahainaluna last week and they had an auditorium and gymnasium there that was quite adequate for the school that only cost them $17,000. I wish you could all view that. It was made possible by the funds provided by the legislature.

You know nowadays we provide a lot of funds for the counties to do with what they will under the gross income tax. It's no more than fair that we should have a state-wide system of education where all the facilities were carried on on a state-wide basis, not giving more than they should to any particular county but seeing that every county was carefully provided for. I think you can do this better on a state-wide proposition than you can on a county basis. It's just returning to the system we had prior to 1931. We have tried this new system and I think it falls down in the fact that some places you have requests for auditoriums and gymnasiums when in other parts of the territory you don't have the actual necessary facilities.

The State should be closer in touch with federal funds to take advantage of federal funds. A lot of people criticize the amount expended for Baldwin High School on Maui, but when you think that we got $650,000 free federal money because we took advantage of federal funds, that means a lot to the community. You have to, in the matter of education and facilities, study the needs of the future. You can't wait. If we waited to build the high school three or four years later, we couldn't have provided the facilities for the people in central Maui. It was looking ahead that did it, and I for one am very keen for this same system. Delegate Mau, the City and County should use those funds. Separate funds should be provided by the territory for specific purposes and a program lined up that will take care of all the territory.

MAU: I want to say that I'm in favor of a state-wide system of education. I' m just calling attention to the present method of handling facilities for the school children, that the schools have benefited greatly under the county regime because it spent many more millions of dollars than have been called for under the legislative mandate. However, if the report—as looking at it you find the place in which it is so stated, as one of the speakers has said—recommends certain delegations to the county government, it may meet with the approval of the county officials. However, I state again that I am in favor of the system of state-wide education, but it seems to me that the division of authority doesn't rest in the method of teaching or the real system of state education, it only goes to the facilities that are set up for the system.

ANTHONY: I wanted to address myself to the question of the word "free," but the debate has gone on to the next sentence and I will hold my peace until this is settled.

KAUHANE: I feel that the State should provide for the education of its children of the citizens of this state. In providing such education, I feel that the State should provide for free basic textbooks. The State should also provide, if transportation is provided for children attending public schools, that such transportation shall be provided for children attending sectarian or private schools. I be-

lieve also that those parents who send their children to private schools are taking away from the State some of the provisions by which the State should provide education for the children by establishment of private schools. Certainly the educational system, the State should provide such, then all accommodations should be made for parents who are taxpayers and citizens of the state whose children attend private schools. They should be compensated or some just return for their tax money that they pay to the public school educational system. They should be considered when they make requests for the use of public school buildings.

For instance, just recently St. Louis College, a private school under the control of the Brothers of Mary, made an attempt to secure the McKinley High School auditorium for graduation for the 1950 class. Because McKinley High School had a graduation exercise which was to be held on Sunday and the St. Louis College wanted to use it on Saturday, it was impossible for them to secure the use of that auditorium. Yet, those graduates whose parents are taxpayers of the Territory of Hawaii have contributed to the public school system, the education system, and yet are being deprived of the use of public school buildings, even if it's for gratis.

I bring you also the fact that they are assessed certain fees by the public school system. I feel, Mr. Chairman, that there is some merit to requests that public aid out of public money be given to sectarian schools or private schools.

We have before the Congress of the United States a legislation requesting federal aid for the educational system. And what is holding that bill up? The fact that the Congress cannot agree to include such aids and benefits to sectarian schools. That piece of legislation, which is much needed for the Territory of Hawaii and other states who seek federal aid for educational system is being held up in the Congress. We must pay attention to the aid of those schools where the citizens contribute to the educational system in the way of taxes in helping provide the public school system.

I feel, therefore, Mr. Chairman, that any facilities, physical facilities that may be accorded to the public school system should as well be accorded to the private schools or sectarian schools. I feel, also, that the committee should take into consideration some means or some possible means to include such aid to sectarian and private schools.

AKAU: I'd like to speak just very briefly in opposition to what the delegate from the fifth district has just said. I'd like to speak in favor of "nor shall the public funds be appropriated for the support or benefit of any sectarian, denominational" school. Not primarily because I believe in the separation of church and the state but for the very simple reason that those people who send their children to either parochial schools or private schools send their children there because they wish to send their children there. That is, it is a personal choice. By making a personal choice, sending their children to private schools and having to pay tuition and what goes with it, it is the prerogative of those people to do as they wish; and therefore, when they make the demand or ask that these public funds shall be extended to private schools, I think they're quite out of step.

SHIMAMURA: May I seek clarification on one point that seems somewhat indefinite? As I read Section 1, which provides for a state-wide system of public education, including State control of public facilities, and also read Section 3, which delegates to the board of education the function of formulation of policy and full control of the public school system, it is fairly construable that the board of education under these two sections shall have the control of the facilities of public education. I'd like to have that point clarified by the committee.

LOPER: The speaker has a point. However, I should call his attention to the fact that the first section says that the State shall provide for the schools including physical facilities. It doesn't say the State shall control the physical facilities. The conflict, if any, comes in the second paragraph where it gives -- or third paragraph where it gives the board of education full control over the system. Now, it depends on whether you include in your system the buildings or just the educational program and personnel.

HEEN: Mr. Chairman.

CHAIRMAN: Are you completed, Delegate Shimamura?

SHIMAMURA: Well I'll yield for a moment to the delegate from the fourth district. I'd like to be recognized again.

HEEN: I'd like to find out from the chairman of the committee what was intended when the word "free" was inserted in this sentence—free of charge or free from nonsectarian [sic] control, or what?

WIST: I'd like to answer that. I think that this word "free' has become sort of standardized; we're thinking of free public schooling for our children. However, since public education has been extending itself into the level of adulthood, perhaps we could resolve this, and I would like to suggest that we do resolve it by stating "The State shall provide for the establishment, support and control of a state-wide system of public schools free from sectarian control."

HEEN: Well, of course, that means free from that type of control, but still it's not free of charge so far as the children are concerned.

WOOLAWAY: I'd like to --

CHAIRMAN: Just a moment. Delegate Wist, would you care to answer that question?

WIST: Yes. What I was trying to say was that the concept of education free of charge to children at the support of taxpayers has become so universally accepted that I don't think it's a serious issue.

HEEN: Then if the language is changed as suggested by the last speaker, then it would leave it up to the legislature to say whether or not there shall be any charge, tuition fees, book fees, and so forth and so on. Is that correct?

WIST: That is correct. It's inconceivable to me, however, that a legislature would ever charge tuition of children attending public school.

HEEN: I'm in agreement with you there. Then, I think that that should be the amendment, as suggested by the last speaker. "A state-wide system of public schools free from sectarian control"; and then we might as well go on and make a further amendment by cutting out the word "all" before the word "physical." Just cut the word out, "all" out and then you've got it. I so move. I move that the first sentence be amended by deleting the words "free, non-sectarian" appearing in the third line and adding after the word "schools," before the comma, the words "free from sectarian control."

CHAIRMAN: All right.

HEEN: Insert that before the comma, and delete the word "all" after the word "including" in line 5.

CHAIRMAN: Deleting what, Delegate Heen?

HEEN: The word "all," just the word "all."

WIST: I second the motion.

CHAIRMAN: It's been moved and seconded that the first sentence of Section 1 be amended by deleting "free nonsectarian" appearing in the third line and inserting after "schools" and before the comma "free from sectarian control," and also deleting the word "all" appearing in the fifth line of the first sentence.

KAWAHARA: I'd like to speak again in reference to the statement of the word "free." When I made my remarks in regard to that word, "free," I did not have any serious objection to incidental fees charged by the university or incidental fees charged by the various public libraries. I was speaking in reference to what is stated on page 2 of the Standing Committee Report No. 52 in which there is a statement as follows—as already stated by the delegate from the fourth district, Delegate Anthony—that "provisions shall be made for the establishment and maintenance of a system of public schools, which shall be open to all." If the schools -- public schools shall be open to all children, why shouldn't a state university be open to all who are interested in going to the university even if they do have to pay incidental fees? And that is the point I've been wanting to be cleared. I don't understand. If it's free for the children to go to public schools, why shouldn't it be open, likewise, free for young people to go to the state university?

ANTHONY: I think a proper interpretation of the section as amended would make all the public schools and the university open to all students of this territory. It would simply remove any doubt that the university and the public school system could charge the incidental fees. Notwithstanding the fact that, as I understand it from one of the delegates on the committee, that even with the word "free" in there, it has been upheld by the New York Court of Appeals that such fees could be charged. I think there is no problem there about everybody in the territory being eligible to go to the university or attend the public schools.

KAUHANE: I believe that it is the intent of the committee in submitting the proposal that a free public school system is to be provided by the State. If it is that intent that the committee has, then I feel that no educational system is free if and when we charge children rental for textbooks. Therefore, I feel in all sincerity, that the State shall provide such uniform service as basic textbooks free to the children attending public schools so that we keep in step with that intent of a free public school education system for the children of the state. Certainly, as admitted here, it is the universal intent to accept a free public school education. Public school education is not free when we charge the children attending a free public school fees for textbooks and other fees that are now being collected in the public schools. The State should provide for such textbooks and it should be a uniform service of basic textbooks, free of charge, for the use of the children attending public schools, and no other fees for such educational system should be collected from children attending the public schools in a free system of public education.

LOPER: I am very sympathetic with the remarks of the last speaker. It is possible under the present Organic Act to eliminate book rentals, fees for courses, by the mere act of the legislature appropriating funds to do that. If we attempt to write in here that the public school shall be free in the sense that the speaker intends, might it then not be considered unconstitutional to charge book rentals and fees and, therefore, the net result would be a curtailment of educational opportunity unless the necessary appropriations are made by the legislature?

KAUHANE: I believe that is the intent of this Convention when it sits here to draft a constitution and providing provisions by which the educational system of the State shall carry forth. I think it is with that intent that a free public school system means free and that the basic textbooks should be provided by the State and appropriations shall be made for such -- taking care of such incidentals. Certainly, we have left it to the legislature in the past, following the dictates and terms of the Organic Act. But we were unable to secure such a legislation from the legislature. We've never been able to pass it. Why? Because we have groups of individuals, organizations, who are fighting the passage of such free basic textbooks. Certainly, as I said, that if the educational system is to be free, the public school system is to be free, then the State should make it free by providing that the basic textbooks for children attending public schools should be free. Why should we charge them?

Today we have charged those children -- we have collected from those children attending public schools a textbook rental fee. We have been collecting that sum of money for a period of the past 20 years, and what is the ultimate result? For a classroom of 30 children, each child has been assessed a book rental fee. If the child has failed to pay, the parents have been forced to pay. And what has been the ultimate result in a free public school education system that we have today? We read in the *Record,* although the *Record* is considered a subversive newspaper, and yet we find glaring headlines that reads a graduate is not given his diploma because he has failed to pay some fees that are asked of him by the school which he's graduating from, a sum of $20 and he is being deprived of the right of securing his diploma. If that is a means of stopping a boy from getting his free education, then I say all fees that are now being collected by the public schools system, rather than having a continuation in the State of Hawaii, that such fees should be taken care and absorbed by the State. The basic textbook fees that are now being collected, are fees that have been collected for a period of 20 years.

In 1945, a survey was asked, that the number of public schools collecting such book rental fees and what basic textbooks were being furnished in schools. That report as submitted to the 1945 legislature shows in a classroom of 30 or 40 children, basic textbooks -- you find only ten basic textbooks, and yet each child has paid for a basic textbook so that he may receive a proper education under free public school system. And yet, they have collected all of this money and what has happened? Instead of receiving 20 arithmetic books, they have only ten basic arithmetic books. So, we find a system which I feel it's a spoil system as far as free education is concerned and I honestly feel that the government should provide the necessary basic textbooks for all children attending public schools free of charge.

SMITH: I would like to bring in the discussion right now that as far as I can find out there is no such thing as anything being really free, that with freedom goes responsibilities. If the last speaker can work out a system where the students will be responsible for books which would be coming from the taxpayers' money, I think that you'd find everybody going along with him.

HAYES: I feel that we have discussed a long time on this paragraph and therefore, I'd like to move for the previous question.

J. TRASK: Second the motion.

SERIZAWA: Mr. Chairman.

CHAIRMAN: Delegate Hayes, will you kindly withdraw the --

HAYES: I withdraw. I thought everybody had spoken.

CHAIRMAN: Delegate Serizawa, did you wish to be recognized?

SERIZAWA: In reply to the delegate from the fifth district, the section as proposed by the Committee of Education leaves it open for the legislature; if they see fit to give free books to the school children, they may do so at their discretion. This section does not tie it down; it leaves a great number of the decisions to be made by the legislature. For that reason the committee felt these matters are legislative matters and it should be given -- the legislature should be given the authority to do so.

YAMAMOTO: I'd like to make a statement in reference to this matter of dual control. I did not concur on the Standing [Committee] Report No. 52, with a note, "I do not concur with section of report dealing with dual control." On page 10, second paragraph, it reads,

> Since the funds for new construction are, under our present system, requested by the respective counties from the Territory, the initiative lies with each county as to what and how much new construction, and where, when and how the county plans to build. The result is that one county has utilized Territorial credit to build facilities other than classrooms for its school children while in other counties the children have not sufficient classrooms in which to go to school, or in some instances are going to school in fire-trap structures.

The reason I object to this particular paragraph is this, that on the County of Hawaii, as you know, there's a joke, "You can forget your lunches but don't forget your umbrellas." Now, as far as the construction of the gymnasium, that's a very important factor because of the fact that during recess, you don't want your children to stay in your classroom and bicker around the desks. That is the reason why I objected to this statement - - to this paragraph. I wanted to have on record that is such.

OKINO: I move that we recess, subject to the call by the Chair.

SERIZAWA: Mr. Chairman.

CHAIRMAN: I believe there was a motion for a previous question before I recognized Delegate Serizawa. Delegate Hayes.

HAYES: I so move.

SAKAKIHARA: A previous motion was put, but there was no second to that previous motion.

CHAIRMAN: There was a second but he withdrew it.

SAKAKIHARA: I second the motion.

CHAIRMAN: Ready for the question?

APOLIONA: Will you kindly state the previous question?

CHAIRMAN: Question is shall the main question be now put. All those in favor should signify by saying "aye." Contrary minded. Carried.

Question is on Delegate Heen's amendment which reads, amending the first sentence, the first sentence reads, as amended, "The State shall provide for the establishment, support and control of a state-wide system of public schools, free from sectarian control, a state university, public libraries and such other educational institutions that may be deemed desirable, including physical facilities therefor." Ready for the question? All those in favor signify by saying "aye." Contrary minded. Motion is carried.

LOPER: Is it now in order to ask for the approval of Section 1 as amended?

ANTHONY: The second sentence of Section 1 is a duplication of what we have already adopted in the Bill of Rights and, therefore, I would move to delete it. For the benefit of the delegates, I will read Section 6 of the Bill of Rights, second sentence.

> No person shall be denied the enjoyment of his civil rights nor be discriminated against in the exercise of his civil rights because of religious principles, race, sex, ancestry or national origin.

A child is a person within the meaning of the Bill of Rights; therefore, this sentence is unnecessary.

CHAIRMAN: Was there a second to the motion?

KAWAHARA: Is there no second to that motion?

CHAIRMAN: I don't believe there was a second.

WOOLAWAY: I second that motion.

CHAIRMAN: It's been moved and seconded that the second sentence appearing in Section 1 be deleted.

KAWAHARA: I move to amend the motion by inserting the words, in lieu of the words deleted, "There shall be no dual standard schools."

KAUHANE: Second that motion.

CHAIRMAN: Is that an amendment to the amendment, or is that an amendment to the section?

KAWAHARA: That's an amendment to the motion to delete the sentence.

CHAIRMAN: I don't believe that's an amendment to the amendment, and the Chair so rules.

KAWAHARA: It's an amendment to the motion to delete that section.

CHAIRMAN: That's out of order just at the moment, Delegate Kawahara.

SMITH: I'd like to make an amendment to that motion, leaving the first part of that sentence in and deleting only, "nor shall public funds be appropriated to the support or benefit of any sectarian, denominational or private educational institution." This right, "There shall be no segregation in the public education institutions of this state because of race, color or creed," I believe that was left out of the Bill of Rights provided that the Education Committee insert it in theirs.

KAUHANE: I understand the motion put by Mr. Smith. I second his motion.

CHAIRMAN: Will you rephrase your motion, Delegate Smith?

SMITH: That the sentence will be left in with the deletion, "nor shall public funds be appropriated for the support or benefit of any sectarian, denominational or private educational institution."

TAVARES: I object to that deletion. I think that's in H.R. 49; it's specifically prescribed. I think it should be stated there in those words.

KAUHANE: I move for the previous question and the motion made by Mr. Smith.

BRYAN: I'd like to talk to the motion made by Mr. Smith.

CHAIRMAN: Very well.

BRYAN: And also to the remarks made by the delegate from the fourth district, Anthony. I believe that in different states in the United States, segregation has not been claimed to be discrimination. In other words, by providing equal facilities they have claimed no discrimination and yet have upheld segregation, and that - -

ANTHONY: May I interrupt, will the speaker yield? That is not an accurate statement; in fact, as recently as two weeks ago the Supreme Court of the United States outlawed the time-honored segregation in the I.C.C. of separate diners, and the schools also.

KING: I'd like to speak against both the amendments, both the amendment to the amendment and the original amendment. It seems to me there's no harm done in repeating the language in this article that is partially repeated in the Bill of Rights, but this particular paragraph goes further than that, and puts in the ban that Delegate Smith is trying to accomplish by his amendment.

SMITH: To clear the atmosphere, I'll withdraw upon the understanding that if there is a duplication the Committee on Style will eliminate the duplication.

DOWSON: In speaking to this point about eliminating amendments and amendments to the amendment, I think it's highly important to recognize that one word in particular which was mentioned, the word "sex" should be left out of this section because Kawailoa School and the Boys' Industrial School at Waialae have classes maintained by the public school system. I don't have to explain that segregation as far as sex is concerned is highly necessary in that case.

SMITH: That is why the Bill of Rights [Committee] agreed to leave that "no segregation" clause in the public schools, leave it out of the Bill of Rights, because of sex and they put it in here "because of race, color or creed."

CHAIRMAN: Do you withdraw your amendment, Delegate Smith?

WIST: Point of order.

CHAIRMAN: Delegate Wist, state your point.

WIST: There's nothing before us. The mover of the original amendment has withdrawn his motion.

CHAIRMAN: Point is well taken.

HOLROYDE: I move for the adoption of Section 1 as amended.

KAWAHARA: Mr. Chairman.

CHAIRMAN: Delegate Holroyde, will you withhold your motion? I believe Delegate Kawahara wanted to make an amendment. I believe he can do so now.

KAWAHARA: Well, in the committee the question of dual standards was discussed and nothing was actually done, partly because of the fact that we couldn't arrive at some reasonable language. I don't know that it's very important to include that item in the Constitution; however, I had in mind something like this. After the words, "because of race, color or creed," I thought of something like this: "There shall be no segregation in the public educational institutions of this state because of race, color or creed, or because of other conditions not inconsistent with the provisions of the Constitution."

In other words, there may be other conditions, other than race, color or creed on which discrimination may be based, and if we limit it to race, color and creed, it may leave the way open for a type of segregation that might not be consistent with the letter or the provisions - - the general provisions of the whole Constitution. I have no objection to the provisions here, "No segregation on the basis of race, color or creed," but, my question is, does it cover enough ground?

LOPER: In reference to the comments of the previous speaker, I'm very sympathetic with the purpose he has in mind, but he will recall that the committee felt that it was impossible to say that without making the section very long. As a matter of fact, there is a law now which authorizes and directs the department of public instruction to provide for the gradual elimination of the dual standard, that is English standard schools, and they are proceeding on that basis. But if you wrote in here that "There shall be no segregation because of race, color or creed, or ability in the English language," or something of the kind, you would make it illegal to section within a school on the basis of educational need and it would throw a block in the way of the educational program. It seems to me that that can be safely left to legislation. The present law is rather general and loose but we are proceeding under it. It could be made more specific at another session of the legislature.

HEEN: I rise to a point of information. I'd like to ask the last speaker whether or not you at one time had a school especially established for backward children? Perhaps we still have that down at Kakaako way.

LOPER: Yes, we still have it.

HEEN: That would be a proper segregation there.

KING: I'd like to rise on a point of information. The language as it exists, now that it has not been amended, would not be satisfactory to cover the point Delegate Kawahara has in mind, recollecting and noting that the additional language you proposed might work against the schools for backward children, schools for people who are ill or other types of handicapped children? This language plus what the legislature might do in the future should eliminate the difficulty that you have in mind. Is that not so?

TAVARES: I should like to refresh the memories of the delegates here since Delegate Mizuha is not here. At the hearing on the Bill of Rights before the Committee of the Whole, I'd like to read what the minutes state, which I think is substantially correct.

> Delegate Mizuha said this: "Likewise the question of segregation in the public schools, it is proper at this time that the question be asked of the chairman of the Education Committee whether that would be incorporated in tne education article of the Constitution."
>
> Delegate Loper stated: "The committee proposal in its present form does include a sentence against such discrimination, but it has not yet been passed in its final form by the committee."
>
> Delegate Mizuha: "Then I believe that it is proper that the recommendation of the Committee of the Whole will include a provision for a clarification that that question should be considered raised again in the event that the education article doesn't contain that provision of segregation in the public schools, and I so move."

And later, Delegate Mizuha withdrew his motion but stated that he would offer it if it is not included.

Now in fairness to Delegate Mizuha, if we are going to exclude this, we ought to postpone this until he is here.

KAUHANE: I'd like to amend Section 1 in the following respect. After the words "a state university" - -

CHAIRMAN: We've already taken up the first sentence. Would you kindly hold it up, Delegate Kauhane?

President King, do you wish to be recognized?

KING: Well, I'd like to move we adopt Section 1 as amended, leaving all the language of the second paragraph of that section.

ANTHONY: Second the motion.

CHAIRMAN: It's been moved and seconded that Section 1 be adopted as amended. Are you ready for the question?

NIELSEN: There's just one little change I would like to see made. It says "a state university." Couldn't we make that plural so that when we grow a little more we can have another university? Is that taken care of somewhere else?

KING: May I clear that? There is a further clause, "and such other educational institutions as may be deemed desirable." I believe in the committee report there was some discussion of junior colleges and other types of higher schools that can be established by the legislature.

HEEN: If the State of Hawaii - -

CHAIRMAN: Delegate Kauhane is recognized.

KAUHANE: Am I proper now to request an amendment to the Section 1 of the proposal? I'd like to amend Section 1 of the proposal in the following respect. After the words, "a state university," include "junior college or colleges."

HEEN: I rise to point of order. Section 1 has already been agreed upon.

CHAIRMAN: Delegate Heen, a motion was made to adopt Section 1 as amended. I believe the motion to amend is proper at this time.

KAUHANE: I further amend Section 1.

HEEN: So far as the first sentence is concerned, that has already been agreed upon, there was an amendment to that sentence; and the only part that's subject to amendment, further amendment is the second sentence.

CHAIRMAN: I believe the point is well taken, unless the delegate asks for a reconsideration of the first sentence.

KAUHANE: Although we have adopted Section 1, which is true, but I think that the delegate from the fourth district does realize that further amendments can be made. We have done it in our legislative proceedings and I can't see any difference if we do it there when it's adopted and it's further amended that we can't do it here.

SAKAKIHARA: Point of order.

CHAIRMAN: State your point.

SAKAKIHARA: I'm in accord with Delegate Heen, that the first sentence of Section 1 has been agreed upon.

CHAIRMAN: The Chair has so ruled, Delegate Sakakihara.

SAKAKIHARA: In order to enable the delegate from the fifth district, I now move that we reconsider our action on first sentence of Section 1.

KAUHANE: Second the motion.

CHAIRMAN: It's been moved and seconded that the first sentence of Section 1 be reconsidered.

SERIZAWA: Does not the phrase "such other educational institutions" cover that?

CHAIRMAN: The Chair thinks it does. Delegate Loper, can you - -

LOPER: Will you repeat the question, please?

SERIZAWA: I stated that does not the phrase "such other educational institutions" cover the question that the delegate from the fifth district raised?

LOPER: It seems so to me, yes.

TAVARES: I'd like to answer that. It may be so, Dr. Loper, but during the last session of the legislature we attempted to have passed [by] the legislature a bill creating or the establishment of junior colleges. Although one of your officials within your school department has agreed or was behind the establishment of junior colleges, we were unable to pass that piece of legislation in the '49 session. In sessions prior to that, attempts were made to have junior colleges established and we were unable to pass it through the legislature. I agree with you that the language here specifically takes care of that thing, but I would like to see the State provide such establishment of junior colleges, so that we definitely will have the establishment of junior colleges to take care of the number of children graduating from high school.

CROSSLEY: I'd like to ask the last speaker this question. Does he want in the Constitution a mandate that we shall have junior colleges whether we need them or not?

TAVARES: It is not a question of whether we need it. We do need junior colleges here. The people, the citizens here have demanded establishment of junior colleges by their requests of legislators to introduce such bills, not only the 1949 sessions [but] in sessions before 1949. There is great need for the establishment of junior colleges here. What is happening to a number of children graduating from the high schools who are unable to get into the University of Hawaii?

HEEN: I rise to a point of order.

CHAIRMAN: The Chair was just going to put it. There is a motion to reconsider and I'd like to put the motion at this time. Ready for the question? All those in favor of reconsidering Section 1 - - sentence 1 of Section 1 signify by saying "aye." Contrary minded. Motion is lost.

The motion pending is to adopt Section 1 as amended.

SAKAKIHARA: I rise to a point of information. If the remarks made here by the chairman of the Committee on Education is true, that "such other educational institutions as may be deemed desirable" will be considered as a catch-all phrase, then why did he specifically limit a state university?

CHAIRMAN: Delegate Wist, would you care to answer that question?

WIST: The committee considered that very carefully. There's no disposition on the part of the committee to oppose the establishment of junior colleges. We recognized that the time is probably here when we'll have to give serious consideration to the establishment of junior colleges. There was a question as to who should control junior colleges. We purposely left that out because that is a controversial question; we don't know whether the control should be vested in the board of regents or the department of public instruction. We'd rather leave that for future decision, because at the present time we just don't know. Then, too, I think it's pertinent to point out that we specifically provided the phrase, "such other institutions as may be deemed desirable, to take care of this very problem that has been raised here by the two previous speakers.

SAKAKIHARA: We're not here to discuss who controls it. The question is, is there an immediate need for establishment of a junior college or colleges and if we are to spell out specifically here to provide for a state university - -

HEEN: I rise to a point of order. As I understand it, the delegate rose for a point of information. He got the information. There's nothing to argue about now. He's arguing about further amending sentence one.

SAKAKIHARA: Mr. Chairman, the delegate raised a question that he didn't realize and levied upon the question of who shall have the control, and admitted there was a need for a junior college.

WIST: There was one part of the question that I did not answer that I intended to. The reason we mentioned university specifically—because it is an existing institution. We might establish other institutions of higher learning, probably shall in time, junior colleges or full-fledged colleges.

HEEN: Point of information. There was an inquiry made about whether or not we might have more than one university. If we need two universities we can have one in Hilo and call it University of Hawaii at Hilo, same as the University of California at Los Angeles. That's only one state university.

CHAIRMAN: Are you ready for the question?

KAUHANE: I rise to a point of information. I'd like to know if the preamble of the Constitution for the State of Hawaii will read in substance, "We, the people of the State of Hawaii"?

CHAIRMAN: Will the chairman of the Committee on Miscellaneous answer that?

CASTRO: The Committee has agreed to include the words, "the State of Hawaii."

KAUHANE: Include "We, the people of the State of Hawaii"?

CASTRO: That's right.

KAUHANE: If that is the preamble, then my point of information is this, that the people of the State of Hawaii do demand that the inclusion of junior college or colleges be made in this Section 1.

TAVARES: I again object on the grounds of point of order, that this is entirely out of order.

CHAIRMAN: I am putting the question now, Delegate Tavares. The question is, shall Section 1 be adopted as amended? Ready for the question?

NIELSEN: Just a point of information. In this "including physical facilities therefor," that doesn't keep the counties from the maintenance and repairs of the school buildings?

LOPER: No.

NIELSEN: Thank you.

CHAIRMAN: Now, ready for the question?

KAWAHARA: Do I understand that we are voting on this whole Section 1?

CHAIRMAN: Section 1 as amended.

KAWAHARA: Including the second sentence?

CHAIRMAN: That's right.

KAWAHARA: What is the disposition in regards to the question of dual standards? Is there going to be some remark made in the Committee of the Whole as to disposition of that question, made by delegate from the fourth district, Mr. Tavares?

CHAIRMAN: If the delegate wants that incorporated in the report of the Committee of the Whole, I believe we can take care of that adequately.

All those in favor of the question signify by saying "aye." Contrary minded. Carried.

We have been at this for a little over an hour. I believe in fairness to the clerks, we should take a short recess.

(RECESS)

PORTEUS: As to the continuation of this article this afternoon, I do want to call attention to the delegates to the fact that the Legislative Committee has almost brought to a close some of its matters on reapportionment but they do have some troublesome problems on redistricting. Having examined some of the rest of the article and talked to some of the people, I don't think you are going to get through education this afternoon, in any event, I'd like to see a vote put now as to whether or not we rise, report progress and ask leave to sit again. I think we're not going to be able to finish this afternoon in any event, and I'd like to see the Legislative Committee get to work early this afternoon, so I now move that this committee rise, report progress and ask leave to sit again.

BRYAN: Second the motion.

CHAIRMAN: It has been moved and seconded that this committee rise and report progress and ask leave to sit again.

H. RICE: I think the Secretary is an optimist. I've watched that Legislative Committee for quite a while. I think we have a better chance getting through the educational proposal today.

PORTEUS: I've attended some of their meetings until eleven and I left here at twelve o'clock last night. It seems to me that in troublesome matters, as they have before that committee, it takes a little time to shape these things up, and they are shaping up; they are working out. I think that it's very important to let the chairman of that committee have an opportunity to bring this matter to a head in the committee because you cannot expect a report to be written under several days' time, and if he can get through most of these questions this afternoon, it will give him the weekend. Isn't that right, Mr. Chairman?

HEEN: That's correct, and after we resolve ourselves into the Committee of the Whole, I'll give notice now that I'm going to ask for an extension of time for the filing of the final report.

CHAIRMAN: Are you ready for the question?

HEEN: It's supposed to be filed today.

CHAIRMAN: Delegate Rice.

C. RICE: [Statement not recorded]

PORTEUS: Well, I'm sure that if the delegate from Kauai wants to sit around here that nobody would have any objection to it. I think it might be very instructional if he would care to attend the meeting of the Legislative Committee. I'm sure the chairman of that committee would be delighted to have him.

CHAIRMAN: All those in favor say "aye." Contrary minded. Motion's carried.

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CHAIRMAN: Will the Committee of the Whole please come to order? When we rose to report progress yesterday afternoon, we had just completed Section 1 of [Committee] Proposal No. 11. It is now in order that we take up Section 2. Dr. Loper.

LOPER: The remaining four sections of this article or Committee Proposal No. 11, Sections 2 to 5 inclusive, each include one new idea or provision, except Section 4, which, I believe reflects the present situation.

Coming to Section 2, board of education, the new provision is contained in the last line following the comma, a provision for the governor to appoint members of the school board from a panel nominated by local school advisory councils to be established by law. Otherwise the appointment of school board members is as it is at present. This provision is the result of a long discussion of the pros and cons of an elected school board and the arguments on both sides of that question are on page 5.

KELLERMAN: A point of order. I don't think we have anything before the Convention. I move the adoption of Section 2.

NIELSEN: Second the motion.

SAKAKIHARA: I second the motion.

CHAIRMAN: It's been moved and seconded that Section 2 of Proposal No. 11 be adopted.

LOPER: Thank you, Delegate Kellerman.

Speaking to the motion, the arguments for an election of school board members include these: that is, that it's more likely to be a representative board, sensitive to the will of the people; provide for closer participation in school matters; more in line with our democratic concepts of republican form of government; and 85 per cent of the school boards on the mainland, that is local school boards, are elected. Against this is the possibility of drawing the school system into politics, and the belief on the part of many members of the committee that persons that would otherwise be available for board service would be unwilling to run -- spend the time and money to be elected to a non-paid position, and at the same time run the risk of being defeated. Furthermore, it was pointed out that state

school boards on the mainland are typically either appointed or hold their positions ex officio.

However, it is recognized that there is a need for more local participation in school matters, and this need was reflected in the report of a survey of education made thirty years ago in these islands by the U.S. Office of Education. This provision for local advisory committees is not unlike the recommendation in that report of that survey. In that case, the recommendation was that local school boards be appointed by the commissioners of public instruction. In this case, we leave the matter of how the school advisory committee in each locality should be set up to the legislature. We add, also, one function that was not provided in that report of the survey, namely, that they shall submit names to the governor from which he would make his appointments on the school board.

Now admittedly, this is new and has not been tried, but I would call your attention to the fact that much of the provision for this is left to law. The committee discussed a number of ways in which these panels could be drawn up and the advisory committees or councils could be put in their positions. I think we might skip that unless there are questions about it.

One more point. If it should turn out that the legislatures in the future wish to give more local autonomy, the panel of names could be very short. If they wish to go in the other direction by providing for a long panel, several times as many names as there are board members to be appointed. You can see that it would leave the matter relatively wide open for the governor to appoint almost anyone available on a particular island.

I'm prepared to answer any further questions if there are any on this Section 2.

KAWAHARA: While I'm in accord with the provisions of the section as written, I have since then been wondering about the last phrase, "from a panel nominated by local school advisory councils to be established by law." As I get it, if the phrase is left as it is—I don't know whether I am correct in my interpretation or not—however, I get this implication that the law may dissolve such council. I don't know if this is a correct interpretation of the phrase or not. I would suggest that the phrase read something like this, "from a panel nominated by local school advisory councils" period; and then the statement, "established by law," be written in a separate sentence. That is, "The legislature may establish such laws to create such councils." I don't know what the delegate - -

LOPER: Does the delegate mean that you wish to remove the possibility of such councils not being provided for by the legislature?

KAWAHARA: No, this leaves the - - this gives the sole power to the legislature to create such councils, does it not?

LOPER: Yes.

KAWAHARA: And likewise to do away with such councils. If it can create, can it not do away with such council?

LOPER: Perhaps one of the lawyer delegates can tell us. It seems to me there is at least a suggestion of a mandate in there when we say, "from panels nominated by councils to be established by law."

TAVARES: It's my opinion that such a provision would be mandatory once a council is established. The legislature could not eliminate it without putting a substitute in its place. The only trouble might come if the legislature didn't initially pass the law. We might have a little trouble mandamusing the legislature, but once they did so, I don't think they could remove it without a substitute in its place.

CHAIRMAN: Is that a satisfactory answer, Delegate Kawahara?

KAWAHARA: I believe that's satisfactory.

One more question with the wording "local school advisory councils." The question was asked whether or not the word "counties" should be included somewhere. I'm not so sure that it should be included, the words "various counties." However, I think the word "local school" will take care of that.

LOPER: We used the word "local" deliberately because we didn't know how many counties there would be or whether it might be advisable to have more than one council on the Big Island, for example, or perhaps on this island.

MAU: The motion that was put this morning was for the adoption of Section 2. My understanding is that we only agree tentatively to the various sections and then go back again. Otherwise there would be no opportunity to deal with all of the remaining sections at one time. I have in mind, for instance, an amendment for purposes of discussion which might eliminate Sections 2, 3, and 4 and portions of 5. Now if we adopt Section 2, no opportunity would be given to make that type of a motion to amend or delete unless there was reconsideration. My understanding has always been that we just tentatively agree to it. Is that correct?

CHAIRMAN: The Chair believes that that will be agreeable with the chairman of the Committee on Education. Is that correct?

LOPER: The purpose of the Committee of the Whole is to get full and free discussion, as I understand it. The motion was to adopt, but on previous committee proposals we have tentatively agreed to. I leave it to the Chair.

MAU: Well if that is the understand - -

CHAIRMAN: The Chair believes that is the understanding and we shall proceed along that line, Delegate Mau.

MAU: May I ask a question on Section 2? Is it the intent of the Committee on Education to have panels from each of the islands or counties, and that the governor will have a free choice to choose from all of the panels from each of the islands, or did the committee intend to have - - to limit the governor in his selection from representatives in each island or each group?

LOPER: The intention of the committee is in line with your second position, but we're leaving that to be spelled out in the law.

MAU: Oh, I see. And does the - - is the intent covered in the committee report so that there is no question - -

LOPER: Yes, it is.

MAU: - - how the legislature shall pass that law?

LOPER: Yes, it is.

KING: I would only like to comment that historically these local advisory boards are not new in Hawaiian history. In the very beginnings of education - - public education in Hawaii they had such school boards even in the smaller districts, but transportation wasn't as speedy as it is now, and they had a good deal of jurisdiction and authority over the school activities in their respective districts and worked in conjuction with school agents, they called them in those old days. Is that not correct, Delegate Loper? So, this is not a novel idea. It's a return to an old idea that made the jurisdiction over public schools localized and in touch with the people whose children were going to those schools.

TAVARES: Perhaps I'm being a little technical, but the way I read this section it seems to me that this is the interpretation to which it is susceptible in its broadest impli-

cations. If a statute, or the laws providing for the school board, provides for a state-wide board without any particular residential requirements, it seems to me it would mean then that the local board would be a state-wide board to select the panel. If, on the other hand, the legislature by law provides for members of a locality - - people to have residence in a locality, then there would be advisory boards for those localities to pick a panel. It seems to me that that would make the statute as broad as, I mean that is the broadest implication I read into it. Now there is nothing here that necessarily says that the members of the school board shall be limited to localities. I am not sure that that was the intention. If it is, I'm not sure that that has been accomplished.

WIST: I'd like to answer that or speak to that. The thought of the Education Committee was that undoubtedly when the legislature sets up the board of education, which we regard as a statutory matter, that the board would have representation from the various islands. Our thought was that we would have a panel, and we have used the word in the singular there, that would represent the nominees from the various islands. The governor could select on a state-wide basis any individual recommended by any advisory committee from any island; but where he is appointing a local representative, he obviously would have to appoint somebody who represented the local district. Now if that is a county as set up by law, it would be a county.

LOPER: In further reference to that point, it is spelled out in considerable detail on pages 5 and 6 of our report in which we indicate the recommended number, nine; that they be for staggered or overlapping terms; and that they come two from the Big Island, one from Kauai, one from Maui, one from rural Oahu, one from Honolulu, and the others at large; and the local school council shall function as an advisory committee to meet with the local school board member and district superintendent; and that the panel be a combined list made up of specified number of names submitted by each of the local school advisory councils, from which the governor would appoint both the local board member from each county or district, and the board members at large.

NIELSEN: I think that this should be spelled out in some way so that the council in each district in which a board member is appointed is indicated in the Constitution. In other words, if a commissioner is to be appointed from Kona, the panel from Kona is the one that would put in the names of those they recommend. So that if after the word "counties" you insert, "in each district from which a board member is appointed as established by law," I think it'll take care of it.

HEEN: I was just about to speak along the same line, and this may solve the problem. After the word "by" in the third line of the first page of this proposal, being the last line on that page, after that word "by" insert the words "each of such." Then in the first line of the following page, substitute the words "as may" for the word "to," so that the section will read:

> There shall be a board of education to be appointed by the governor, by and with the consent of the Senate, from a panel nominated by each of such local advisory councils as may be established by law.

If that sounds good to the delegates, I'd so move by way of amendment.

DELEGATE: I second that motion.

NIELSEN: Will that take care of the situation where the board member that is to be nominated and appointed for the county of Hawaii?

HEEN: Are you asking me the question, Delegate Nielsen? My thought there was this, that the legislature may appoint - - provide for the appointment of an advisory council, say, to represent West Hawaii, East Hawaii, Windward Oahu, and Leeward Oahu, Kauai maybe two districts and so forth and so on; and then each council would submit to the governor a panel from which the governor is to make his appointment to the board of education.

TAVARES: I am not sure that even that will hit the mark. It seems to me that if it is a good policy—and I see no objection to it, I'm for it—of having some geographical requirement or geographical distribution of the members of the board, we ought to write that in pretty clearly into this section. For that reason, I suggest that we defer action on this and let us think about it a little longer, and before the day is up I would like to present some wording that would more definitely tie down the legislature to seeing that there is at least partial geographic distribution or there is leeway in the legislature to give either entire geographic distribution to your board or part geographic distribution and part at large.

SERIZAWA: I second the motion to defer.

CHAIRMAN: It's been moved and seconded that we defer action on Section 2 until later in the morning.

KAWAHARA: When Section 2 is to be reconsidered, I wonder if the following could be considered. Nothing in Section 2 at the present time states whether or not, as I can see it anyway, whether or not this board shall be non-sectarian or non-partisan. This is a separate section; I see nothing in there which definitely states that this board shall be non-sectarian or non-partisan. I wonder if those two phrases could be incorporated in that particular section?

CHAIRMAN: All ready for the question?

ANTHONY: That would be absolutely impossible. You don't want a bunch of eunuchs on the board. They've got to have beliefs of some kind.

CHAIRMAN: Are you ready for the question to defer action on Section 2? All those in favor say "aye." Contrary minded. The ayes have it.

LOPER: If I'm not out of order, I'd like to call attention to the fact that the Education Committee made its article so brief that it is now being asked along "Barristers' row" that we make it longer.

CHAIRMAN: Shall we now proceed to Section 3?

LOPER: I move for the adoption of Section 3.

LARSEN: I second the motion.

CHAIRMAN: Will you kindly change the motion to tentatively approve Section 3, Delegate Loper?

LOPER: I withdraw the motion and remake it to tentatively agree to Section 3.

CHAIRMAN: It's been moved and seconded that Section 3 be tentatively approved. All those in favor - -

WHITE: I have some question about the use of that word "full" in there. According to the committee report, it's not intended to cover every phase of it. In other words, I am concerned about whether that would cover full - - include all financial control as well, and whether the statement wouldn't be just as well - - the provision be just as well with the "full" out?

ASHFORD: I'm not in favor of the last clause of that section, "and shall be ex officio a voting member thereof." I think when the members are drawn from the several counties, the superintendent should be the executive officer of the board, but should not be a member. If he becomes

a member, then it is a constant source of embarrassment to everyone concerned, in the event that the board and he disagree upon policies; and I think it will diminish the true control of the board over the education. I, therefore, move to insert a period instead of the comma after the word "board" and delete the last clause.

H. RICE: I would have agreed with the delegate from Molokai, but past experience has shown that it's a mistake - -

HEEN: Point of order. That motion has not been seconded. Nothing before the - -

MAU: Second the motion.

CHAIRMAN: It's been moved and seconded that a period be inserted after the word "board" and the rest of the sentence striken.

H. RICE: I say I would have agreed with the delegate from Molokai, but past experience has shown us that without the member being a voting member of the board, the school commission could go into executive session and go on on executive matters that really concern the school department and the professional people would not have a voice. We know from past experience that was true on the - - in the University of Hawaii. They got in a jam because the regents would - - the president and the executive officer was not a member of the board of regents and they would go into a huddle in different parts of Honolulu and then put through programs that were detrimental to the University. I am a member of the Territorial Aeronautical Commission. I feel that even in this case the director should have a voice so that he sits in and has a voice with the rest of the commissioners because in that way you keep the - - we could not go into executive session which they have done previously on that board, and it hasn't helped them out.

Practically you are correct, but - - I mean theoretically you are correct, but practically I don't think it works out. It's to the interest of the school department to have professional men represented at every meeting of the board and without his being a voting member of the board, as I see it, they could go into executive session and the professional people would be ignored and they might steer the Territory wrong in educational matters.

HEEN: Will the delegate yield to a question?

H. RICE: Yes.

HEEN: In the Aeronautical Commission you have, as I understand it, an executive director, and is that director a member of the commission?

H. RICE: No. I say it's wrong.

HEEN: Oh, I see.

H. RICE: I say it's wrong but that's the way the legislature set us up, and they could - - there's no reason why - - the commission might meet on Maui and without the director, and do something that was radically wrong. I, for one, would have - - want him to sit in always, and I for one want the executive department in this case to sit in with the board and have a vote. He does now and it's worked out all right. He's never used it. In case of a tie or when there is not a quorum present he has to vote.

HEEN: I suppose that if the director were a member of the board and the board wanted to discharge the executive officer, it would be very embarrassing, of course, to have that officer sit in with the rest of the members of that board. However, they can adopt what the political parties do—they hold a caucus —and they can hold a caucus, and then have it all decided and when they have a meeting introduce your resolution dismissing the officer.

H. RICE: And secret ballot.

HEEN: Either secret ballot or not.

WIST: I'd like to refer to two things. In the first place, in practice, the executive officer who is a member of the board never meets with the board when they are considering his appointment or reappointment. That's a common practice. Secondly, I'd like to point to the fact that our board of education is different from boards of education throughout the mainland in this respect, that it combines the responsibilities of both the local board, which has the general control, and the state board, which has oversight. Now, in state boards it is commonly the practice for the executive officer to be a member of the board. In local boards, however, the practice is the other way. But we have the situation here where the executive officer, the superintendent, is serving in the dual function. He's working with the board that has the function of control and oversight, and it's in view of that, largely, that your Committee on Education felt that the superintendent should be appointed by the board but remain on the board. It's worked out very well in university practice and we believe it's worked out well as far as the superintendent being a member of the board in local practice.

DOI: The fact that the present superintendent is a very excellent administrator, I believe, should not influence our thinking here. I think we should decide on principles. Should we examine Section 2 we will find that the superintendent is appointed by the board. In other words, he is not an equal with the members of the board of education. Also at this point I would like to inject and say that he is not a representative of the teaching profession as stated on page 9. He is an administrator of the teachers. He was not elected by the teaching group, and therefore the argument advanced on page 9, I think, is invalid. I believe the superintendent, if made a member, at the most, should not have a voting - - should not have a right to vote. I am, therefore, speaking in favor of the motion.

TAVARES: I have had occasion in the course of the last 20 years at least to observe the operations of two kinds of boards, and I think those ought to be borne in mind very clearly. One is the professional, well-paid board of persons who are chosen because they are specially qualified to serve on that board and are paid adequate compensation to do their job. For that kind of a board I am a hundred per cent with the proponents of this amendment. But for the type of non-paid, non-professional and sometimes ignorant members of the boards that run this type of a department, I am against giving them absolute power. The only professional man many times upon the board of education is the superintendent of public instruction himself. He is the man that should run that department and should be given almost a free hand. If he's no good, he ought to be fired; but if he's good, he ought to be backed up almost 100 per cent. And what do you have running him? A bunch of laymen—and I'm not derogating from their abilities—a bunch of laymen most of whom, if not all of them, are not educators, who are not acquainted with the theory of education, many of whom don't know very much about education, as a matter of fact. And even when you have local boards appointing them, you may be limited in your area as to not - - so as not to have a really highly skilled, professional man to put on that board. And, therefore, unless you put the superintendent of public instruction, who is probably the only qualified man on education on that board and let him tell them what his policies - - what the policies should be; give him an opportunity to argue with them every time before they make a decision; be sure that he will be at those meetings, and they can't exclude him; then I think you are going to have trouble running your department.

Furthermore, there is one other thing and that is the matter of pay. If you make this head of the department

subordinate entirely to a board, the classification commission will rate him one salary rating lower than any other department head, and that is a very important thing in securing your superintendent of public instruction. That has been done in the past and it can happen again, where because a board is entirely over a man, they say, "Well, the board fixes policies; therefore, part of your duties are purely ministerial; therefore, you have a lower salary than the superintendent of public works," or the auditor or some other person who may not have any more work and any more responsibility really than this superintendent of public instruction. I urge the delegates here not to vote for this amendment.

KAWAKAMI: In your first sentence, "The board of education shall be empowered to establish," I'm not too satisfied with that word. Maybe some other word such as "formulate" may be a better word.

MAU: I'd like to ask a couple of questions. I wonder if the committee would be satisfied to make the superintendent an ex officio member without the right to vote?

CHAIRMAN: Delegate Wist, will you care to answer that question?

WIST: We discussed that, but we didn't think it was too meaningful to have the superintendent a member without vote. In other words, if he's to have any prestige in his position—and certainly the superintendent as the executive officer and a professional leader should have some prestige—that prestige would come only if he also has the vote. In other words, putting him on the board without a vote is almost the same as not putting him on the board at all.

MAU: Another question. This goes back to what has been expressed many, many times in the early days of the Convention that certain matters which are legislative should be left to the legislature, and those proponents of the idea of a concise constitution and empowering the legislature to do many of the acts that we are trying to enact here in the Constitution, whether or not they gave thought to that theory in writing out Sections 2, 3, 4 and portions of 5 of this proposal? I wonder if the committee could answer that question. In other words, why shouldn't we leave these things to the legislature if you believe, as the delegates have often expressed, many of them have expressed, that certain matters should be left to the legislature to deal with?

CHAIRMAN: Delegate Loper or any member of the committee care to answer that question?

LOPER: I would like to have you recognize another member of the committee on that point, or another delegate.

KAGE: This matter of having the superintendent a member of the board, that is a voting member, is a matter of principle and we believe that it should not - - I mean, it should be included in the Constitution and not be left to the legislature. And while I'm standing, I would like to bring to the attention of the delegates that in 24 out of the 39 state boards on the mainland, the superintendent is a voting member. That leaves nine; the nine other states do not have any state boards.

KAWAHARA: This argument that a certain number of states has a certain accepted practice, therefore, we should embody such practice in our Constitution, may not be as sound as it looks on the surface because 85 per cent of the local boards, local school boards on the mainland, are elected.

ASHFORD: I assume everyone else who wanted to has spoken. I'd just like to reply on the matter.

ANTHONY: I haven't spoken. I've risen several times, Mr. Chairman.

CHAIRMAN: Delegate Anthony.

ANTHONY: If you'll examine the document published by the - - "Studies of State Departments of Education"—that's a United States publication—you will discover that they are broken down into three - - four categories, that is the relationship of the chief officer of education to the board. The first is whether or not he is a member of the state board. There are 24 states that make him a member. The second is whether or not he is a secretary of the state board, and there are 21 states that make him the secretary. The third category is whether he is the chairman, and there are 11 states that make him the chairman. The last category is that he is the executive officer of the state board, and there are 26 states. So far as I can discover from this pamphlet, there is no state where he is not in some capacity a member of the board.

Now, it strikes me that we ought to follow our - - we ought to follow the best in education. You take a jurisdiction like Pennsylvania that has an outstanding school system, you'll find that the chief commissioner of education is a member of the board with full voting power. You find substantially the same thing in New York. The particular table that - - particular text does not state the voting power but it strikes me a very anomalous thing, if you are going to put him on the board, not to give him the power to vote. I certainly think he ought to have the power to vote if he is going to be on the board, and it seems to me that this survey clearly demonstrates that he should be, in the judgment of the wisest states, be on the board. Therefore, I am against the motion.

TAVARES: May I say just one more short sentence?

CHAIRMAN: I believe Delegate Mau wanted to be recognized.

MAU: The delegate who attempted to answer my question merely stated that he wanted to see that the superintendent of public instruction be made an ex officio member with voting rights, and that is why they want to see it in the Constitution. But mine went to - - my question went a little broader, not only to that but to the other sections which asked why they desired to spell it out so much in detail even to the powers expressed in the board of education and the board of regents. Now, I understand that in the committee report the statement is made that it is the desire of this Committee on Education to write a peoples' Constitution. Now, I'm wondering whether they had in mind a fear of the legislature.

WIST: I think the answer is in the fact that we had geared these basic principles to the concept that the legislature does have the power. We have not spelled out how the board - - the number of the members of the board and a lot of other things that we want to be left to legislative action. All we have done is to express in principle certain things that we think are sound.

MAU: May I at this time withdraw my second to the motion made by the delegate from Molokai.

SHIMAMURA: May I just inquire of the gentleman from the fourth district, Delegate Anthony, whether he said in the great Commonwealth of Pennsylvania the commissioner of education is a member of the board or not? He is? Thank you.

CHAIRMAN: Any further discussion?

OHRT: I'm against the amendment.

CHAIRMAN: There is no amendment.

NIELSEN: Point of order. I'll second that motion of Miss Ashford.

OHRT: I think this is a very important decision that we are about to make. I'd like to call your attention to the fact—

the university has already been mentioned—but we have the board of health that now operates in this way, and we also have the department of agriculture and forestry that acts in this way, and I think they are functioning very well. Now the question of whether the executive should be the chairman of the board is rather important, I think. In talking to Mr. Wilbar of the board of health, he doesn't think that the executive should be the chairman because in presiding at meetings he thinks the chairman is busy enough watching the technicalities of the meeting then, and he should be given time to really present his own problems. I'm against the amendment.

TAVARES: Unless we write qualifications for membership on this board into this article so as to be sure that people with a very broad background that are really qualified to run a department all alone, are the only ones that can be nominated and appointed to this board, as is done for instance with the National Labor Relations Board or with the Tax Appeal Court or some other boards that have full-paid employees or members, I think that it would be very dangerous not to put the only man who is going to be qualified possibly on the board as a voting member. Remember the other members are non-paid, non-professional people who who are not going to be giving full time to even studying the problems of the school department, and I think they are going to need every bit of advice that they can get from the superintendent and they should be made to have him present at every meeting, and this is the only way you can be sure of that.

LAI: I move the previous question.

CHAIRMAN: Just a moment, I believe the movant of the amendment should be given an opportunity to answer some of the arguments.

ASHFORD: I think the arguments here have resolved themselves again into the same argument that has been brought out here repeatedly. We say that all power resides in the people and we are afraid of them. We want to qualify some exhalted persons or else the people are not to have a word to say. Now, it's perfectly obvious from the argument what the purpose of this is. It is to put a man in there that will override the opinions of the various members of the board.

KELLERMAN: May I talk on that point just a moment? I, in committee, was opposed to the superintendent having -- being a member of the board and having a vote, but it was on the basis of principle. It seemed to me that a man who was appointed by a board did not sit with or could not be in an equal position. He is employed under a contract or by appointment and he would not be on an equal basis, as I could see it, legally or psychologically with the board which appointed him and had the power of removing him from office. But I do not believe that there is any more opportunity for the superintendent of public instruction, whether a member of the board or not, to control the board. In other words, I don't think it comes down to his being a member or having a vote. He only has one vote out of nine. He obviously, as the executive officer and the representative of the department of public instruction, will be the professional advisor of the board. If he is that strong a personality, even in his executive capacity, he can control the board. I don't believe control of the board would come from his being a member with a vote when that vote is one out of nine. I think that will come down entirely to his personality and the personality of those who are put on the board, and not to whether or not he has a vote on the board.

CHAIRMAN: Question now is, shall we adopt Delegate Ashford's amendment.

KAM: In Section 3, "The Powers of the Board of Education," they have the power as I see it to appoint the superintendent of public instruction. But I think we should be consistent. If they are appointed, all these department heads that are appointed should be appointed by the governor and upon confirmation of the Senate. I don't see why they should have the board appoint the superintendent. May I have somebody from the committee answer me that?

KELLERMAN: I'll attempt to answer that. Our feeling was quite strong that the board of education should be as independent a body as possible and should have the administrative control of the department of public instruction, as well as the power to establish policy. If it does not also have the power to appoint the superintendent of public instruc tion, it is giving it power in law but without power in fact. Under the present circumstances—and, of course we are not discussing personalities—but under the present law the superintendent of public instruction is appointed by the governor. The board of education is appointed by the governor, or the commissioners of public instruction as they are now called. Under the law, the commissioners have the responsibility for establishing policy and administering the school system. However, they do not have direct power over the superintendent. The result is possibilities of conflict and the actual fact of not having the degree of control which the law pretended or intended to give them in the language set up in the statutes. The power of control through an executive officer can be recognized and can be effectuated through the power of appointment and the power of removal, and not simply through the opportunity under the law to ask advice or to give orders which they have no real effective power of carrying out because they don't have the power over the person who does the carrying out. This was intended to give the board of education greater power in carrying out the policies and the administrative procedures which it approves.

If I may say something further, somewhat in contradiction to Mr. Tavares' argument for highly trained or professional people on the board of education. It is the opinion of most of us, and also of the educators who have appeared before our Committee on Education, that the board of education should be a lay board. The board of education should not be made up of professional educators. Its purpose is to correlate the social and economic and political thinking of the community as parents of the children going to school with the professional group who carry out those policies, that it should not be a board made up of professional educators who maybe have professional points of view to put into effect which may at some time run in conflict or not be in accord with what the parents and the citizens of the community feel they want their children to learn and how they want them to be taught. Education is essentially the developing of citizenship and carrying on the social, political and economic thinking of a people. It is basic, and in that sense a lay board is a protection to any community as against any professionalized group, in any regard, who may be carrying out those policies It is for that reason that we do not intend or have not intended that the board of education be made up of professional educators, but all the more reason for having one professional educator there at all times, as I quite agree on that point, to present adequately and fully the professional point of view.

CHAIRMAN: Delegate Kam, does that answer your question?

KAM: That was very good, but I don't see it. We should be consistent in our appointment of department heads, and I was just talking to Dr. Loper. In the present setup now he is appointed by the governor. He has a much freer hand to do what he wants. But as it is, by appointment by the board, the board would control his actions. I believe that we should -- something should be done with the appointment of the superintendent of public instruction.

KING: I raised a point of order, but it seems to me the delegate from the fifth district, my colleague, is speaking to another subject entirely and not the pending amendment. What he has - -

CHAIRMAN: I believe it is - - President King, I believe it is part of the section. It deals with the appointment of the superintendent of public instruction and it's germane to Section 3.

WIST: I'd like to supplement what the delegate at my right has just said by making this statement. In the time that I've been in the islands, nearly 40 years, there has been several surveys. In 1920 there was a survey of education made by a commission representing federal government. Then we had a survey of industry and education in 1930 promoted, I believe, by our local industries. Then we had a survey in 1940 promoted by our own legislature, through the holdover committee. Then we had a survey in 1943 conducted by Dr. Draper from the University of Washington. Every single one of those surveys reported the recommendation that the superintendent should be appointed by the board and should be the professional executive of the board.

CHAIRMAN: If there's no objection, the committee stands at recess.

(RECESS)

CHAIRMAN: At the time of the recess, Delegate Mau wished to be recognized, and I now recognize him.

MAU: I was going to propose an amendment in regard to the appointment of the superintendent, but after the recess, I am convinced I should not make that amendment. But I have another question to raise on the motion. If this superintendent is given the power to vote, assuming you had a board of nine and the rest of the members of the board, the eight members, desired to remove this officer, what would be his status? Would he have a right to vote still? I think he would. Wouldn't there be difficulty in the event that you had a man in there not like our distinguished executive officer of education now, and I think he's an excellent officer. You'd have a great deal of . . . [rest of sentence not recorded.]

AKAU: I'd like to answer the delegate from the fifth district's question, if I can or may. It would be rather unethical for the member who's being talked about to be there to vote for himself or against himself. It has been the practice in the past, certainly at the university and I'm sure on the board of commissioners in the school department, if such a matter presented itself—and it has in the past at the university—that the president is not there. It will be unethical. And so, to answer your question, he would not be there to vote either for himself or against himself just on general principles.

MAU: I would agree with the last speaker that if Dr. Loper were the individual involved that he would absent himself from such a meeting. But I'm not so sure that that has happened in the past. You recall that there was a great shake-up in recents years at the university. There was also a great deal of stew in the department of public instruction about 10, 12 years ago.

AKAU: May I just pursue that one step further and answer fully? The situation referred to at the university was just exactly what Mr. Mau said. In other words his answer - - his question is the answer to the argument. The 10 or 12 years ago to which he refers was the time when the executive officer, that is, the president, did not have a vote. That was the situation and since that time it has been changed and so the president does have a vote now. That's why the situation was so smelly.

WHITE: I'd just like to say for the benefit of Mr. Mau, there's nothing novel about this. This happens in corporations quite often. They always seem to get by with it.

CHAIRMAN: The amendment before the committee now is this. The insertion of a period after "board" and the striking of all that follows the word "board." The question is shall the amendment be adopted. All those in favor say "aye." Contrary minded. The noes have it. The motion is lost.

The question before the committee now is shall Section 3 be tentatively approved.

WHITE: I'd like to propose an amendment to Section 3, and that is, in the second line to eliminate the word "to" and in the third line to eliminate the word "full," so that the sentence would then read: "The board of education shall be empowered to establish policy and exercise control over the public school system through its executive officer," and so forth. I move that it be amended that way.

H. RICE: I second the amendment.

CHAIRMAN: It's been moved and seconded that the word "to" in the second line following the word "and" be deleted, and the word "full" appearing before the word "control" in the third line be deleted.

LOPER: I think that that amendment is a good one. I see no objection to it, and I believe that is the opinion of the committee. Some question has been raised about the use of the word "establish" and there may be a preference for the word "formulate" before "policy." If there is a feeling that that word should be changed, it might be incorporated in this amendment or in a subsequent amendment.

CHAIRMAN: That's not in the form of a motion, Dr. Loper?

LOPER: It might be left to the Style Committee. I'm not changing the amendment.

SAKAKIHARA: Following up that statement by the last speaker, I believe the question of establishing policy is the power vested in the body which creates the board of education, and I believe the proper language for that would be to establish - - to administer policy or formulate policy rather than establish policy. I move that the amendment - - I move that we amend the word "establish" to read "administer."

NIELSEN: I second that motion.

HEEN: Point of order.

CHAIRMAN: Is there a second to that motion?

HEEN: Point of order. I think we have an amendment pending now, and it's hardly germane to that amendment. It can come afterwards, if necessary.

SAKAKIHARA: I bow to the suggestion of Senator Heen.

CHAIRMAN: Are we ready for the amendment proposed by Delegate White? All those in favor say "aye." Contrary minded. The ayes have it. The motion is carried.

SAKAKIHARA: I now move that the word "establish" in the second line of Section 3 be amended to read as "administer."

CHAIRMAN: Is there a second to that motion?

NIELSEN: I second it.

CHAIRMAN: Moved and seconded that the word "establish" appearing in the second line of Section 3 be deleted and the word "administer" substituted in lieu thereof.

LOPER: I think I understand the thought back of that amendment, but I would like to call attention to the fact that the matter of formulating policy is primarily for the legislature. But beyond that, the board - - the very purpose of the board is to establish further educational policy or formu-

late it so long as it is not contrary to existing law. That is one of the provisions now and it is one of the functions of the school board of the State, I'm quite sure. We have, for example here, a policy manual in which the policies laid down by the school board as well as those by the legislature are printed for the use of the schools. If you say administer only, you don't cover the whole thing.

SAKAKIHARA: In that case I wish to withdraw my original amendment and substitute the word "formulate" in place of "establish."

CHAIRMAN: Is there a second to that motion?

KAGE: I second the motion.

CHAIRMAN: It's been moved and seconded that the word "establish" be deleted from the second line and the word "formulate" be substituted in lieu thereof.

KAWAHARA: I wonder if it's in order to ask a question here. We're giving the board a lot of power, a lot of control, and also we have given the superintendent voting power on the board, and yet we haven't quite agreed on Section 2 as to the composition of the board, how many members shall the board be composed of or whether - -

CHAIRMAN: Are you speaking to the amendment, Delegate Kawahara?

KAWAHARA: Yes, because of the fact that the word "formulate" policy or "establish" policy has a very serious implication in my opinion. When I asked the question, shall clergymen or persons of holy orders be allowed to sit on the board, I had the section here, Section 3, "establish policy" in mind. If we empower the board to "establish policy" in our Constitution, it's going to mean that the board may establish such policy from time to time as guaranteed in this Constitution. If we are going to do that, I think it's necessary for us to establish the board first and find out what this board is going to be composed of: how many members, who is going to serve on it, are we going to pay them, so forth and so on. Where are they going to come from?

AKAU: I was going to raise the question of which comes first, the chicken or the egg ? Do you establish something first and then formulate it afterwards or is it the other way around? I don't know. I raise the question because there may be a fine line of demarcation, but I don't see it.

SAKAKIHARA: In reply to the inquiry or statement of the delegate from West Hawaii, I think Section 2 of the proposal takes care of that. That left it to the legislature.

CHAIRMAN: Delegate Trask, did you wish to be recognized?

A. TRASK: Yes, if you please. I just wondered whether or not in Section 3 the question is to establish and to have - - exercise control. Those words "establish"—I'd like to ask this of the chairman, perhaps—the word "establish" and the word "control," they have reference evidently to the public school system. Now, doesn't that refer altogether to the intellectual program and really not to facilities and other things which are connected apparently in Section 1? In other words, the word "establish" and the word "control" have, do they not, reference to the public school system which refers to the intellectual program which may change from time to time, and that's why you have people on the board from every phase of life?

LOPER: I'm not sure that I follow the question entirely but I agree with what I believe you mean. The laymen who are members of the board would establish or formulate policy within the law for the control and governing of the schools. Now, the question of the control over the physical facilities is referred to in the first section and can be delegated by the State or the legislature either to the school board or to the counties, as it is at the present time. I'm not sure that I answered your question.

CHAIRMAN: Delegate Trask still has the floor.

A. TRASK: The legislature, according to Section 1, will make provisions with respect to physical facilities and so forth, and other matters. And the power of the board, it seems to me in this Section 3 if I understand it, is limited to the intellectual program of the school system, which may change from time to time. Is that what the words, "public school system" mean? It doesn't include the physical facilities obviously because that is in Section 1, and is it not therefore true that the words "public school system" refers to the intellectual program?

CHAIRMAN: Delegate Wist, would you care to answer that question?

WIST: Yes, I think Delegate Trask is quite right. The intention here in this particular paragraph is to give to this board of education the responsibility for formulating internal policies and that would refer, of course, to any responsibilities that had been given to it by the legislature. Now if the legislature has not given to the board the responsibility for the maintenance of school plants, which we have left entirely up to the legislature, then it would not include those.

A. TRASK: Well, what I have in mind is this, more graphically stated perhaps. If the legislature, it seems to me, pursuant to Section 1, sought to interfere with an intellectual program for the public school system, it would seem to me that it would violate the powers given to the board in Section 3, and therefore any legislation to that effect would be unconstitutional.

Now, I am putting to me a very real question. Say the legislature would advocate, well, let's say communism - -

LOPER: May I rise to a point of personal privilege in connection with this inquiry? I think I see the point that you are making. It certainly was the intention that this formulation of policy should be subordinate to policies laid down by the legislature. It was not intended that anything enacted by the legislature should be unconstitutional because of this language. I think then that perhaps we should say, "The board of education shall be empowered to formulate policy not contrary to existing law," or something of the kind.

HEEN: May I ask the speakers to yield a moment?

LOPER: I'll yield.

HEEN: I have an observation to make. This part of this section might be amended to read as follows:

> The board of education shall have control over the public school system.

When they have control, they certainly have the power to formulate policies and everything that goes with that control; and if that is accepted, why we can eliminate all further arguments.

CHAIRMAN: Is that merely a suggestion, Delegate Heen?

HEEN: Well, if it sounds good to the delegates, I so mov that after the word "shall" in the second line, delete all the words up to the word "control" appearing in the third line, and insert for what is to be deleted the word "have."

My position is this, that if you give the control of the school system to the board of education, they certainly can decide and establish or formulate policies.

WIST: As one member of the committee, but not speaking for the committee, I would gladly accept that amendment because I think it covers the problem without us encountering the difficulty that the senator from the fifth district has raised.

YAMAMOTO: I second the motion.

A. TRASK: Point of order, please.

CHAIRMAN: Delegate Trask, state your point.

A. TRASK: Will the delegate from the fourth district, Judge Heen, restate his amended section, please in full?

HEEN: After the word "shall," delete the words "be empowered to establish policy and to exercise full," delete those words and substitute for them the word "have" so that that part of the sentence shall read: "The board of education shall have control over the public school system through its executive officer."

SAKAKIHARA: I second that motion of the language as proposed by the delegate at large from the fourth district. I would like to ask him this question. Won't that give the absolute control of the public schools to the board of education?

HEEN: I didn't quite get the purport of that question.

SAKAKIHARA: According to your amendment, you will vest the entire power of the - - over the public school system to the board of education - -

HEEN: That's correct.

SAKAKIHARA: - - by constitutional mandate, and that the legislature will have no power whatsoever other than to make available funds for the public school system.

HEEN: No, I don't think that follows. In order that that board may function, of course, the legislature will have to appropriate the necessary funds.

SAKAKIHARA: But you would deny the legislature the power to formulate any policy under the terms of your amendment?

HEEN: No, the legislature still has the power to formulate - - form policies.

SAKAKIHARA: Or establish policy for the education system? You say here, according to your amendment, the section will read, "The board of education shall have control over the public school system through its executive officer."

HEEN: That's correct, and with that control, of course, they will have the right to formulate policies.

SAKAKIHARA: I beg to differ with the gentleman. It will be a paradise for the courts and lawyers to go to court to struggle out and fight it out as to the interpretation and intent of that amendment. When one - - perhaps you say the board of education shall have control over the public [school] system, and I beg to differ with the delegate at large from fourth district. In my opinion, I believe that we are throwing the entire power of the policy to the public school system to the board of education. I think that should be reserved to the legislature and its duly elected representatives of the people.

LOPER: There can be no question about the soundness of the position taken by the last speaker. One of the chief functions of the State board of education is to carry out and to enact - - be responsible for carrying out the laws on education enacted by the legislature, but I think that a slight modification of the wording might take care of that.

TAVARES: It seems to me this is one of that type of word which is sufficiently, shall we say, ambiguous so that by a report of the Committee of the Whole interpreting it in accordance with what has been agreed to be the proper interpretation, that this does not prevent the legislature from passing laws to fix policy, that we can then accept the section now with the amendment suggested by Delegate Heen.

KAWAHARA: I wonder if the word "empowered" could be left in there and a possible amendment like this: "The board of education shall be empowered to exercise control over the public school system," eliminating the word "full," eliminating the words "establish policy." If they are going to control, they are going to establish policy anyway. However, I think the word "empowered" should be in there.

A. TRASK: I am very, very much concerned about this word "control" with reference to the power of the board of education over the public school system. I'm thinking about a concrete situation where the legislature would say, as a matter of policy, that the school system of Hawaii shall teach American history from a particular slant that may be agreed upon by the legislature, and then the school board would be defiant of such a program. Now the concrete question is whether or not the powers given to the board in Section 3 are specifically broad so that the legislature would be embarrassed and could not formulate such a program of intellectual planning. It seems to me that the words "control over the public school system"– and I take the words "public school system" to mean an intellectual program–that it would give the board power. The legislature might be embarrassed in telling the board what to do.

Now, of course, maybe it's one of those words that Mr. Nils Tavares refers to, as to power and how far it can go and how far it's going to be limited. I'd like to think that the legislature would have some participating control over the establishment of policy since in the motion now pending, the words "be empowered to establish policy and to exercise full" have reference really to legislative participation in the policy of the school. So I am troubled.

HEEN: May I relieve you of that trouble, Mr. Speaker?

A. TRASK: Well, I'm just convalescing.

HEEN: Another observation. That clause might read this way:

> The board of education shall have power to administer the affairs of the public school system.

How does that sound?

KELLERMAN: May I go a little bit into the history of these two phrases? It was the discussion of the committee and its discussion in the committee records that to "formulate policy" and to "exercise control" mean, in a sense, two different things. That the board should have the power to formulate policy, to exercise control through the superintendent of public instruction, the control being administration, control of administration through the superintendent of public instruction, not to formulate policies through the superintendent of public instruction. There is a basic difference in theory of power between the two terms. I'm not now discussing the inter-relationship of the power of the board with the power of the legislature. I'm speaking of the power of the board with the power of the superintendent of public instruction now and the way the system works. We deliberately chose to "formulate policy" and "to exercise," to draw a distinction between those two ideas. The formulation of policy is independent of the superintendent, other than in his vote or in his relationship with the board, but the exercise of administrative control of the public school system is to be exercised through the superintendent.

Now, to make that clear–it may sound like just language to most of you–but the educators have this in mind, and those of us who have been - - had some relationship in studying the school system, there has been criticism frankly of members of the board of school commissioners - -

HEEN: I rise to a point of personal privilege. I withdraw my motion.

SAKAKIHARA: May I make this suggestion? By amending Section 3, after the word "empowered" in line 2 thereof, and after there insert, "as authorized by law to formulate and administer policy."

DOI: I second the motion.

CHAIRMAN: It's been moved and seconded.

H. RICE: Mr. Chairman.

SAKAKIHARA: May I speak on the amendment?

CHAIRMAN: Delegate Rice.

H. RICE: With the exception of the amendment made by Delegate White, I'd like to have the section stand as is. I think the delegate from the fifth is unduly exercised over the reading of this section. The board of education has to "play ball" with the legislature; the cash comes from the legislature. They look after the affairs that the legislature wants them to, they have to "play ball" and it's been my experience that they always bow to their wishes. Therefore, I am against amending this section in any other way but by the original amendment by Delegate White.

SAKAKIHARA: I offered the amendment so that there will be an expressed understanding. It says, in reading the amendments, that the legislature - - the powers reserved to the legislature, it empowered in accordance with law or as authorized by law.

CHAIRMAN: Delegate Sakakihara, will you withdraw your first amendment, then?

SAKAKIHARA: All right. I'll withdraw my first amendment, with the consent of the second, to read "empowered in accordance with law."

WIST: May I say in answer to that particular point that that is exactly what the committee intended when it used the word "empowered." Somebody has to empower the board, and the body that would empower the board is the legislature. That's why we used the word "empowered."

SAKAKIHARA: To me - - I beg to differ with the last speaker. The wording as used here, "empowered," is an expressed power delegated to the board of education by this Constitution, and is entirely different from that as delegated to it by the legislature. I'm willing to lay those two amendments to the committees' pleasure, either as "authorized by law" or "in accordance with law," to establish policy and so forth.

KING: Some members have to leave to keep appointments between now and noon, and I was anxious to bring the Hawaiian Homes Commission Act up for third reading; so I move now that the Committee of the Whole rise, report progress and ask leave to sit again in order that we may take up the Hawaiian Homes Act on third reading; then again resolve ourselves into the Committee of the Whole.

PORTEUS: I second the motion.

CHAIRMAN: It's been moved and seconded that this committee rise and report progress and ask leave to sit again. All those in favor say "aye." Contrary minded. Motion is carried.

Second Morning Session

CHAIRMAN: Will the Committee of the Whole please come to order.

SAKAKIHARA: I at this time make a motion to amend the second sentence of Section 3 after the word "empowered," insert the following: "as authorized by law"; and in lieu of the word "establish," the word "formulate."

DOI: I second the motion.

CHAIRMAN: It's been moved and seconded that Section 3 be amended by inserting, after the word "empowered," "as authorized by law," and substituting the word "formulate" for the word "establish."

SHIMAMURA: May I speak to that amendment? I don't think it's wise, in my humble opinion, to make that "as authorized by law" because if you did that the board's powers would be considerably restricted. We should have it, I think, in the original wording of the delegate from Hawaii in which he said "in accordance with law," which would be a much happier and much more accurate, I think, wording. If you have it "as authorized by law," the construction may be possible that—and I think it would be so construable—that for every act of policy-making, the legislature must have specifically authorized it. To make it "in accordance with law" will be more accurate.

WHITE: I feel the same way about it. To put in "as provided by law," you might as well eliminate the whole section. There's no need for it.

DOI: I have heard some discussion on this amendment before we recessed, and I believe Delegate Wist did express some sentiment of the committee. I think this addition here, the amendment here, only makes clearer the intention of the committee in the first instance.

CHAIRMAN: Any further discussion? All those in favor - -

HEEN: I think the suggestion made by Delegate Shimamura is the better one. That is that "The board of education shall have power to establish policy in accordance with law." That would give the legislature some measure of control over the policies that might be formulated by the board of education.

SAKAKIHARA: As movant of the amendment, I accept the suggestion offered by Judge Shimamura.

DOI: As second, I also accept the suggestion.

CHAIRMAN: The amendment is now the insertion of the words, "in accordance with law" after the word "empowered in the second sentence; and substituting the word "formulate' for "establish." Ready for the question?

LOPER: Is there any difference between inserting that after the word "empowered" or inserting it after the word "policy"? "The board of education shall be empowered to exercise or formulate policy in accordance with law."

CHAIRMAN: I believe that's a matter of style, don't you, Delegate Loper?

HEEN: I think the two words "be empowered" should be changed to "have power." "The board of education shall have power to establish policy in accordance with law."

CHAIRMAN: Hearing no second - - there is no second. The question is on Delegate Sakakihara's amendment.

LEE: Mr. Chairman, I believe - -

CHAIRMAN: Delegate Kage.

LEE: Oh, Delegate Kage is recognized.

CHAIRMAN: It's been moved and seconded that the amendment - -

LEE: Mr. Chairman, I thought you said you recognized Delegate Kage.

CHAIRMAN: He seconded the motion, Delegate Lee. It's been moved and seconded that Delegate Sakakihara's amendment be further amended to read as follows:

> The board of education shall have power to establish policy in accordance with law, and exercise control

over the public school system through its executive officer, the superintendent of public instruction, who shall be appointed by the board and shall be ex officio a voting member thereof.

SAKAKIHARA: May I speak to the amendment?

HEEN: Will the gentleman please yield just a moment? Was it the idea that even in the matter of control that that control shall be in accordance with law? If that is the intent, then the amendment should be "The board of education shall be empowered in accordance with law to establish policy and to exercise control." In other words, the legislature will then have some measure of legislating in all matters concerning control and also concerning policy.

SAKAKIHARA: That's what I was going to talk to, the amendment.

CHAIRMAN: Will all the movants of the amendment withdraw the amendments so we'll have only one amendment on the floor then?

HEEN: My amendment would read this way: "The board of education shall have power, in accordance with law, to establish policy and exercise control over the public school system," et cetera.

CHAIRMAN: Is that acceptable to Delegate Sakakihara?

SAKAKIHARA: That is acceptable.

ASHFORD: Then the word "formulate" drops out? Is that it? It's still "establish"?

CHAIRMAN: It's still "establish."

SAKAKIHARA: Senator Heen, would you accept an amendment to that amendment? Instead of "establish," "formulate."

HEEN: In order to avoid any further argument, I'm willing to accept that amendment.

SAKAKIHARA: So that it would read "to formulate policy."

CHAIRMAN: There is now only one amendment on this floor. It reads, "The board of education shall have power, in accordance with law, to formulate policy and exercise control over the public school system through its executive officer," et cetera. Ready for the question?

DELEGATE: Question.

KELLERMAN: Before we vote on that, may I ask a question, information? What happens if no law has been passed on a policy? Is it understood by this Committee of the Whole that in that instance the board of education is free to adopt a policy? There may be many things that will arise on which policy questions will have to be determined when the legislature is not in session and has not passed upon it at all.

It seems to me that you are restricting the board there. It may feel under this authority that it must wait until the legislature meets and formulates the policy and in accordance with that it can go ahead. It seems to me that you make it very difficult for the board to operate unless we as a committee make it very clear that the board in absence of any law on the subject is entirely free to formulate policy. Otherwise we are putting them in a very difficult situation.

LOPER: In answer to the last speaker, as I heard the amendment read, it said that "The board of education shall have power, in accordance with law." It seems to me, "in accordance with law" refers back to the power, not to policy in accordance with law. That was the point, I think, of Delegate Heen's moving it back to its original position in that sentence.

Further commenting on this amendment, as one delegate not speaking necessarily for the committee, although I have a slight preference for the original wording, I see no serious objection to this amendment. I think it goes to the matter of whether the Convention wishes to place pretty full responsibility for the school system on the board of education or to indicate, specifically, as suggested by the amendment, that what we do is and must be in accordance with law. I assume that in either case, laws passed by the legislature affecting education become the responsibility of the board of education.

SHIMAMURA: I believe that the words "in accordance with law" are certainly construable to mean also "not contrary to law," so that in the event that there is no law, then the board may formulate policy in the absence of any law; and also, where there is law, not contrary to law.

WIST: I wonder if the mover and seconder of this motion to amend would accept that wording, "not contrary to law." Perhaps that would clear this up.

TAVARES: I agree very heartily with Delegate Shimamura that in the absence of a law covering a specific area on which decision has to be made by this board, they would have the power to make that decision as long as it is not contrary to law. That's the implied power of every department head or board, that where it's within the area that he is authorized to act in and the legislature hasn't specified a controlling policy, he exercises discretion.

DOI: As the seconder of the motion, I would not accept the suggestion made by Delegate Wist. I would rather see the suggestion in the committee report.

CHAIRMAN: Are you ready for the question?

KAWAHARA: I'd like some information on this statement here. Is there a great difference between the words "shall have power" and "shall be empowered"? The amendment, "shall have power," to the previous statement, "shall be empowered," was made --

HEEN: May I answer that question? I did that because in the article on health and general welfare we used that term throughout, "The State shall have power," and "The State shall have power" down all along the line. It's just for uniformity of language.

KAWAHARA: That is what I had in mind, because in reading the sections in health and public welfare, each section starts out with "The State shall." In the provisions of this section on education, the first section starts out with "The State shall provide" and the second section does not say anything about the State. I wonder if some clarification could be made on that point there for not putting in the word "State," or is it really necessary to put in the word "State" in each section when the word "State" was used in the various sections in the article on health and public welfare?

HEEN: If the delegate will look at that article on health and welfare, he will find that in the first section of that article a phrase that reads, "The State shall provide for the public health" and so on, instead of saying "shall have power." So in this first section you use the same style, that is, "The State shall provide for the establishment," and so forth and so on.

CHAIRMAN: Are we now ready to vote on the amendment? All those in favor of the amendment signify by saying "aye." Contrary minded. Hearing none, the motion is carried.

TAVARES: I move that we take up Section 2 now.

CHAIRMAN: Just a moment. I think it is proper now to have a motion for the adoption of Section 3 as amended.

HEEN: I think that there should be another amendment to that Section 3. I will state it at this time and if it appeals to the delegates of the Convention, I will move to reconsider

the action which has just been taken on that section. Going down to the last clause, commencing with the word "who" in the fourth line, "who shall be appointed by the board," I think there should be inserted there somewhere as to the power either of removal or as to the tenure of the superintendent. My suggestion would be that that phrase should read as follows: "who shall be appointed by and serve at the pleasure of the board and shall be ex officio a voting member thereof."

CHAIRMAN: There's nothing before the - -

ASHFORD: I would like to second that motion.

CHAIRMAN: It's been moved and seconded - -

HEEN: I then move - -

SAKAKIHARA: Point of order.

CHAIRMAN: There's no motion. I think it was only a suggestion.

HEEN: That was a suggestion, and if there is any merit in it, I would move now that we reconsider the action taken on Section 3.

CHAIRMAN: We're still on Section 3, Delegate Heen.

HEEN: Oh, I thought that that was approved.

CHAIRMAN: No.

HEEN: Oh, very well. Then I will move that after the word "by" appearing in the fifth line of that section, the following words be inserted: "and serve at the pleasure of." I move that amendment.

ASHFORD: I second that amendment.

CHAIRMAN: It's been moved and seconded that we insert the words "and serve the pleasure of" after the word "by" appearing in the fifth line of Section 3.

TAVARES: If there is one thing that's certain in the common law, the decisions of the courts, it is that the power of appointment includes the power of removal at will. It's utterly unnecessary to put that in here.

WHITE: I raise the same question. Are we going to do that with every officer or every executive officer of a board? In the provision under, or in the article on executive powers and functions, this very problem comes up in connection with every board appointment and the head of every executive department. It seems to me it's lot better covered there than in each individual section.

HEEN: I'd like to ask the chairman, or rather the last speaker, whether or not there is a general provision covering this particular point? If there is, then you don't need it here.

WHITE: There is a - - there are two types of - - there is a majority report and a minority report but both of them deal with this particular situation. One recommends that the removal of the - - I think both reports recommend the removal or that they serve at the pleasure of the board.

HEEN: I might state that this particular phrase, "at the pleasure of," is found in the Organic Act in connection with the appointment made by the President of certain officers - - appointments made by the President of the United States of certain officers in the Territory.

TAVARES: The effect of the amendment, if it is adopted, will be this : if the legislature, later on, would like to give the superintendent enough tenure so as to require his removal to be only for cause, you will prevent the legislature from inserting such a protection. In other words, you are cutting down the power of the legislature to regulate this subject. And if you don't say anything, then impliedly the power of appointment includes the power of removal unless and until the legislature otherwise provides. And what's wrong with that?

HEEN: All right, then, I'll withdraw my motion.

CHAIRMAN: There is nothing before the house at the present time except a motion to adopt Section 3 as amended.

APOLIONA: I so move.

LOPER: I second the motion.

SHIMAMURA: I think the use of the expression there, in the third line, "through its executive officer," is not a happy one for this reason. You give the board of education, in the first place, the power to establish policy and to have control of public education, and then you initially at the very beginning, delegate that power to the executive officer. Therefore, I move to amend that section by inserting a period on the third line after the word "public school system' and then start a new sentence there as follows:

> The board shall appoint an executive officer, the superintendent of public instruction, who shall be ex officio a voting member thereof.

LOPER: The use of this particular language - -

CHAIRMAN: There's no second, Dr. Loper.

NIELSEN: I'll second the motion.

LOPER: The use of this particular language was deliberate and for good and sufficient reason and it is in line with the Connecticut study of revision of constitutions, the idea of centering the responsibility for the administration of policies established by the board in its executive officer. I think you will find the same language in a later section with respect to the president of the university and the intention is that the executive officer in each case will be responsible for carrying out the decisions and the policies made by the majority vote of the board in each case. I, therefore, would ask a very careful consideration for retaining the present language.

SHIMAMURA: May I ask the committee chairman, if I may, whether it is the intention of that committee to delegate outright at the beginning the function of establishing policy and having control over the school system, to the superintendent, the executive officer, at the outset?

LOPER: In answer to Delegate Shimamura, the answer is no. The responsibility of an executive officer is to carry out the decision, to implement the decisions made by the board sitting as a committee of the whole and to carry out the policies of the board. He has no authority in his own right except as he exercises the vote.

SHIMAMURA: I understand from many executive officers that he does carry out the policy as established or formulated by any board, and that he does have administrative control over the functions of any corporation or any board, as the case may be. But here, my objection to the terminology, the phraseology, is that it delegates at the outset to the superintendent of public instruction, the executive officer, these functions. In other words, you establish a board and give that board certain powers, and then in that same provision you delegate it to an executive officer. It seems to me it's understood that when you establish a board which has certain functions, that is, policy-making and control over its system, that the executive officer shall, as the administrative officer, carry out those policies.

TAVARES: I think the sense of this is clear. We don't want non-paid, part-time members of a board to be running - - doing the administrative work. The biggest trouble that the board of regents and the board of education in the past has had is when some board member, instead of leaving the carrying out of the administrative policy to the executive

officer, went around and tried to monkey with it himself, or herself. [Laughter] I'm trying to be impartial. It seems to me that this is designed to do exactly that, to serve notice that we want these board members to fix policy and then we want them to let the administrative officers carry it out, and if he doesn't, they should either -- they should fire him. If they can't get a board member who has enough of their confidence and who will carry out those policies properly, they should fire him; but they shouldn't be monkeying in these administrative matters over which most of them are very unqualified to act.

CHAIRMAN: Delegate Akau, did you wish to be recognized?

AKAU: I just want to -- pursuant to what Mr. Tavares said, the executive officer, who is the superintendent, is there every day. The people from the commission meet once every two weeks or once every four weeks; therefore, the superintendent has to really be on the job and that's why it's worded just as it is—through the executive officer. That's just a clarification of what actually happens. You don't have the people on the commission going every day and sitting in a meeting.

MAU: I think that the speaker from the fifth district is correct in his analysis of the language. He is not against the control through the executive officer, but he is speaking to the formulation of policy through its executive officer. I'm wondering whether or not there shouldn't be a comma after the word "policy" and then the words go on "and to." In other words, reinsert the preposition "to," which had been stricken through a former amendment by Delegate White. Then it would read, "The board of education shall have power to formulate policy, and to exercise control over the public school system through its executive officer." I think that would clarify it.

WHITE: That's correct. I think it would even be an improvement if you went back and -- Excuse me.

MAU: Well, if that has merit, I move the amendment.

LOPER: I second the motion.

CHAIRMAN: Did Delegate Loper second the motion?

SAKAKIHARA: I rise to a point of order.

CHAIRMAN: Delegate Sakakihara, will you state your point?

SAKAKIHARA: I believe this committee of the whole has agreed to amend the second sentence of Section 3 after the word "shall," to read, "have power in accordance with law."

CHAIRMAN: Delegate Mau, that was in the --

MAU: I didn't -- The words are in my handwriting, but I couldn't read it. I agree with that and that should be included.

CHAIRMAN: It has now been moved and seconded that Section 3 be amended to read as follows: "The board of education shall have power, in accordance with law, to formulate policy, and exercise control over the public school system, etc." Is that correct?

MAU: "And to exercise."

CHAIRMAN: "And to exercise control." Ready to vote on the amendment? All those in favor of the amendment say "aye." Contrary minded. Hearing none, the amendment is carried.

MAU: One more question; I know we've been at this a long time. In empowering the board of education to appoint the superintendent of public education, I am wondering whether or not there is an existing precedent for it; and if not, whether the creation of this will be a precedent, good or bad, so that thereafter all boards might be empowered to select their department heads or executive officers.

LOPER: There is ample precedent for the appointment of the superintendent on the mainland in local school boards and in some state boards. It is not nearly as common in state boards, but it's quite common in local city and county boards.

MAU: I'm sorry I didn't make my question clear. I meant any other boards or commissions within the Territory.

TAVARES: I think I can answer that question. Not many years ago the board of health setup was created exactly that way by the legislature and, in my opinion, very ill-advisedly, on the request of Governor Stainback, was then restored to the present system. I think it was a step backward, but it has been done in this territory with the board of health.

CHAIRMAN: We have now before the committee a motion to adopt Section 3 as amended. Are you ready for the question? All those in favor say "aye." Contrary minded. The motion is carried.

We come now to Section 4.

TAVARES: May we go back to Section 2? I have the amendment ready that I was going to suggest. It's on the desks of all the members. A proposed amendment to Section 2 of Committee Proposal No. 11: insert after the word "education" in the second line of the section the following, comma, "at least part of the membership of which shall represent geographical subdivisions of the state" comma.

KELLERMAN: I'll second.

TAVARES: I think this actually carries out what the report of the committee wants to be done. I think it reinforces their desire that there be at least in part a geographical distribution of the membership in various geographical areas throughout the state, so as to have local representation. It gives body to the later requirement of the same sentence that there be a panel which nominates -- local school advisory councils which nominates the members of the panel.

LOPER: I would like to speak in support of that amendment. I think perhaps we were a little too brief in our statement. It's fully covered in the report. It was the intention that geographical representation should be provided for.

CHAIRMAN: The amendment -- Are you ready to vote on the amendment?

A. TRASK: Just a question. Does the geographical subdivision, asking Delegate Tavares, refer to the island situation or does it -- would it have reference to perhaps political, representative, senatorial subdivisions?

TAVARES: I purposely used the words "geographical subdivisions" to be broad enough to cover any kind of subdivision the legislature saw fit to make.

CHAIRMAN: The question is shall we vote to adopt the amendment as proposed by Delegate Tavares?

LOPER: One question. Does "political subdivision" mean counties or is it broad enough to include or mean "school administrative districts"?

TAVARES: The word "geographical subdivision" is broad enough to cover any kind of a subdivision, whether it's a school district, representative district, senatorial district or any other type of district.

CHAIRMAN: The amendment now reads:

> There shall be a board of education, at least part of the membership of which shall represent geographical subdivisions of the State, to be appointed by the governor,

by and with the consent of the Senate, from a panel nominated by local school advisory councils to be established by law.

LEE: If the word "geographical subdivision" is as broad as I understand it to be, it doesn't mean anything then. In other words, we might just as well leave it out. What is there to be gained because the legislature, or the governor rather, could take them from every -- could take them from the City and County of Honolulu and say, "Well, one was from Nuuanu and the other from Waikiki; that's a geographical subdivision."

HEEN: In answer to that, I don't think the legislature would be that foolish, while my colleague is still in the Senate, to divide up Oahu, for instance, "All that part north -- west of Nuuanu shall constitute one district," and so forth and so on. What the legislature would probably do is this, that one district would be the County of Hawaii, another would be the County of Maui, the County of Oahu -- City and County of Honolulu, and the County of Kauai. That could be done under this general language, and I think the legislature would be intelligent enough to do that.

LEE: I'm sure the legislature would be intelligent enough to do that, but the governor would not be restricted, unless the legislature acted.

HEEN: The governor would be restricted if we passed a law stating so and so and he approves it, and if he doesn't we override his veto.

ASHFORD: May I call to the intelligence of the legislators present that possibly this language might provide for an appointment of someone from Molokai.

KELLERMAN: The committee had in mind two very definite concepts with reference to this board. We carefully omitted all details for fear we would run afoul of the prescription against legislative matter. But Mr. Tavares has ably pointed out the need for calling to the attention of the legislature the committee report which spells out how we would like the board of education to be appointed and from what districts.

On the same theory, I would like to propose a brief further amendment to introduce, after the word "appointed," "for staggered terms." We are very anxious to have the board of education a continuous body. Now if that is legislative and the other is not, I am perfectly willing to accept it, but I want to bring to the attention of this body, and if necessary have it in the report of the Committee of the Whole, that our intention was a continuous body to give it a greater continuity of purpose and of policy and independence.

HEEN: I don't think you need that provision in the Constitution. That can be taken care of in the legislation itself and that has been done quite frequently in all of these -- many of these boards.

LEE: I agree with my learned colleague on that, that the legislature can provide that, but in the Committee of the Whole report we might mention it, and that goes for the amendment. That same argument that my colleague, distinguished colleague sitting next to me, has argued could certainly apply to the amendment because it's in so broad a general term that the intention of the Constitution makers could be incorporated in the committee report. That's where it belongs instead of lengthening the verbiage of the language in Section 2.

TAVARES: One more thing and that is, if, as I believe, you are going to have a Senate controlled by the non-Oahu districts, they will jolly well take care so that the geographical subdivisions will adequately represent the different subdivisions.

LEE: Leave it out.

CHAIRMAN: All those in favor of the amendment, say "aye." Contrary minded. Hearing none, the motion is carried.

We will now proceed to Section 4.

HEEN: No, no, Mr. Chairman. I have another amendment which I did propose at one time, but it didn't seem to appeal to the members. That was in the third line after the word "by," insert the words "each of such"; and then on the next page, change the word "to" to read "as may," I move that amendment.

WHITE: I'll second it.

CHAIRMAN: It's been moved and seconded --

HEEN: "From panel" --

CHAIRMAN: May I state the question, please? It's been moved and seconded that the words, "each of such" be inserted after the word "by" in the third line of Section 2; and the words, "as may" be substituted for the word "to" in the fourth line of Section 2.

HEEN: That's correct.

CASTRO: It seems to me that the amendment completely changes the sense of the committee report. "A panel nominated by each of such local advisory councils" would mean to me that each local advisory council would have to nominate a complete panel to the board of education, and as I understand the committee from speaking with members of the committee and reading the committee report, the idea is that the local school advisory council would submit names as a representative of the geographical area which it represents. I think that the amendment is not well taken.

LOPER: Speaking not for or against the amendment, because I think it will work out the same either way, but speaking to the purpose of clarifying the language, we tried to decide whether to make the word "panel" plural and have names submitted on four or five panels and then put them together in one list, and we discussed that in our report, or to leave it singular. The intention is that each local council will submit names and from the names submitted by that council, the appointment of the board member from that particular district would be made. Then if there are two or three board members to be appointed at large, those appointments would be made from the remaining names on the combined list submitted by all of the committees.

KAWAHARA: I'm inclined to agree with Delegate Trask in his interpretation of the word "made." This whole phrase from the words "from a panel" to "established by law" was inserted there because of the position taken by many members of the committee, some members of the committee, that the local units, the local geographical units of people in the various localities should have some representation. If you are going to water that section down, I see no reason why we shouldn't water the other section down, which has something to do with appointments. I think by inserting the word "may," it leaves it up to the legislature to establish such council. I think it should be stated so that the councils -- the panel shall be by this Constitution set up so that people may choose and nominate people on this board of education.

H. RICE: Originally when they drafted this section it said, "from a panel nominated by the county school advisory board," and I objected to the word "county" because I wanted to take in local school boards such as Molokai, Lanai. They would all be able to set up a panel and have some representatives on a panel, even if it was one or two names they may suggest. Because, as you could see, if it were county-wide, why Wailuku might absorb the entire panel. But I think the wording as it stands is O.K., and I agree with the other member of the Education Committee. I think we should leave this as it is.

WIST: I'd like to speak in support of what Mr. Kawahara said. I think it was definitely the consensus of the committee that this was to be a mandate upon the legislature to establish or set up these advisory committees, and if we use the word "may" instead of "shall," we would simply make it permissive rather than mandatory.

CHAIRMAN: Delegate Tavares. Delegate Heen, I'm trying to get all the other speakers before recognizing the movant.

HEEN: No, I think I can clear this up now because it's been made clear to me that while you may have panels from various localities where advisory councils are set up, that you need not appoint from that particular district. Therefore, I withdraw my motion and suggest this - - make this suggestion. Delete the word "a" in the third line of that section before the word "panel" and change the word "panel" to "panels." "From panels nominated by local school advisory committees to be established by law." I make that as a motion. The only change would be to delete the word "a" in the third line of the section and change the word "panel" from singular to plural.

KAM: Second that motion.

AKAU: Would that mean then that, say, the island of Oahu could suggest six panels or eight panels rather than a panel? It seems to me that we are changing the sense of the thing when we eliminate the word "a" and make "panel" plural, which might be interpreted to say that one island could present any number of panels and the people could be chosen, rather than from each island. "Panels" I think could be misconstrued.

LOPER: On that point, it may be to the advantage of the school system to have an advisory council on the island of Lanai, another advisory council on the island of Molokai, and still another on the island of Maui, and yet not have that many board members from that county. So I think the change suggested by Delegate Heen is good, to say "panels nominated by local school advisory councils." My question then goes to the point raised by Delegate Kawahara. "To be established by law," or, "which shall be established by law." If the language, "to be established by law," is a mandate, then it is all right as it stands.

NIELSEN: Going back about an hour and a half, I made the suggestion that after the word "councils" we should insert "in each district from which a board member is to be appointed." This amendment that we agreed to awhile ago regarding geographical subdivisions to me doesn't mean a thing, and I would like to see that the councils are from the districts in which board members are to be appointed because that's the sense of the whole thing and we might as well spell it out so there can't be any misunderstanding.

TAVARES: I think now we are going into too much detail. The legislature by law will take care of all of those details. We placed here a bare skeleton and pointed the way to which they must go. I think you can safely leave it to the legislature to take care of those other details, and I think the amendment is proper. I think the amendment means exactly what the committee wanted it to mean as it stated in its report.

CHAIRMAN: Ready for the question? Question is on the amendment proposed by Delegate Heen. The amendment is this: to delete the word "a" appearing in the third line before the word "panel," and to substitute the word "panels" for the word "panel." All those in favor of the amendment say "aye." Contrary minded. The amendment is carried.

TAVARES: I now move that we tentatively approve Section 2 as amended.

KAWAHARA: I'd like to second the motion. However, before we second that motion I'd like to - -

CHAIRMAN: Is there a second to that motion?

A. TRASK: Second it.

CHAIRMAN: It's been moved and seconded that Section 2 be tentatively agreed to.

KAWAHARA: In setting up this board, or rather I should say - - start by saying that in the various proposals proposed by various members of this Convention, in one of the proposals at least, there was this statement, "that no clergyman or persons of holy order shall be members of the board." In looking over the report here, No. 52, I may be incorrect, however I fail to find an explanation of that provision. I should think that some provision or some statement should be made in this Section 2 as to whether or not clergymen or persons of holy orders may serve on the board here for this reason. In Section 3 we are giving the board power, in accordance with law, to establish policy and to have control. If we have people, clergymen, persons of holy orders, while I do not say that their judgment may be unsound, if we have such persons on a board of education, it may be that in some future time these people may formulate policy and exercise control over the intellectual pursuits of the children in the public schools. For that reason I believe it's necessary in our article on education that some statement be made to that effect in one of these various sections, and I think that Section 2 is the logical place for that statement to be put in. Therefore, I would suggest that an additional amendment be made - - an additional statement be made after the words, "established by law" in Section 2 to read as follows: "No clergyman or person of holy orders may serve on the board." I so move.

BRYAN: Is there any second to that motion?

C. RICE: I second it.

BRYAN: I believe that that's well covered elsewhere. And I think that the fact that the "established by law" is in here that that law would include the Constitution. I think we have sufficient safeguards against what the delegate is worried about in other sections of the Constitution. I also think that there are many localities where the people that he was mentioning might be very valuable members of the board.

KAWAHARA: Certainly I agree with Delegate Bryan that members of holy orders and clergymen may be valuable members who may serve on the board. I do not disagree with that viewpoint. If I remember correctly in the Organic Act there is some provision as to whether or not clergymen or persons of holy orders may serve on the board. I think this provision is very important. For that reason, I move that Section 2 be amended to read as follows: "No clergyman or - - "

CHAIRMAN: Delegate Kawahara, it's already - - you've already made the motion and it's been seconded.

TAVARES: I rise to speak against that motion. I think that's a matter of qualifications which can be fixed by the legislature and is now fixed by Section 1703 of the Revised Laws of Hawaii, 1945, which says: "No person in holy orders nor a minister of religion shall be eligible as a commissioner." I think we're going a little bit too much into detail in putting this provision in, and I submit that we should leave it to the legislature, if it so chooses, to eliminate that, and I think the legislature can be left to take care of that situation.

CHAIRMAN: Ready to vote on the amendment?

LOPER: In answer to the first portion of Delegate Kawahara's remarks as to where the proposal appears, it is

in Proposal No. 10, Section 1, and it's referred to in the report on page 19 in the following words: "The board of education to be part appointed, part elected." This was filed in view of the committee proposal on Section 2. That's all that is said about that particular thing in our committee report. I just wanted to clear up that point.

CHAIRMAN: All those in favor of the amendment say "aye." Contrary minded. The noes have it. The motion is lost.

The question now is, shall we adopt Section 2 as amended? Question? All those in favor say "aye." Contrary minded.

HEEN: That's a tentative adoption.

CHAIRMAN: Section 2 is tentatively agreed to.

LOPER: Section 4 has to do with the board of regents of the University of Hawaii and provides nothing new. It provides for a board to be known as the board of regents of the University of Hawaii and the manner of their appointment and two ex officio members of that board of regents as at present.

KELLERMAN: I move for the adoption of Section 4.

LOPER: I second the motion.

CHAIRMAN: Moved and seconded that Section 4 be tentatively agreed to.

BRYAN: I have one question. I didn't see it in the committee report. Is it the recommendation or the intention of the committee that the board of regents shall appoint the president of the University?

LOPER: In answer to that question, the answer is yes. It's covered in the next section.

CHAIRMAN: Are we ready for the question?

C. RICE: Present law has it that regents shall be appointed from the different islands. Will this do away with it, unless the legislature reestablishes this section?

CHAIRMAN: Delegate Wist.

WIST: No, this would not do away with it. We certainly do not want to do away with it, but we felt in the committee that that too is a matter that should be left to statutory law, that in all probability the same statute that is now on the books will be reenacted.

C. RICE: I think just leaving it here would do away with the present law.

PORTEUS: I think we will want to keep in mind that the existing statutes of the Territory of Hawaii, except as they are inconsistent with the Constitution and thereby ruled out by the Constitution, will remain in force and effect. In other words, if there is a law on the books now that isn't inconsistent with any provision of this Constitution, it's going to take action by the legislature and be subject to the veto of the governor in order to remove that statute from the books.

CHAIRMAN: Delegate Doi, you wished to be recognized?

DOI: I would like to amend the section by inserting in the last line of the section, between the words "ex officio" and "voting" the word, "non-voting members of the board."

SAKAKIHARA: Second.

CHAIRMAN: It's been moved and seconded that Section 4 be amended by inserting the word "non" after the word "officio" appearing in line 5 of Section 4.

ASHFORD: In regard to the remarks of the delegate from the fourth district about the law as it now stands relating to representation from several islands or counties, does not the law also contain the provision that the president of the University and superintendent of public instruction shall be ex officio voting members of the board?

PORTEUS: That's correct.

ASHFORD: Then that would be equally properly a method -- a matter for the legislature to care for.

WIST: I think this has already been answered. In other words, we acted in terms of the position of the superintendent to place him on the board as a voting member. Now we made a change there in terms of the position of the superintendent, to conform with the practice that we now have with reference to the president of the University. In other words, what we are stating here is that we would like to have in our basic law the same principle expressed with reference to the president, and I think that by all means he should remain a voting member of the board and that the superintendent should be also an ex officio voting member of the board in order that there can be a tie-up between the public school system and the University.

KAM: In Section 4 we had talked about the superintendent of public instruction -- in Section 3, as being ex officio voting member. I think that should be left out in Section 4.

VOICE: It's a different board.

KAM: I know but, "the president of the University shall be an ex -- " Just leave out the superintendent of public instruction. Just a suggestion, because you have it above in Section 3.

DOI: With the consent of the second, I would like to change my motion so that it will provide for the deletion of the last sentence in Section 4.

IHARA: I second that motion.

CHAIRMAN: It's been moved and seconded that the last -- the second sentence appearing in Section 4 be deleted. Delegate Rice.

H. RICE: It seems to me we ought to provide some liaison between the public schools and the University. The public schools should know what is going on in the University because after all the University is teaching the teachers who come out from the University to take positions in the public schools with the board of education. There should be a liaison between them.

CHAIRMAN: Ready to vote on the amendment?

CASTRO: Seems to me that when an amendment as far reaching as this is made, that the maker of the amendment should give his reasons therefor. I, therefore, rise to a point of information and ask the delegate from Hawaii why his amendment?

CHAIRMAN: Delegate Doi, will you kindly supply the information that Delegate Castro desires?

DOI: I'm sorry, I wasn't listening to the question.

CHAIRMAN: Delegate Castro desires to know the reason for your amendment.

DOI: I think it's best to leave the question as posed by the last sentence in Section 4 to the legislature.

TAVARES: I think we've already established the principle in our other vote on public instruction of having the executive officer also be a voting member of the board. It seems to me that if one is sound, the other is, and since the majority of this Convention has established the principle of allowing the superintendent of public instruction to be an ex officio member of the commission of public instruction, we should permit the president to be a voting member of the regents. For liaison purposes, which is very necessary, we should make sure that the superintendent of public instruction has a vote on the board of regents. It has not always been so.

CHAIRMAN: Delegate Tavares, the amendment does not go to the voting or non-voting of the president or the super-

intendent of public instruction; it's for the deletion of the entire sentence.

TAVARES: Well, that accomplishes the result. It takes away the power of the president to - -

CHAIRMAN: He will not even be a member, Delegate Tavares.

TAVARES: Well, that includes it.

SHIMAMURA: May I ask a question of the Committee on Education, especially its chairman? Wasn't it the intent of the committee to include the last sentence so that the president of the University of Hawaii and the superintendent of public instruction shall not be left to the whim of the legislature?

LOPER: It was the intention of the Education Committee to provide for the appointment of a certain number of regents, and the board of regents to include ex officio the president of the University and the superintendent of public instruction, as at present. That was the intention, and if you leave that out, the members of the board of regents would then be appointed by the governor, and it would not be possible, it seems to me, for the legislature to provide otherwise.

SHIMAMURA: In other words you want - -

CHAIRMAN: Ready to vote on the amendment?

SHIMAMURA: - - you wanted to be sure that the president of the University and the superintendent of public instruction shall be members of the board of regents?

LOPER: That's right.

SHIMAMURA: I think that's a very good provision.

WIST: May I say that this practice is in conformity with practice throughout the country. It is difficult for presidents of boards of - - presidents of universities to be members and voting members of boards of regents. We have had the experience in Hawaii where, when the president is a member of the board of regents and a voting member, things ran rather smoothly. We've had the experience that when he is not, they do not run as smoothly. Why should we depart from practice that is traditional in our country and which has worked out well here.

CHAIRMAN: Are you ready to vote on Delegate Doi's proposed amendment?

NIELSEN: As long as we have gone thoroughly into Section 3 on the method of appointing the superintendent of public instruction, why don't we follow the same on the president of the University? I think the arguments are very sound in Section 3 and I don't - - I'd like to know from the chairman of the committee why the same procedure wasn't followed with regard to the president of the University?

LOPER: Delegate Nielsen, I think you must be referring to Section 2 because Section 4 and Section 2 are the similar sections providing for the establishment of the board of education and the board of regents. I'd like to suggest that the Chair recognize Delegate Wist on that point, if he's willing to answer.

WIST: Just what was your point there?

NIELSEN: The question was why wasn't the same procedure used in naming the president of the University as in naming the superintendent of public instruction?

WIST: In other words, you're asking why we didn't suggest a panel for the selection of the board of regents? The reason for that in the opinion of the majority of the committee was simply this, that we feel that public schools are very, very close to the people. The people have all had experience with elementary and secondary education. Higher education, however, is in a different category. Relatively few people have that experience with higher education. We feel, therefore, that if you are setting up machinery for advisory boards or something of that sort which would provide a panel restricting the governor in his selection of board members on the one hand or regents on the other hand that you do not have analogous situations. And when I say this, I don't want to be challenged with the idea that I do not have faith in the people because that isn't the point at all. I think we have expressed the idea that we do have faith in the people because we've insisted, and insisted rather vigorously, on the panel idea for the public school system. But when you get into higher education, the people have not had the same kind of experience. The experience throughout the country has been, not only in Hawaii, but elsewhere, we get our best University, the university could develop and grow and it can be a pride to our community when the board is selected in accordance with the method that is now prevailing in Hawaii.

KAWAHARA: I would like to speak to Section 4 in regard to the statement made by Delegate Rice from Kauai. I think we should be consistent in our various sections - -

CHAIRMAN: Are you speaking to the amendment, Delegate Kawahara? The amendment is simply this, the deletion of the second sentence appearing in Section 4.

KAWAHARA: Yes - - no, no. I'll speak to that later.

CHAIRMAN: Ready for the question? The question is on the adoption of Delegate Doi's proposed amendment. All those in favor of the amendment say "aye." Contrary minded. The noes have it. The amendment is lost.

OKINO: In response to the suggestion that was made by Delegate Charlie Rice from Kauai, I should like at this time to move an amendment to this particular Section 4. I move at this time to insert the following words, after the word "Hawaii" appearing in the second line, "at least part of the membership of which shall represent geographical subdivisions of the State." I see no reason why this particular phrase which has been incorporated - -

CHAIRMAN: Delegate Okino, do we have a second to the motion?

YAMAMOTO: I second the motion.

OKINO: May I now speak to the amendment? I see no reason why this particular phrase or clause which has been incorporated into Section 2 of this article is intentionally—that's the way it appears to the speaker—left out from Section 4. I believe there are competent and some capable men to represent the outside islands to serve on the board of regents, and I believe the practice heretofore has been so.

LOPER: I'm in agreement with the last speaker. However, I'd like to point out that the omission was not intentional because it was also omitted from the other section. We left it in both cases to the legislature assuming, of course, that they would provide for the membership from the other islands. I see no objection to the amendment; it makes it consistent with the other section.

A. TRASK: I have no objection to the amendment as made, but I do object strenuously to the idea that if we don't provide such geographical subdivisions, Oahu is going to take everything. It seems to me there's a campaign here to establish the fact that Oahu is going to get everything, and the other islands nothing. I don't - - I'm not possessed of that thinking and I think it's awfully wrong and I'm certain the delegate from Hawaii doesn't intend that. But constantly we hear that Oahu is ganging up on all the outside islands. I don't think - - I think that's awfully provincial thinking; that's thinking that belongs to the Territory of Hawaii days.

I like to think that we should have a forward thinking and that we are all united and that there are many people on Oahu that love the outside islands, and circumstances prevent them from living on the outside island.

CHAIRMAN: Delegate Okino, do you wish to rise to a point of personal privilege?

OKINO: I appreciate very much the suggestion that was made by Delegate Trask, but I feel that a certain degree of trust should be reposed in our legislators. I think that thing -- that particular point has been quite adequately explained by the delegate, Judge Heen, and I hope that Delegate Trask at this time will not insist upon the particular suggestion which he has made.

SHIMAMURA: Speaking to what the delegate from the fifth district said a few moments ago, some of us are wondering if the outside islands, neighbor islands, aren't ganging up on the island of Oahu.

CHAIRMAN: Are you ready to vote on the amendment? All those in favor of the amendment -- proposed amendment say "aye." Contrary minded. Amendment is carried.

NIELSEN: I'd like to make an amendment due to the fact that the university is a land grant college and agriculture is one of the most important things we have in the territory. For that reason I'd like to amend the second sentence to read, after the word "president of the university," put a comma and include "the commissioner of agriculture," and then go on "and the superintendent of public instruction." I so move.

CHAIRMAN: I didn't get the motion, Delegate Nielsen.

NIELSEN: The motion is to, after the word "university" -- "president of the university," place a comma and add therein "commissioner of agriculture," then go on, "and the superintendent of public instruction." As this is a land grant college, agriculture is foremost, and I think there has been quite a lack of cooperation that we can get into a workable situation on agriculture by including the commissioner of agriculture. I so move.

PHILLIPS: I second that motion.

HEEN: I don't think there is anywhere in the articles which have been proposed for the appointment of a commissioner of agriculture. So, therefore, it has no place here, whereas, right in this particular article you provide for a superintendent of public instruction, you provide for a president of the University of Hawaii.

NIELSEN: Well, it's coming up.

HEEN: You might leave that until later, then. However, that can be taken care of by legislation if it appears to be wise. I do have -- I call for the previous question on that motion.

DELEGATE: Second.

CHAIRMAN: It's been moved and seconded. The previous question has been called for. Shall the main question be now put? All those in favor say "aye." Contrary minded. Motion is carried.

Question is the proposed amendment by Delegate Nielsen, which is this: the placing of a comma after "university" appearing in the fourth line and inserting "commissioner of agriculture," comma, in the same line. All those in favor of the amendment say "aye." Contrary minded. Amendment is lost.

BRYAN: I would like to ask the Committee of the Whole if they would include in their report a recommendation so that should the commissioner of agriculture be set as an officer in the government --

H. RICE: Do you make that as a motion?

BRYAN: -- he will be appointed. I will so move.

H. RICE: I second the motion.

CHAIRMAN: Moved and seconded that the report indicate that the commissioner of agriculture be -- whoever it is.

NIELSEN: If that's the situation, why don't we include it in and if we don't have a commissioner of agriculture, the Style Committee will certainly cut it out.

CHAIRMAN: The amendment has already been voted on, Delegate Nielsen.

DELEGATE: Question.

CHAIRMAN: All those in favor of the motion made by Delegate Bryan say "aye." Contrary minded. The noes seem to have it.

HEEN: Mr. Chairman.

CHAIRMAN: I haven't made a ruling yet, Delegate Heen. The ayes have it. The motion is carried.

HEEN: I am going to propose an amendment to Section 4 --

TAVARES: Mr. Chairman.

ROBERTS: Mr. Chairman. Point of information.

CHAIRMAN: Delegate Roberts.

TAVARES: Mr. Chairman, I appeal from the ruling of the Chair. I think the noes had it.

ROBERTS: Mr. Chairman.

CHAIRMAN: Delegate Roberts, will you state your point of information.

ROBERTS: I didn't hear the ruling of the Chair. Did the Chair rule that the ayes had it?

CHAIRMAN: The Chair ruled that the ayes had it.

ROBERTS: I would like to, therefore, to have a question of show of hands. It seems to me that there is some doubt, there was some doubt in the Chairman's mind. I think we ought to get this question clear. It's fairly important.

CHAIRMAN: There is no doubt in the Chair's mind, Delegate Roberts.

SAKAKIHARA: Then I second that motion.

TAVARES: Then I appeal the Chair's ruling to the floor, then.

SAKAKIHARA: And I second the motion made by Delegate Tavares.

KAUHANE: I believe you have stated your position and that you have stated your position in such a manner that it is your opinion that the ayes have it and I, therefore, feel that there is no ruling from the Chair's decision.

PORTEUS: I think it's been customary where we've been voting by voice that sometimes there are some people who vote a little more loudly than others, and sometimes those that have voted in the majority have voted in a little quieter fashion. Up till now it has been the practice, if people haven't been very sure and some people haven't voted at all, to have a show of hands or some other division. I see no particular harm in doing that at this time. I don't think it's a question of sustaining the Chair; after all he's in the position of making his ruling as he hears the sound, and I think it's the fault of the rest of us for not making our desires fully known. But there may have been some who didn't express themselves and if the Chair would be willing to call for a show of hands, we can settle it without any more debate.

C. RICE: Mr. Chairman.

CHAIRMAN: The Chair is certainly willing to do that if that is the wishes - -

C. RICE: Having voted in the affirmative, I move for reconsideration of the vote, so that we could have a show of hands.

PORTEUS: I don't think the motion is necessary, if the Chairman is willing to call for a show of hands. I think it will dispose of the matter.

CHAIRMAN: Vote by a show of hands. All those in - -

ROBERTS: I'd like a point of information, please. Do I get the intent of the motion that we include in our report a recommendation that a commissioner of agriculture, if one is established, shall become a member of the board of regents? Is that the question?

CHAIRMAN: I believe that was the motion. Is that correct, Delegate Bryan?

ROBERTS: Well, it seemed to me that we have already voted on that question and the question was put as to whether we should have one. This committee voted no. Unless they want to reconsider that question, it seems to me that that question can then be properly put. We already voted on that problem once.

CHAIRMAN: Delegate Roberts, this is merely including in our committee report that such an officer be a part of the board. It's not part of the proposal. We have not voted upon the question. Delegate Porteus.

PORTEUS: I don't think this matter should be subject to debate just now. I have some feelings on the subject. The Chair is courteous enough to ask for a calling of the hands. I think that we will have to go through a motion to reconsider if we want to debate it further, but I think that the thing should be disposed of now on the Chair calling for a show of hands.

CHAIRMAN: All those in favor - -

HEEN: If the majority of the Convention is going to vote upon this motion in the affirmative, that means that they wish to have a commissioner of agriculture or similar officer to be a part of the board or a member of the board of regents. If this is so, then we might as well do it now instead of leaving it to the legislature.

PORTEUS: Let's have the call on the vote on a showing of hands. No more debate. If we're going to debate this matter, we will have to move to reconsider. Now let's have the show of hands, please.

NIELSEN: This is a very important thing. Agriculture is the backbone of the Territory - -

PORTEUS: Point of order.

CHAIRMAN: I'll now put the motion. All those in favor of Delegate Bryan's motion, please raise your right hand. Contrary minded. 24 ayes and 22 noes. The motion is carried.

HEEN: I have an amendment to propose to Section 4. Section 1 provides that the State shall provide a state university and now we might as well state here in Section 4 that the University of Hawaii is hereby established as a state university. In other words, add a new sentence at the beginning of that section reading, "The University of Hawaii is hereby established as the state university." I move that as an amendment.

CHAIRMAN: Will you please restate your motion, Delegate Heen.

HEEN: I move that Section 4 be amended by inserting the following sentence at the beginning of that section: "The University of Hawaii is hereby established as the state university."

PHILLIPS: I second that motion.

CHAIRMAN: It's been moved and seconded that Section 4 be amended by including this sentence: "The University of Hawaii is hereby established as the state university."

TAVARES: We have a whole chapter establishing the University of Hawaii which we are going to continue in effect by a subsequent section of this Constitution. I think we again are going needlessly into detail. This by implication fits right in with the existing state university and I think it's not necessary to go that far.

HEEN: I just wanted to get away from that, not to depend upon implication; have a direct statement there, and you don't have to indulge in any implication.

BRYAN: I would ask the movant if you would consider making a separate section of that, rather than have it go into - -

CHAIRMAN: Ready for the question?

HEEN: It fits right into that same section.

CHAIRMAN: Are you ready to vote on the amendment? All those in favor of Delegate Heen's proposed amendment, signify by saying "aye." Contrary minded. The amendment is carried.

LOPER: I now move that we tentatively agree to Section 4 as amended.

BRYAN: Second the motion.

CHAIRMAN: It's been moved and seconded that Section 4 be tentatively approved.

HEEN: I move an amendment to that section. Delete the words "be empowered to establish" appearing in the second line and insert in place thereof - -

CHAIRMAN: Just a minute, Delegate Heen. Is that on Section 5?

HEEN: Five, Section 5.

CHAIRMAN: We have not voted on Section 4. Will you withhold it just for a moment? All those in favor of the motion - -

SERIZAWA: Point of information. We took a vote on the assumption that if the commissioner of agriculture is established, then he shall be a member of the board of regents. Does that mean that Section 4 will automatically include the commissioner of agriculture if such office is established?

CHAIRMAN: That is not the understanding of the Chair, Delegate Serizawa. It's merely to incorporate in our Committee of the Whole report that if such an office is created, then we shall recommend that the commissioner of agriculture be on the board of regents.

All those in favor of the adoption of Section 4 please signify by raising - - by saying "aye." Contrary minded. Motion is carried. Section 4 is tentatively approved.

LOPER: I now move for the adoption of Section 5.

J. TRASK: I second it.

HEEN: I move an amendment to that section. After the word "shall" in the second line, delete the words, "be empowered to establish," and insert in place thereof the words "have power, in accordance with law, to formulate"; and in the third line delete the word "full."

SAKAKIHARA: I second the motion.

CHAIRMAN: It has been moved and seconded that Section 5 be amended by inserting the following after the word "shall," "have power, in accordance with law, to formulate policy and to exercise control."

HEEN: Comma after policy.

CHAIRMAN: I'll read the sentence over again. "The board of regents shall have power in accordance with law, to formulate policy, and to exercise control," etc. Is that correct, Delegate Heen?

HEEN: Except that there should be a comma after "power" - -

CHAIRMAN: And after "law."

HEEN: - - and comma after "law," as you read it at first. I move that amendment.

DELEGATE: Question.

KAWAHARA: May I ask a question? Is a comma necessary after "control"?

HEEN: No, I don't think so.

CHAIRMAN: Ready for the question?

DELEGATE: Question.

CHAIRMAN: All those in favor of the proposed amendment say "aye." Contrary minded. Amendment is carried.

HEEN: I have another amendment to offer. Line 5, after the second "the" in that line, delete the words "board of regents of the" so that that sentence will read: "The University of Hawaii shall constitute a body corporate" and not the regents be a body corporate.

DOI: I second the motion.

CHAIRMAN: It's been moved and seconded that the second sentence of Section 5 be amended as follows: after the word "the," the words appearing "board of regents of the" to be stricken.

WIST: I personally have no objection to that. I just want to point out that this phraseology is the typical phraseology of other constitutions and statutes that refer to this particular matter, namely the corporate body, that is, the board being a corporate body. But I think the meaning is the same in either case.

HEEN: The meaning is not exactly the same or anywhere similar. The other constitutions may have that type of language; but the university itself is an entity and it is the corporation, and the board of regents are what might be termed the directors of that corporation, and you don't make the directors a corporation.

KAWAHARA: Speaking to that amendment, in discussion in the Committee on Education, the word "body corporate" was discussed and it was stated very clearly by one of our members that the interpretation of the words "body corporate" would mean that a body corporate in so many words means an artificial person. I don't know. If that is true, then the University of Hawaii may be liable to suit and so forth, and that we might place the whole university in liability to suit. I'd like to know if we changed the wording from "board of regents" to just the "University of Hawaii," I'd like to know what the effect of that change would be.

HEEN: If there is any suit to be brought, the board of regents as a corporation might be sued for any damage that the board might incur, or rather, that is, when a damage is caused by it. If the university as a corporation does any damage it might be sued also in a competent court of - - a court of competent jurisdiction. But I have in mind this. Generally speaking, you don't constitute a board of directors, a corporation. A corporation is an entity created by law and the university itself should be that corporation and that the board of regents could then be, well, be regarded as the board of directors of that corporation.

PHILLIPS: I don't exactly know how wrong I am here, but I have the feeling that changing it in this manner would make it necessary for the university in anything that it did to have a - - it would make the university have to have a legislative act in order to empower it to do anything. I happen to know that the board of regents as they are now empowered, and as I have been able to determine by reading other constitutions, that they can administer the land, be responsible for the land, make improvements to the land, over and above anything that does not involve legislative appropriation, such as the housing that they have on the agenda up there now. I feel that to take it away from the board of regents would be to cut down the power of them to give us a more progressive university.

TAVARES: It seems to me it's a matter of choice or preference here, what we want to do. It's been done by law both ways. The City and County of Honolulu is created under the name of City and County rather than the board of supervisors of the City and County of Honolulu by Section 6501 of the Revised Laws and 6503. The latter section says: "The City and County is created a municipal corporation under the name of the City and County of Honolulu." Now, in my humble opinion, the only difference between the presen form of the section and the method - - amendment suggested by Delegate Heen is in one case the name of the corporation will be board of regents and so forth, and the other case it will be the University of Hawaii.

KELLERMAN: I don't think it makes any - - possibly any difference at law, but historically it has been that the boards of regents or the boards of trustees of universities for hundreds of years have been the incorporated body. I have here the original constitution of the State of Massachusetts adopted in 1780 with respect to Harvard College and it is declared—this is from the Constitution of the State of Massachusetts, 1780—"It is declared, that the PRESIDENT AND FELLOWS OF HARVARD COLLEGE"—that's set up in double caps—"in their corporate capacity, and their successors in that capacity," and so forth and so forth, shall hold, have title, and so forth, it goes on. It dates back to the English universities. The boards of trustees of the respective colleges at Oxford and Cambridge are incorporated in the capacity as, I don't want to use the word trustees, but in the language of the governing body and not the language of the university itself. I think it's a matter of historical precedent. I don't know that it makes any other difference.

A. TRASK: May I ask the last delegate, what university she was referring to? Harvard? But wasn't that a private rather than a public state university? That's the difference.

KELLERMAN: I don't think that makes any difference. It happened it may have started originally as private, but it's set up in the constitution and it gives them full corporate powers. But you'll find the same language in other universities that are state universities, in the other constitutions.

A. TRASK: I speak in favor of the amendment by Delegate Heen. There is a question in my mind, in addressing myself to Delegate Kawahara's inquiry. It would seem to me that if we left it the body corporate, namely, the University of Hawaii, it would be more invitational to some people who, looking at the responsibility of a board of regents of the university, may say, "Well, I might have a personal liability to a suit at law." Now it would seem to me if the "board of regents of the University of Hawaii" means the same thing as the "University of Hawaii," it would seem to me to be better and more invitational to people who are available to have the words "board of regents of the" stricken, since there seems to be some doubt about it. I am particularly concerned about this situation because the latter portion of the sentence says that this body corporate "shall have title in fee simple to all of the lands of the university."

Now referring - - addressing ourselves to Section 1943 of the Revised Laws, we have this concluding sentence at the end of that paragraph, quote, "All lands, buildings, appli-

ances and other property so purchased or acquired shall be and remain the property of the Territory to be used in perpetuity for the benefit of the University," unquote. Now under the present situation, therefore, at the University of Hawaii it seems to me—and I'm addressing myself to the inquiry by the delegate from Hawaii—the University of Hawaii apparently cannot be sued because you would have to have permission to sue the Territory or have - - get a settlement from the legislature with respect to any claim. With this sentence, it would seem to me when you give the University of Hawaii a body corporate entity, and you give it the property; therefore, if a suit is filed successfully against the university and a judgment is received, it may very well be that execution may be made upon the buildings and properties of the university and then the university would be closed down.

I'm addressing myself to two situations here, and I feel that right off that the title to the property should continue in perpetuity in the name of the Territory for the benefit of the university. Otherwise, we might - - or I might or the delegate from Molokai might execute against the property of the university and pilikia. So I'd like the chairman or Dean Wist to clarify that or the Secretary, who is regent at the university.

PORTEUS: I think there is going to be, from what I've been informed by the various delegates, some extended discussion on the subject raised as to the title in fee simple. I think the motion before the Convention at the moment is purely with respect to the name. Now, whether you want to vote on the name now or later, I think the disposition of many of the delegates is for the moment to rise, report progress and ask leave to sit again. It's 20 minutes after 12:00.

SHIMAMURA: Before we do that, may I be permitted to correct an impression - - mis-impression that may have been been given by the remarks of one of the previous speakers. I'm not necessarily speaking against the amendment, I might say. Naming the board of regents as the body corporate would not make them liable individually and personally. They would be liable merely in a representative capacity and they certainly would not be legally responsible personally or individually.

C. RICE: I agree with Delegate Trask, and I want to point out to the members before we take a recess that you should read page 17 and 18. This making the university a body corporate and having title to its lands, they want to borrow a lot of money. Now I want to know how much has been invested in bonds for the university. I want to know how they are going to be self-liquidating. That's what they are after. I'm seconding the motion to take a recess.

CHAIRMAN: It's been moved - -

HEEN: I rise to a point of order there because we're not dealing with that particular phase of that sentence at the present time. We were dealing with the matter the name of the - - as to whether the university itself should be the corporation or the regents should be a corporation.

CHAIRMAN: That is my understanding of the amendment.

PORTEUS: I think there are some requests to act on the name now; let's act on the name, then I'll make the motion - -

WIST: May I say, before we act on that that I don't think the committee has any strong preference either way. It chose this wording because that's the historical wording, but if it's the feeling on the part of the majority here that the word "university" be used instead of "board of regents," I'm sure that we wouldn't feel offended in any way.

LOPER: I would like to rise to a point of information and ask the maker of this amendment who is included under the title of "University of Hawaii" that is not included under the "board of regents of the University of Hawaii"? You are either talking about persons or groups of people or some legal fiction. The board of regents will be a group of men and women, eight or nine, as determined by law, and if you cut out board of regents and say the University of Hawaii, who are you including that are not regents? Are you including the professors, the staff at the university?

HEEN: Under my proposed amendment, the university itself would be the corporation. Then all of the administration of the affairs of the corporation would be in the hands of the board of regents who would, if this were in business, be the board of directors of that corporation. When you prepare a document, a contract of any kind, you would start with saying that this contract is entered into by the University of Hawaii, a corporation, and so and so and so and so, instead of saying that the board of regents, composed of the following members, a corporation, shall enter into this contract. It would be very much simpler to say that this is - - the University of Hawaii is the corporation.

DELEGATES: Question.

HOLROYDE: Move the previous question.

A. TRASK: Second.

CHAIRMAN: Question? Question is shall we adopt Delegate Heen's proposed amendment. All those in favor say "aye." Contrary minded. Motion is carried.

TAVARES: I think the matter should be reconsidered. I have just read the section - - the chapter on the University of Hawaii, and I think there are some provisions about trusteeships which ought to be studied before we do this. We are apparently reversing ourselves.

CHAIRMAN: I'd like to - - Delegate Tavares, the Chair would like to inform the delegate that we merely acted on the name alone.

TAVARES: I think then we should - - I move to reconsider and defer because there is a section which provides that the regents shall be trustees for gifts, and we may have some gifts already held by the regents as trustees.

DELEGATE: I second the motion to reconsider.

PORTEUS: If I can get the floor, there's going to be - - We can leave the reconsideration to another meeting and let the attorneys look into this matter in the interim, and come back more fully informed than we are at the present. The motion is - - will be in order at the next meeting. So I now move that we rise, report progress and ask leave to sit again.

NIELSEN: I second the motion.

CHAIRMAN: It's been moved and seconded that we rise and report progress and ask leave to sit again. All those in favor say "aye." Contrary minded. Motion is carried.

JUNE 19, 1950 • Morning Session

CHAIRMAN: When the Committee of the Whole rose to report progress Saturday noon, we had just concluded taking action on Delegate Heen's amendment to Section 5, the last sentence of Section 5. The Chair recalls that the section was amended to read "The University of Hawaii shall constitute a body corporate and shall have title in fee simple to all of the lands of the university." The amendment was the striking out of the words, "board of regents of the."

LOPER: Was there also a proposed amendment in the last line after the word "lands" to add "now or hereafter assigned to," striking out the word "of? In any event we

have over the weekend studied rather thoroughly the wording of this last sentence, and have before the delegates now a two and a half page mimeographed statement concerning new wording for the last sentence, the second sentence of Section 5.

In order to get this before the Convention, I would move the deletion of the second sentence in Section 5 and the substitution therefor of the second paragraph in the mimeographed statement which is before you in quotation marks, which reads:

> The University of Hawaii shall constitute a public corporation and shall have legal title to all the lands of the university, which it shall hold in public trust and administer in accordance with law.

HEEN: The amendment that I offered just before the close of the session of the Committee of the Whole, the last hearing, was one that is applied only to the first part of that sentence and did not extend to the matter of title. And the amendment that I offered was upon motion made and seconded, carried; that motion carried.

CHAIRMAN: That is correct.

HEEN: But I let alone the last part of that sentence. The last part of that sentence, as I understand, is now open for discussion and perhaps for amendment.

CHAIRMAN: It's been moved and seconded that the second sentence appearing in Section 5 should be now amended to read:

> The University of Hawaii shall constitute a public corporation and shall have legal title to all the lands of the university, which it shall hold in public trust and administer in accordance with law.

HEEN: That is a further amendment of the first part of that sentence, which would require a motion to reconsider.

CHAIRMAN: As I understood it, the amendment on Saturday was merely the changing of the name, "The board of regents of the University of Hawaii" to "The University of Hawaii." It was not taken up as a substance but merely the change in the name. Wasn't that correct, Delegate Heen?

HEEN: That's correct. The amendment was that that sentence -- first part of that sentence read, "The University of Hawaii shall constitute a body corporate." Now, this amendment says that "The University of Hawaii shall constitute a public corporation." So that is an amendment of the wording which was employed in the amendment that I offered, is to "constitute a body corporate" and not "a public corporation." So it seems to me if you want to change that language you'd have to have a motion to reconsider. I think Doctor Loper is more concerned with the last part of that sentence which relates to title.

LOPER: I would be glad to accept the amendment going back to the wording as it was on Saturday as far as the first part of the sentence is concerned: "The University of Hawaii shall constitute a body corporate and shall have legal title to all of the lands." And at that point I would like to suggest the additional wording formerly suggested by the previous speaker, after the word "lands" to add "now or hereafter assigned to," striking out the word "of."

CHAIRMAN: Any second to the last amendment?

ROBERTS: Second.

ASHFORD: Is the word "assigned" correct? Is that what is intended? Wouldn't it be "conveyed"?

LOPER: I was using the language that I wrote down as Delegate Heen proposed an amendment which I don't think was put in the form of a motion on Friday or Saturday, and I got it "now or hereafter assigned to."

WIST: I'm not personally too concerned with where these particular words come in the section. The thing that I think is a matter of concern before this Convention is the question of how this provision with respect to land ownership shall be set up in the Constitution. And as proposed in the amendment which Delegate Loper has made, it has to do with granting the university legal title instead of all-inclusive or fee simple title to lands and then stating that the university shall hold this in public trust and administer it in accordance with law. Now maybe that wording isn't the exact, the best wording, but I think it conveys the idea. And the mimeographed sheet, titled "The University and Land Ownership," has been prepared to present the argument so that the position of the university is more exactly stated and overcome the objections that were made to this feature at the last time we met.

LEE: As I understand now, the amendment to Section 5 would read as follows: "The University of Hawaii shall constitute a body corporate and shall have legal title to all the lands now or hereafter assigned to the university which it shall hold in public trust and administer in accordance with law." Is that it?

CHAIRMAN: That is correct.

LEE: That is the present amendment?

CHAIRMAN: That is correct.

LEE: There's only one amendment then?

CHAIRMAN: There's only one amendment before the committee.

LEE: And that's been moved and seconded?

CHAIRMAN: That is correct, Delegate.

LEE: All right, Question.

TAVARES: Mr. Chairman, I still am a little bit lost here. I'm sorry I got here late. As I understand it that leaves the first sentence, as amended, unchanged, of Section 5.

CHAIRMAN: The first sentence in Section 5 as amended is still the same.

TAVARES: And that reads now, "The board of regents shall have power, in accordance with law, to formulate policy and to exercise full control over the University of Hawaii through its executive officer, the president of the university, who shall be appointed by the board." Is that correct?

CHAIRMAN: The only difference is the word "full" has been deleted.

TAVARES: Yes.

LOPER: I rise to a point of information. If it should be preferable to change the wording in the first part of the second sentence, instead of reading, "The University of Hawaii shall constitute a body corporate," to read as follows: "The University of Hawaii is hereby constituted a body corporate," would that change be permissible in the Committee on Style or should it be made here?

HEEN: I think that is not a change in substance at all, just a matter of phraseology, and can be handled by the Committee on Style.

NIELSEN: Doesn't this -- Can't this be handled by the legislature, the transferring of legal title to the lands? I'd like to have that answered.

CHAIRMAN: Does anyone care to answer that?

NIELSEN: Couldn't this be a legislative matter?

ANTHONY: The purpose is to secure to the university the title to the lands which it now has, and those lands which are hereafter set apart by executive order or otherwise to the university. In other words, that will then place the university in a position where it can take advantage of certain public enactments of Congress and borrow money, for instance, on a bond issue, and without that we would require further legislation. It seems to me that this is a highly desirable thing, to put the university in the situation which it really should be so that it can take advantage of whatever program is offered by acts of Congress.

WIST: I would like to point out one other thing, namely, that as a land grant institution, without this wording it would not be possible for us like other state universities to own income-producing land which might be located outside of Hawaii. Many state universities had lands which belong to the universities which are not located in the state where the university itself is located, and that to me is a rather significant thing.

SHIMAMURA: May I ask a question, please? This sentence speaks only of legal title to all lands. What is the position as to personalty, that is, personal property?

ANTHONY: I think the situation as to personalty ought to be exactly the same as the personal property of any department of this state. There's no need in my judgment to have the title to the typewriters and the paper and pencils vested in the body corporate. I don't know whether Doctor Loper has other views on that, but I should think the general territorial law would apply there.

LOPER: Is it your position, Delegate Anthony, that lands is sufficient without saying "real and personal property"? There was some discussion over the weekend as to the advisability of substituting for the word "lands," "real and personal property." I see no important problem involved there.

SHIMAMURA: Perhaps I haven't got a clear picture, but I thought the main reason for giving legal title to the university was so that it may be enabled to mortgage and hypothecate its property so that it may secure a loan. If that's the case, then what about personalty?

LOPER: As I understand it, if at any time the lending agency should be in a position to foreclose, it would not be a foreclosure in the usual sense. It would be a matter of taking over and operating the property until it paid out, and then it certainly would involve not only the land and buildings, but the equipment in it if it happened to be a dormitory. So I personally have a preference for "real and personal property" in the language there.

SHIMAMURA: If there's to be a mortgage or hypothecation of this property, wouldn't the university be in a better position to affect such loans by mortgage or hypothecation if personalty were included? That's my only concern. And also presumably by construction, land will include buildings, but wouldn't it be clearer to say "real properties" instead of just "lands."

WIST: I think if the delegates would turn to this mimeographed statement, Item 3, "Legal title to its lands would enable the university to avail itself to federal loans without pledging the lands themselves." The next sentence, "Mortgages are so written - - " Now this isn't speculation, this is the way they are actually written by federal government. "Mortgages are so written that if the university should fail to meet payments, federal government would take over the operation of the individual project (not the university) until such time as the obligation should have been met." In other words, that's the way the federal government operates in these matters. All that is really pledged is income from the self-liquidating project.

TAVARES: I think the only reason why today the university doesn't have legal title to its land is the Hawaiian Organic Act which says that the Territory has legal title to all public lands and that they may be set aside by executive order of the governor, which of course is revocable. That's the whole trouble. So that a great deal depends on what we're going to have in our public lands section. The university should have the fullest possible power to acquire any kind of interest in land, not just fee simple. I am a little afraid that mentioning legal title or fee simple title is actually limiting because the university may want easement sometime. They may want equitable interest or they may want to acquire all kinds of other interests and it should be made as broad as possible.

Isn't it true that what the university needs today is legal title to the land that it is now using and the right to acquire title in the future in the manner provided by law? Wouldn't that be much more proper? I suggest that we ought to get the attorney general over here - - Assistant Attorney General Lewis to give us the language that whatever land the university now has under executive order or that has been acquired under condemnations for the university shall - - is transferred now by way of legal title to the university.

As to the future, leave it wide open as to whether the Territory by its laws will give title to lands in fee simple or on condition or any other way that it sees fit, because I think if you require legal title to be acquired to all the lands the university gets, it will deter the Territory in the future through its legislature from authorizing further lands to be transferred. Perhaps the legislature [sic] will want to have just the right to use land for a limited period. The Territory will hesitate and say, "We can't give you a lease; we've got to give you fee simple title; we've got to give you legal title."

Therefore, I think we should split it into two parts, one, a present grant of what the University now has; and second, the right to acquire in the future in the manner provided by law. Then I think you'll have the well-rounded system.

LOPER: I have three suggestions to make. Perhaps they should be submitted as separate amendments if they meet with the approval of the delegates. One is to strike out the word "legal"; the second is to change the word "lands" to "real and personal property"; and the third is to change the word "assigned" to "conveyed." I have no concern over the order in which those things are taken up, but it seems to me that that would cure the defects of this sentence.

ANTHONY: I have a suggestion that may meet with the approval of the body. First, as to whether or not the use of the expression "title" will preclude the university from acquiring less than a fee, I think in law as well as in mathematics, the whole includes the parts. If the university has the right to acquire title, it can acquire any kind of a title. Therefore, I would suggest this amendment, if it meets with the approval of the body. "The university is hereby constituted a body corporate - - University of Hawaii is hereby constituted a body corporate and shall have title to all of the real and personal property now or hereafter set aside or conveyed to it, which shall be held in public trust for its purposes and administered in accordance with law." I can have that - - If the body would like to look at it, I could have that mimeographed and circulated in a few minutes.

LOPER: I'd like to second that motion - - amendment.

LEE: We don't need to have it printed. Read it again.

ANTHONY: What are the wishes of the Chairman? Shall I read it again or get it printed?

CHAIRMAN: I think the reading of it should suffice.

ANTHONY:

The University of Hawaii is hereby constituted a body corporate and shall have title to all of the real and personal property now or hereafter set aside or conveyed to it, which shall be held in public trust for its purposes and administered in accordance with law.

CHAIRMAN: Delegate Loper, will you withdraw your first amendment?

LOPER: Yes, I withdraw the first amendment, and I'd like to second the motion to amend as made by Delegate Anthony.

CHAIRMAN: There is now just one amendment before the committee, and that amendment has just been read by Delegate Anthony.

NIELSEN: I didn't get a direct answer, if this could not be legislative action. I question very much the advisability of turning over the entire setup to the board of regents. In the past we've had a lot of difficulty. In fact, the board of regents have even ignored the legislature. In the 47th Session we gave them $400,000 for a chemistry building, they went ahead and put wings on it and spent another $264,000 and then came in and asked for a deficiency appropriation of $264,000. At present I've had to fight with them for the last year trying to get a small building in Kona built for $15,000; and in the Special Session, having been ignored by President Sinclair and the board of regents, I had to put in another bill and make it exclusively for the extension service because they said that they didn't think that was the intent of the first appropriation. At the present time, they went ahead and have drawn plans and they included the experimental station in this building as to laboratories, coffee drier and so forth, absolutely ignoring Act 39 of the Special Session. So I think that we've got to give more power to the legislature to hold these fellows down out there.

CHAIRMAN: The Chair feels that the answer -- the question of Delegate Nielsen was amply answered, but if Delegate Anthony wishes to amplify on the matter - -

ANTHONY: Just one statement. I don't know the exact facts of the legislative history, but this is true; without this kind of a provision in the Constitution of the State, our university will not be placed on a footing with other state universities. In other words, it will be hamstrung. Certainly this will not prevent the legislature in the future, if they want to have a wing on a coffee establishment in an experimental station at Kona, appropriating funds expressly for that purpose. The university couldn't do anything about it. All this does is to put the university in a position where it can, on a parity with other great state universities, take advantage of the right to borrow money on its property. In other words, you are going to fetter them if you don't have this kind of provision in the Constitution.

NIELSEN: May I ask a question? Doesn't this allow the university to hypothecate every bit of land they have and every bit that they'll ever obtain title to?

WIST: It does not.

TAVARES: I think, after reading this over again, that it might fill the bill if the report of the Committee of the Whole makes clear a number of ambiguous situations. For instance, if this property is to be held in public trust, there may be some question about the right of the university to dispose of it. It should be made clear in the report that if, by law, the university is authorized to dispose of some of this property, which isn't under some kind of a private trust that can't be changed because of a matter of contracts, that the law can authorize it to do that, and the words "public trust" will not make that inalienable. In other words, that should be made clear in the report.

I think it should also be made clear that the word "title" includes this situation. If the university wants to get some land from a city or a county or the Territory, and the Territory or county is only willing to give a limited interest to the university, that will not prevent them from doing that. In other words, I wouldn't want it to be - - appear that "title" means only the legal title. Any interest can be transferred in the future. And I think if that's taken care of, then except for one thing, you've taken care of the situation.

I think this still leaves it then up to the legislature to make an initial transfer of this land to the university because I'm not sure that this language will itself convey the land now held by the university to the university in any particular kind of title. I wonder if the other delegates have any ideas on that last question?

ANTHONY: I think what Mr. Tavares said is correct. I endeavored to accomplish one of his statements by inserting the words, "shall be held in public trust for its purposes. In other words, if one of its purposes includes the selling of a typewriter, or disposing of anything, obviously they would go ahead and dispose of it. I think the report also should make clear that the use of the word "title" includes any kind of a title: leasehold, easement, or anything. But after that you've got to - - if this is adopted there probably would have to be an executive order or legislation confirming and implementing the constitutional provision. That is the point that Delegate Tavares raised, and I think he's quite accurate in that.

HEEN: I was just wondering whether or not personal property should be included in this proposed amendment. We know there is a general statute which applies to disposal of personal property. I think there is a disposal commission which passes upon the disposal of personal property. In other words, all personal property - - the title to all personal property is now in the Territory of Hawaii so far as territorial departments are concerned, and when they are to be disposed of or destroyed, they must go through - - you must go through a certain procedure. Therefore, personal property should be left out of this proposed amendment and they should be held and may be disposed of according to law.

ANTHONY: I think the last sentence - - I agree that we don't want to depart from the disposal provisions of existing law, but "administered in accordance with law," means just that, in my judgment. Does not that reach the question that the last speaker had in mind?

HEEN: Well, I'm not so sure whether it does take care of that situation or not. Matter of administration may be broad enough to do just that, but I'm not too sure.

H. RICE: I agree with Senator Heen that you should leave out the word "personal property" because real property takes the building and the land and so forth, and I think it is better that way. If you'll accept the amendment taking out personal property, I think it's better.

TAVARES: I think that you are running into the question of what the lawyers call expressio unius. That is, if you are going to only express the power to take title to real property, you are going to, by implication, run into the danger of having the power to take personal property excluded. As far as that board of disposal statute, Section 1661 of the Revised Laws, is concerned, it says that, "The proceeds of such sales, where not otherwise provided by law, shall be paid into the general fund of the Territory as territorial realizations." Now what's going to happen to the personal property held in trust? Is it going to be turned over to the Territory as general realization? I think we should specifically cover them both. If we're going to cover one, I think we should cover both.

FONG: I don't think I necessarily concur with Delegate Wist in his answer to Delegate Nielsen's question. Delegate Nielsen asked this question, "Does it mean that the university can hypothecate its lands?" Is that right? And Dean Wist said, "No." Now, from my understanding of this, it seems that this is the purpose of making it a body corporate and giving it title to the land. If the university can't convey its land, what's the use of giving it fee simple title to all these lands? I understand that the purpose of this incorporation of the university and putting the title of the property in its name is for the purpose of hypothecating some of its property so that it may build dormitories.

Now, if it is going to be construed in the same position as a trust, and it needs the official sanction of a court or the legislature, then let us put it in. But let us not say that this does not mean that he will not be able to hypothecate his lands.

LOPER: In further reference to the objections raised by Delegate Nielsen and by the previous speaker, it was the intention in this language, the last four or five words, "to be administered in accordance with law," to establish definitely in this section that the university would be limited in what it could do with its lands by laws passed by the legislature.

FONG: Does that mean that everytime the university wants to hypothecate something that is not provided by law they would have to go to the legislature?

PORTEUS: I think the bill that we personally -- we supported in the Legislature of 1947 would still be an appropriate piece of legislation whereby we authorize -- whereby the University was authorized under act to borrow for certain specified purposes provided that they were self-liquidating projects, such as dormitories. I have been interested in this language, too, and I think that the new wording is designed to spell out or to indicate that the power of the university to borrow on land will be subject to such statutes as the legislature may, from time to time pass, such as the Statute of 1947, which gave this power of borrowing. And rather than leave it that the university shall have legal title to land, and putting a period after that, so that there might be cause to wonder whether or not the university could pledge, not only the liquidating project but the rest of the university resources, the language was devised over the weekend to add, "administer in accordance with law." Then write into the report that the intent was to make it subject to legislative act.

FONG: Now that is the definition. Now, let us go one step further. It says that "real and personal property now or hereafter set aside or conveyed to it which shall be held." Now the holding of it is in accordance to law. Does it prevent the university from going out and buying a piece of property? As I understand it here, the holding of it is according -- will be in accordance with law. Now, nothing here prohibits the university from going out and buying a tract of land—say a thousand acres—and come to the legislature and say, "Here, we've purchased this piece of property and we're going to hold it according to law." There's nothing here that prohibits the university from going out and buying a piece of property. Now I'd like to ask the movant of this motion here as to whether that prohibits the university from going out and buying a thousand acres of property, and still be within the provision of this motion.

ANTHONY: Obviously, there would be no prohibition. If the university can get a donation from one of its distinguished alumnus, such as the last speaker, of $100,000 --

FONG: Thank you.

ANTHONY: -- it can go out and buy a fine piece of land with the $100,000.

FONG: The only reason for asking the question is to make it clear so that we know what we are voting on.

BRYAN: I wonder if it would clear up part of the question raised by Delegate Fong and Nielsen if we should clarify the point. We are providing for conveying land to the university. Does that mean the legislature, in turn, will have power to return the land elsewhere or to disenfranchise the university from the use thereof?

ANTHONY: The answer to that is no.

NIELSEN: One more question, and I'll hold my peace. The question is, doesn't this make it so that the university can go into the laundry and dry cleaning business or anything they all want to, according to the way a lot of universities on the mainland are doing these days?

ANTHONY: The answer to that is "administered in accordance with law," and any statutory prohibition against the laundry business -- and, incidentally, the Tax Court has recently given NYU a kick in the teeth on that very business. It is no longer tax exempt for the macaroni business, I think it is. The legislature could prohibit or regulate any such thing.

TAVARES: I think it's important that in this Committee of the Whole debate, we lay a broad foundation for the interpretation of this section and, for that reason, I hope the members will excuse me for just a few more statements. One is that the answer of the last speaker, or one of the last speakers, that the legislature cannot take away land from the university once given, I think needs to be qualified to this extent. If, at the time of the conveyance to the university there is reserved a right to take back by law or otherwise, of course that right can still be enforced. However, if there is an unconditional grant to the university, of course then the legislature could not, under this section, take it back without the university's consent. I think that the speaker agrees with me in that.

Secondly, I think the report of the Committee of the Whole should show that if any provisions in this article relating to the university in any way alter an existing private trust, that that is not to be effective. I think that's the rule, but I think it should be made clear so that if property is now held by the regents in trust, and we say from now on the university shall hold title, as far as that property already acquired is concerned, the regents will continue to hold it in trust, if that is necessary to preserve the trust. I think the minutes of the report of this committee should make that clear.

CHAIRMAN: Are we now ready to vote on this amendment?

MAU: I think that the concensus is to make the University of Hawaii as excellent a university as possible, particularly because of its situation in the Pacific; but the difference, I think, is on the method of accomplishing that result. As I said on Saturday, dealing with the board of education, many of the delegates had mentioned the role that the legislature should play in the government in the new State of Hawaii and those delegates who earlier in the session wanted to leave much of the powers with the legislature now are taking a different tone. They are playing a different tune entirely. I'm wondering whether or not all of this is not legislative. Now if the university was not able to borrow in accordance with this explanation which was just handed us under the authority of Act 141, was it because of a defect in that act?

Isn't it better for these people who want to have such a university to put their problems before the university -- before the legislature and accomplish that purpose? I'm wondering whether or not all of these questions that have been raised are not questions that can be easily and readily handled by the university. If not, is it because they are afraid, again, I say, of the legislature? Really, shouldn't these problems be handled by the legislature? Are we to

sit here in this Convention writing a Constitution and say which one of the branches or agencies of the government shall or shall not have title to certain lands or personal property? Aren't we going into details that should be left to the legislature?

I want to call attention to the Convention that two or three years ago under the master plan for the Island of Oahu, certain lands near St. Louis Heights and adjoining, I think, certain lands of the university now held by them in trust were set aside for park purposes for the community in that area. The City and County condemned the land, and the university, through the Territory, took the case to court. Now is it a case of wanting to say that the university shall be free and independent of all other agencies of government so that it is untouchable, not even by the legislature, because you are going to detail its powers, its holdings and everything else? Now, if that is the purpose, let us be frank about it. If you want to create an agency which is entirely free of the legislature, then why don't we say so? I think that many, many things that are coming up in the next few days will be matters of legislative concern only.

PORTEUS: To those of us who have attended the university and have its interest at heart, we have been supporting the university for many years, not only in the legislature, but out of the legislature. We are concerned with putting this university on the same standing as other land grant universities on the mainland. The regents of the university and those that have gone to that school have the feeling that as other land grant colleges have been established, universities, so should this one be put on the same basis. The mainland universities in land grant areas, such as this university is, have provisions whereby they hold title to land.

The questions that were raised with respect to the fee simple title were in large part raised on Saturday and the days earlier by people who wished to support the university in its legitimate aims and ambitions. We raised questions as to whether legal title meant the power to borrow money. Was that power to borrow in anyways limited? If we intended to limit the Territory of Hawaii, why should we give unrestricted power of borrowing to one of its agencies? Was it the intent to have this agency or this university subject to no control by any other branch of the government? We also raised the question if they could borrow money, was it borrowing from government sources or from private sources as well? If it was from both public and private sources, what of the capacity to place liens on the various projects? Would those liens extend only to the projects which would be self-liquidating or would they extend to all the lands and assets of the university? Those questions were the ones that were posed. Those are the questions to which we wish to be able to give people a direct and flat answer, a "yes" and "no" answer to a direct question. This amendment presented this morning answers those questions.

It is clear from the distribution of the little write-up entitled, "The University and land ownership," that there is no intent to put the university superior to all branches of government. The university, of necessity, will need to come to the legislature and get its appropriations as any other department of the government will be. It will however, like other state universities, possess title to its land, which will enable it to be on the same status as other universities on the coast. It will be able to approach the Federal Government for the purpose of borrowing money at low interest rates, under authority as may be passed by legislation of our State legislature.

There is no desire to put them all out in compartments by themselves where no one can reach it at all. In fact, I believe Delegate Fong's question with respect to the purchase of the land was a question directed to the record only to amplify this record of the Committee of the Whole to indicate that if the university were to obtain money from private sources given to the university for the purposes of acquiring land, that the university could legitimately expend that money for the purpose for which the money had been given. But that if it were public money, the university would not have the right to go out and, with no restraint on its discretion, buy such lands as it might determine it wished to purchase; but rather any public moneys would be expended under limitations established by legislative act. Now that, as I understand it, is the answer that the delegate from the fifth district and a strong supporter of the university wanted in the record, and I wanted that in the record, too.

I think that the language as has been suggested in the amendment puts the university on a better status but does not remove it from control; does permit it to have the power to borrow money, but it will be subject to legislative restraint

HEEN: It seems to me that the regents are concerned about the matter of being able to borrow money for the purpose of erecting dormitories on some piece of land. Now, why not do this. Instead of giving the University of Hawaii title to personal property and real property, why not provide that the legislature may vest title in real property for the purposes prescribed by it. So that if they need to borrow any money upon a mortgage of some real property, give the legislature the power to do that very thing. Vest the title in the University of Hawaii for the purpose of erecting their own dormitories and authorizing the university to secure a loan, secured by such real property. All the rest of the property as set aside for the university, the title should remain in the Territory and not in the university. The title to all personal property should remain in the Territory and not transferred to the university.

Now, with reference to the statute relating to the disposition of personal property, it says this: "No personal property belonging to the Territory shall be sold, exchanged or otherwise disposed of except in accordance with the provisions of this chapter." Then it describes the procedure by which property may be exchanged, sold or destroyed. Now all personal property belonging to the University of Hawaii should be treated the same way that other personal property in the hands of other departments are treated.

So it seems to me that the title to all property, personal or real, shall remain in the Territory of Hawaii. Give the legislature the power to vest title in some particular real property in the University of Hawaii with authorization on the part of the university to borrow money upon that real property.

CHAIRMAN: All those in favor of the amendment - -

FONG: Delegate Bryan asked a question in which - - whether there would be a possibility of reverter. Is that right, Mr. Bryan? And it was answered by Delegate Tavares that the university - - that the legislature could do that. Now, as I understand, upon the ratification of this Constitution, this clause will be self executing. The clause, the motion made by Delegate Anthony, that "the university is hereby constituted a body corporate and all real and personal property now or hereafter set aside," now as I understand it, upon the ratification of the Constitution this clause will be self executing and there will be no possibility of reverter unless we take care of it here. Now, if we wish to give the legislature the right to write into the conveyance the possibility of a reverter there, we should strike out the word, "hereafter held" - - I mean, "now held."

ANTHONY: Mr. Chairman, may I answer that question specifically? There are a number of ways that that situation could be taken care of. We, of course, don't have before us in this Convention the several executive orders setting aside territorial lands to the university. I gather the way to handle this thing would be for the executive to make up a schedule of lands before the Constitution actually goes into effect,

and then do what the executive will have to do with any number of executive orders, rearrange those things. In other words, take those executive orders and put what conditions there need be put in the executive orders, so that if any particular land should - - they would want to put any strings to it, they could put the strings to it, right in the executive order, before the Constitution goes into effect.

I'd like to answer Delegate Heen's statement in regard to the disposal statute. Obviously, the university would have to comply with the disposal statute, and any property that it administered has to be administered in accordance with law. That means disposal in accordance with law. It couldn't go ahead and ignore the disposal statutes. I think the amendment as proposed is all right.

H. RICE: I want to wholeheartedly support the amendment. You can leave certain things to the legislature but sometimes the university has gone through on - - skimmed through on pretty thin ice. I remember one time when the president of the university came to me and asked me whether you wanted to have a University of Podunk or the University of Hawaii. That's the way they were heading. I think that we've got to be fair to the university, and I think that they have vision of - - better vision of what they are supposed to do at the university than the average legislator has. Fortunately, they were cared for, but I had the president talk to the Ways and Means Committee the same way he talked to me when I was president of the Senate. I told him, "You go down there and tell them that you are going to be the University of Podunk if things don't go better than they're going now." And they did. This is far-reaching.

The subject of this chemistry building, that's been a must at the university for a long time. Delegate Ashford showed me where we are going to be more and more in the control of chemical matter so far as land is concerned. They are going to inoculate the soil with nitrogen.

HEEN: I was just going to say this, in reference to the problem of personal property. As I stated, the statute says that "No personal property belonging to the Territory." When you say, "belonging to the Territory," that means the title is in the Territory; and here you say that the title is in the university. Where is the title, in the university or in the Territory of Hawaii?

TAVARES: Mr. Chairman, may I answer that? The title is in the university, but under the words, "to be administered in accordance with law," the legislature can amend this statute or pass another law saying that the university shall not dispose of personal property except in a certain way. I see no danger in that.

HEEN: That's correct, if the Territory will expand the statute relating to territorial personal property. That's correct. It can be taken care of that way. But as I said before, the Territory - - I mean, the University of Hawaii should not have title to all of the real property set aside to it or to the personal property. All that they want as I understand is this, they want to hold title to some real property for certain purposes. Why not, then, let the legislature have that authority, to vest title in that real property. Here is the amendment that I would suggest. "The legislature is authorized to vest in the University of Hawaii title to real property for such purpose as it may prescribe."

NIELSEN: I'll second that motion.

ANTHONY: The trouble with that is that the legislature may never get around to doing it. Now the question is whether or not we want to make this university on a parity with the great state universities of this country. It's a land grant college without any land. Are you going to sit here and write into this Constitution a perpetuation of that situation? I think not. I think you want this university to be as good as any other state university and the way to do it is to put it on the basis with other state universities. The object of - - the objection as to the personal property can be readily taken care of by any statute. "Administered by law," in my judgment, already takes care of it. But if that's not enough, then legislation can be added to the disposal statute. That takes care of the personal thing.

Now, as to the land that is actually now set aside, if anybody thinks too much has been set aside, or there should be some string to that which has been, the time to do it is when the executive reviews all the executive orders and put it right in those executive orders.

CHAIRMAN: Are you ready for the question?

SAKAKIHARA: The amendments offered without - -

[Microphone did not work.]

PORTEUS: I'd like to invite the representative from the - - delegate from the first district to use my mike, provided, however, he is going to support an extension where I'd like to have support.

SAKAKIHARA: The amendment proposed by Delegate Anthony in my mind is a very serious amendment. I have served in the legislature for many sessions and it contains merit. The University of Hawaii is entitled to land grant matters and yet it is not a land grant university. The legislature holds strings to the university. On the other hand, I do subscribe to the argument advanced here by Senator Heen. He has offered another amendment to the amendment.

CHAIRMAN: There is no amendment, Delegate Sakakihara. It was merely a suggestion.

SAKAKIHARA: No, no. Senator Heen made a motion and seconded by Delegate Nielsen.

CHAIRMAN: The Chair didn't think it was a motion, Delegate Sakakihara.

SAKAKIHARA: All right. In that case I believe that in all fairness to the 63 or 62 delegates present here this morning that the amendment offered by Delegate Anthony be printed before we act on the amendment. In my opinion, it's a very serious amendment to the committee proposal; and I for one would like to have a printed amendment so that we could go over the amendment very carefully. I move at this time that we take a short recess to have the amendment printed.

NIELSEN: I'll second that motion. And can we have Miss Rhoda Lewis over here to go into this?

CHAIRMAN: It has been moved and seconded that we take a short recess. All those in favor say "aye." Contrary minded. Motion is carried.

(RECESS)

CHAIRMAN: Will the Committee of the Whole please come to order.

HEEN: I have had prepared an amendment to the last sentence and that amendment, I believe, is on the desk of all the delegates at the present time. The amendment is - - rather, reads:

> The University of Hawaii is hereby constituted a body corporate. The legislature is authorized to vest in the University of Hawaii title to real property for such purpose and with such power as it may prescribe.

LARSEN: I would like to speak against this amendment.

CHAIRMAN: The motion has not yet been put, Delegate Larsen. There is no motion yet.

HEEN: I move that as an amendment.

SAKAKIHARA: I'll second it.

CHAIRMAN: It's been moved and seconded that we adopt Senator Heen's amendment to Delegate Anthony's amendment.

LARSEN: The thing, it seems to me, that we're arguing here is, shall we have faith in the men of the university so as to allow them to go ahead and develop a magnificent university of the state as has been developed in many other states? It seems to me this amendment goes right back to the fact where all the legislatures have been hamstrung. It is not with the men perhaps that we have here from our legislature, but the possibility that men who have not such good will might be in there and then they would hamstring it. It seems to me that if we accept and believe in the good will of university men, which I think has been shown rather generally throughout the country we can depend on, then I believe we should vote for the one that Anthony first proposed.

KING: I'd like to speak in opposition to the amendment offered by Delegate Heen. It seems to me that the previous suggestion safeguards the State and its interests and grants sufficient power and authority over the University of Hawaii as a body corporate because it reads, "shall hereby constitute the body corporate, have title to all of the real and personal property now or hereafter set aside or conveyed to it, which shall be held in public trust for its purposes and administered in accordance with law." That gives the legislature ample supervisory power over the new corporation. The other amendment, the one offered by Senator Heen, would make the university dependent on the legislature conveying to it certain property which may take some time to do.

Now, I was up at the university the other day and have realized that it's grown into a tremendous plant and it will be more important in our life, cultural and academic, as time goes on. We should not hamper the authority of the board of regents in the administration of this university to fill the great purpose for which it was designed and which it is beginning to fill more and more every day. So I would speak in opposition to the amendment to the amendment.

ANTHONY: The only reason advanced for the proposed amendment now before the assembly is that it may include some lands which the university might not want to hypothecate. That objection can be readily met by a change in an executive order prior to the effective date of this Constitution. The word "now" in the proposed amendment offered by myself refers to the date of the effective date of the Constitution. So if there is any land presently assigned to the university which it does not require to have the title to, then an appropriate amendment can be made to the executive order.

This particular amendment offered by Judge Heen will put the university in the same morass that it's in at the present time; namely, it will put it in an inferior status to other state universities and I am against that. The university is supposed to be the cultural and intellectual center of this state and anything we can do to encourage that should be done right here and now. We shouldn't make them come with their caps in their hands to the legislature every time they want to turn around.

KAUHANE: I think much emphasis has been made here that the legislature has not made an honest attempt to help the university out in its purposes. If we looked at Act 141, the 1947 Session, we find that the legislature has been very liberal with the University of Hawaii, liberal to the extent that they can borrow money for housing units under the authorization of the adoption of a resolution by the board of regents. We also find that the legislature has been very lenient with the university, when we write in the statute, Section 1945, "The board shall have the authority to sue in its official name." Here we have a proposal that takes away the right of the board to sue for some obligation that the board may feel just in collecting some money.

The only question, I think, that is in the minds of those who are attempting to have this Convention adopt this amendment is because of the fact that the university has not received the right of mortgaging the property. Certainly, I think the amendment offered by Judge Heen shows clearly that the legislature has never attempted to hamstring the university in its purposes, and that the legislature has done all it can to grant the university all requests that they have made to the legislature, in relation to its purposes as set forth.

I move the previous question on the adoption of the amendment offered by Senator Heen.

GILLILAND: I am entirely in accord with the statement made by the delegate from the fourth district, Mr. Garner Anthony. I think the University of Hawaii should be given the opportunity to expand. We shouldn't be thinking pennies when it comes to giving the university a chance to really educate our youth in the territory. We want to be proud of our people, our children. In the - - Back in the old days when an education or college education wasn't appreciated, we didn't send all our children to a university at all. It was only growing then. But now if we want to advance, we shouldn't stop letting it advance. I'm in favor of Mr. Anthony's amendment and against Judge Heen's amendment.

CHAIRMAN: Are there any other delegates that wish to speak on this question before the Chair calls on the movant?

ROBERTS: I haven't spoken on the question, Mr. Chairman. I'd like to express my views. I'd like to speak in opposition to the amendment which was proposed to the previous amendment offered by Mr. Anthony, Delegate Anthony. I think we are forgetting one very important problem in our discussion and that is the basic function of the university in our community. I think that we've got to recognize that the university is not only a cultural and intellectual center. The university serves as a basis for the advancement and development, economically and agriculturally, of the entire community. Our future in the territory in large part rests on the kind of citizens that we develop, the kind of educational opportunities we afford and the kind of training that we give these individuals when they go out into the community. It seems to me that anything which will develop and help the university, helps and develops the community. It's not a question of individuals. It's a question of an institution and the function it plays in our society. Therefore, it seems to me that it is extremely important that the delegates view the problem in terms of the future of the State of Hawaii, and the training which they have to receive, and the university affords through its various avenues.

We do not know in the future what grants-in-aid the federal government is going to provide, what type of laws are going to be passed, what kinds of funds are going to be made available, which we could avail ourselves of. Putting the university on the same footing as other land grant colleges, on a technical basis, it seems to me would provide the opportunity in the future to permit us to develop at least as well as the mainland universities. It seems to me that our problem here is a little more serious and, therefore, the university ought to be given every opportunity to develop for the benefit of the entire community, because the university does not exist apart from the community. They train the individuals for that basic purpose.

I therefore hope the delegates will vote against the amendment.

HOLROYDE: I'd like to second the motion for the previous question.

CHAIRMAN: The Chair would like to give the movant a closing opportunity. Delegate Heen.

HEEN: Those who are speaking in favor of the amendment offered by Delegate Anthony are using that to oppose the amendment offered by myself. Look at the amendment offered by Delegate Anthony. There is nothing in that amendment which authorizes the University of Hawaii to sell those lands or to mortgage those lands, and they cannot expand the University of Hawaii except by legislation on the part of the legislature, whereby the legislature may appropriate money for the expansion of the university or perhaps whereby the legislature may authorize the university to mortgage some of their lands in order to secure sufficient funds for improvements. There is nothing there whereby, as I said, the university itself can automatically expand the University of Hawaii without the aid of the legislature. So when they talk about these land grant universities, I believe those were grants whereby these universities could sell and mortgage those lands and use the proceeds for the establishment and the expansion of the universities.

Now, what I have in mind is this: that the title, the legal title to all territorial land should remain in the Territory and if legal title is to be transferred to any department of government, let the legislature do that.

You take the board of forestry. They control perhaps a million acres of land for water resource purposes and they don't have the legal title to the land. It's been set aside to be used for water resource purposes, and placed in the control and possession of the board of forestry. Take the lands that are under the control of the superintendent of public works. He doesn't have the title to the land. The title still remains in the Territory. Same with other departments of government. So I say this, that this amendment proposed by Delegate Anthony does not give the university the absolute right or any right at all to sell any land or mortgage any land unless authorized by the legislature.

A. TRASK: Will the gentleman yield to a question? Is the title to the land in the board of water supply of Honolulu, in the name of the board as distinguised from being title in the name of the City and County or of the Territory of Hawaii?

HEEN: I don't know exactly where the title is, but it's somewhere and it's being used for the benefit of the people of the City and County of Honolulu.

OHRT: The title is in the City and County of Honolulu.

TAVARES: We should insist on the previous question, I think.

CHAIRMAN: Delegate Holroyde is now recognized.

HOLROYDE: I second that motion for previous question.

CHAIRMAN: The previous question has been moved. Question is shall the main question now be put? All those in favor say "aye." Contrary minded. Carried.

The question is shall we adopt Delegate Heen's proposed amendment to Delegate Anthony's amendment? All those in favor say "aye." Contrary minded. Amendment is lost.

Question before the committee now is, shall we adopt Delegate Anthony's proposed amendment to Section 5, second sentence of Section 5?

ANTHONY: I so move.

CHAIRMAN: It's already been moved and seconded, Delegate Anthony. All those in favor of the amendment say "aye." Contrary minded. Amendment is carried.

LOPER: I now move that we tentatively agree to Section 5 as amended.

HOLROYDE: I second the motion.

CHAIRMAN: It's been moved and seconded that Section 5 be tentatively approved.

SHIMAMURA: Before that question is put, I think the record should be clear as to the meaning of the word "now" on the third line of the amended clause, "property now or hereafter set aside." I think Delegate Anthony several times referred to that word as meaning "on the effective date of the Constitution," but it's obviously subject to several different constructions and when the Committee of the Whole makes a report, it should be made clear that "now" means the effective date of the Constitution and not any other date.

CHAIRMAN: Ready for the question? All those in favor -- The question is, shall Section 5 as amended be adopted? All those in favor say "aye." Contrary minded. Section 5 is tentatively approved.

LOPER: If it is in order now, I would move that we adopt the Committee Proposal No. 11, as amended.

LARSEN: Second the motion.

CHAIRMAN: It's been moved and seconded that Committee Proposal No. 11, as amended, be adopted.

KAUHANE: I rise to a point of order. There is an amendment to Proposal No. 11 on the Clerk's desk which was submitted Saturday.

PHILLIPS: I prepared the amendment to Proposal No. 11, which is an amendment to add another section to Proposal No. 11.

CHAIRMAN: Delegate Kauhane, is that the amendment you are referring to?

KAUHANE: Yes, this and another one that I submitted myself to the Clerk. I yield the floor --

CHAIRMAN: We shall first take up Delegate Kauhane's amendment. Delegate Kauhane. There is nothing before the committee at the present time except the adoption of Proposal No. 11, as amended.

KAUHANE: I'd like the Clerk to read the amendment that I offered whereby I request that a new section be added to Proposal No. 11.

CHAIRMAN: Kindly read it.

CLERK: That Committee Proposal No. 11 be amended by adding thereto the following section:

> Section _____ . The State shall provide and adopt a uniform series of basic textbooks for use in the e public schools throughout the state. That such textbooks be furnished and distributed by the State free of cost and any charge whatever to children attending the public schools of the state.

CHAIRMAN: Delegate Kauhane. Hearing no second, the Chair recognizes Delegate Phillips.

PHILLIPS: I have on the Clerk's desk an additional section to amend Proposal No. 11.

CHAIRMAN: Will you kindly read the amendment? Delegate Phillips, will you kindly read your amendment?

PHILLIPS:

> There shall be no law denying or abridging the teaching of any language, the establishment of private schools for such purpose, or unreasonable interference with their administration, curriculum or methods insofar as their endeavor does not in any manner teach or advocate the overthrow of the government of the United States.

I'd like to speak in support of this amendment.

CHAIRMAN: Delegate Phillips, there is no motion. There is nothing before the committee.

PHILLIPS: I move that this be adopted by the Convention.

SAKAKIHARA: To enable the delegate to talk on this amendment, I'll second the amendment.

CHAIRMAN: It's been moved and seconded that Delegate Phillips' amendment be adopted.

PHILLIPS: The chief reason why I have submitted this amendment is that I had the good fortune of seeing the language teams that functioned in the last war in the South Pacific and it is my firm belief that without the language that had been taught in the language schools before the war that there would not have been available to the national government this very valuable intelligence function. Those men performed well down there; their song is unsung. They have done a fine job.

I might say that while they were down there, those same language schools that taught them and made them available to both the state and the nation, the legislature passed a law that closed all those language schools up. Nothing was done about it at the time, but when the war was over, litigation was initiated—not carried through, but initiated—costing in the neighborhood of $25,000. This litigation is one of the chief reasons why I would like to see such a section be in this particular article. It is hard -- it is difficult on people to have to initiate legislation and start legislation against an act which is prima facie unconstitutional. It is common knowledge that when the legislature passed this bill it was unconstitutional at that time. There had been other Supreme Court decisions handed down showing that it was an abridgment of the civil rights of the individual to do so.

I might also say that there are some who feel that this is covered in the civil rights or in the Bill of Rights. This, I feel, is not true or if it is true, it would not have happened during the war, I mean the legislature would not have passed such a bill during the war. This litigation works a great onus on the individual who has to prove that something is unconstitutional just because of the stress and strain of a period.

I would say now that this language has proven to be a great asset to the nation and especially to the state. It is one of Hawaii's assets. They are not -- I'm not only referring to any particular language, I am referring to all the languages. We do not know what the future holds. We only know that during the stress and strain of war, there are people who—under duress, due to prejudice, due to various other of their own reasons, they are either grinding axes or what it might be, but in any event, they aren't thinking—will cause prejudice to become rife, thereby cutting out some of the basic rights which are assured us in the national Constitution.

I would say, then, that if the Convention -- if anyone in the Convention might feel that this is redundant and not pertinent at the time, that education, especially this particular asset to Hawaii, is just as valuable as any one of the other welfare proposals which have been placed before the Convention and been accepted. I thereby beg the Convention to consider this particular amendment and agree to place it in our Constitution.

KAWAKAMI: According to the old Chinese philosopher, Confucius, he say that you can say lots but not say anything at all. I think this provision is not necessary in our Constitution. In the past, two groups, namely the Japanese and the Chinese, brought up the test case on the constitutionality of this provision and decisions rendered were in their favor. Therefore, I feel that it's not necessary for us to incorporate such a section in our State Constitution.

CHAIRMAN: The Chair would like to correct the delegate from Kauai that the question was not decided on the merits.

ANTHONY: I think, in the first place, this should be rejected. Most of it is statutory.

Turning to the constitutional issue, the challenge that the language schools would make to the establishment of any law regulating a language school would be either under the Fourteenth Amendment or under the First Amendment, freedom of speech. In the early case, *Meyer vs. Nebraska,* Nebraska endeavored to outlaw German, and that was upheld in the Supreme Court. Later, we had a case following World War I, *Farrington vs. Tokushige,* which was a pretty rough piece of legislation. That ultimately went to the Supreme Court and that statute was declared invalid. The latest legislation which has been carefully drafted in an effort to require the learning of the English language before a person attends a language school, has never been decided, as the chairman has accurately stated, on the merits. It went to the Supreme Court and it was dismissed.

Now the reason I am against this is that I'm in favor of leaving to legislation as much as we can leave to legislation. If it is in the public interest to regulate the attendance at language schools, then the legislature should be free to do so within the limits of the Federal Constitution, and if we leave it out, we will have just that situation. We'll have all the guarantees of the Bill of Rights plus guarantees of the Federal Constitution. Therefore, I would vote against this amendment.

BRYAN: I'd like to speak against the incorporation of this provision in the Constitution, not because I am not in sympathy with the thoughts expressed by the movant, but because I have had some experience in this line myself. I think that it would prevent the legislature from passing necessary regulations in the public interest.

The movant mentioned public welfare or general welfare provisions in the Constitution. I think one of the laws on the books now is a limitation on the number of hours per week that can be spent in such institutions and I think that that's looking after the health and welfare of children in the territory. I think there are many other reasons why this thing should be left to the legislature, although I am in sympathy with the reasons for his asking that it be included in the Constitution.

CHAIRMAN: If there is no one else that would like to speak for or against, I'll call on Delegate Phillips.

PHILLIPS: I'd like to answer the delegate from the fourth district's contention that it isn't necessary because it's statutory material. I'd like to say this, that it's been my experience in this Convention and especially in regard to the welfare clause, of which the education provision which we are right in the middle of now, is an example of statutory material being poured into the Constitution. There are other examples of where they have choice pieces of sightliness and other articles, such as health, and mental incapacity have also been poured into it.

Now, I would say this, that where this has an effect or will have an effect on in excess of 200,000 people living here in the Territory, insuring them of their right; insuring them not only of their rights, but insuring them against litigation and the spending of vast sums of money in order to prove something which was unconstitutional and passed by the legislature -- would be passed and then cause them to go through all this furor. An example of that was in this last case where the Chinese groups spent $25,000 in litigation -- initiating litigation. In the interim, the legislature realized that the law was unconstitutional after it had been on the books for three or four years and then they took it off and it wasn't necessary to press the indictment.

Now I think that on the one hand, this is statutory material. I agree with that one hundred percent. But by the same token, every other article in this educational provision is statutory material and every article and everything that has to -- pertains to the generic term, "general welfare." Just as the federal government saw fit to cover it in seven words, there is no necessity to having these others in here. This is an important piece of legislation and I'd like very much to see it in.

CHAIRMAN: The question is, shall we adopt Delegate Phillips' amendment?

SHIMAMURA: May I ask the proposer of this amendment if he would consent to the following amendment. On line four, on the last line, rather, after the word "through" insert the words, "by force or violence"; and after the word "government of" - - no, pardon me, after the word "United States," the words, "or of this State."

PHILLIPS: May I answer that? I accept that amendment.

CHAIRMAN: Is there a second to that?

NIELSEN: I think that it'd be better to put a clause in the Constitution where we urge that the Russian language be studied in the schools rather than an amendment like this. I don't see where this belongs in the Constitution.

CHAIRMAN: Question is shall Delegate Phillips' proposed amendment as amended be adopted? All those in favor say "aye." Contrary minded. Amendment is lost.

Question now before the floor is shall Committee Proposal No. 11, as amended, be adopted?

OKINO: Before we vote on that motion, I should like to direct the attention of the committee to the expression, "appointed by the Governor by and with the consent of the Senate," appearing in Section 2 and Section 4 of this proposed article.

The proposal for the establishment of the judiciary, which we have already considered, provides for the appointment of justices by the Governor "by and with the advice and consent of the Senate." There is a difference. In the United States Constitution, the expression covering this matter is expressed as follows: "He"– meaning the President–"shall nominate, and by and with the advice and consent of the Senate, shall appoint." This expression which appears in the Constitution of the United States is also set forth in our Organic Act in Section 80. Now, I have been wondering if all these expressions mean the same thing, so that there is no difference in substance, so that this matter is simply a matter of form and style. If all these expressions mean the same thing, I think it would be for the benefit of the Style Committee to know it so that a uniform expression covering this matter may be followed by the Style Committee.

PORTEUS: I agree with the delegate from the island of Hawaii that it is a matter of style.

CHAIRMAN: The question is shall we adopt Committee Proposal No. 11, as amended? All those in favor signify by saying "aye." Contrary minded. Motion is carried.

LOPER: I now move that the Committee of the Whole adopt Standing Committee Report No. 52, with the exception of the last sentence which recommends the adoption of Proposal No. 11, because Proposal No. 11 has been amended and that is not reflected in the language. The motion, then, is to adopt Standing Committee Report No. 52, except for the last recommendation.

PORTEUS: Would the delegate add to his motion, "and that the proposal, as amended, be adopted."

LOPER: Yes, that is correct. "And that Proposal No. 11, as amended, be adopted."

PORTEUS: I think that's the sense of the meeting but would it not be correct for us to adopt that as the sense of the Committee of the Whole, but the motion be to rise, report progress and ask leave to sit again in order that the chairman may be able to submit his report?

LOPER: In that event I withdraw my motion.

PORTEUS: I move that the "Debating Society" rise, report progress and ask leave to sit again.

CHAIRMAN: It's been moved and seconded that this committee rise and report progress and ask leave to sit again. All those in favor - - President King.

KING: With the understanding that the chairman will submit a written - - chairman of the Committee of the Whole will submit a written report of the committee as a whole, when the committee sits again. Is that the understanding?

CHAIRMAN: That is correct.

NIELSEN: A point of order. I didn't know this is a debating society. That is the way the motion read.

PORTEUS: I don't know where you've been, I might say. I think the Chairman correctly stated the intent of the motion.

CHAIRMAN: All those in favor say "aye." Contrary minded. Motion is carried.

JUNE 24, 1950 • Morning Session

CHAIRMAN: The Committee of the Whole please come to order. The Committee of the Whole has for consideration Committee of the Whole Report No. 10 recommending the passage of Committee Proposal No. 11 as amended and adoption of Committee Report No. 52.

LOPER: I move for the adoption of Committee of the Whole Report No. 10 on education.

DELEGATE: I second the motion.

CHAIRMAN: It's been moved and seconded the Committee of the Whole Report No. 10 be adopted. Ready for the question?

NIELSEN: In the powers of the board of regents I thought there was a different wording regarding the title of all real and personal property. Wasn't there a change in that? Would title be fee simple?

CHAIRMAN: I don't get the import of the delegate's question.

NIELSEN: On page six under, about the sixth or eighth line, "The University of Hawaii is hereby constituted a body corporate and shall have title to all of the real and personal property." Has that been changed?

CHAIRMAN: It formerly read "title in fee simple," but that has been changed and the amendment is as shown on the Committee of the Whole report on page six.

NIELSEN: Well, I just wondered if by having title, it is supposed to be held in public trust; but if they have title to it, the last part of that paragraph still applies? That they can only hold it in public trust?

CHAIRMAN: The Chair feels that it does. All those in favor of the adoption of Committee of the Whole Report No. 10, please say "aye." Contrary minded. Motion is carried.

LOPER: I move that the Committee of the Whole rise and report the adoption of the Committee of the Whole Report No. 10.

DELEGATE: I second the motion.

CHAIRMAN: Ready for the question? All those in favor say "aye." Contrary minded. Carried.

Debates in Committee of the Whole on

AGRICULTURE, CONSERVATION AND LAND

(Article X)

Chairman: NILS P. LARSEN

JUNE 21, 1950 • Morning Session

CHAIRMAN: Will the meeting kindly come to order. In my youth I was graduated from the Massachusetts Agricultural College, so you see why I'm here as chairman. I'd like to call on the committee chairman to open the discussion of Committee Report, [i. e. Committee Proposal] No. 27.

RICHARDS: I am not prepared to give a long speech recommending the adoption of this committee report. Prior to going into the discussion, I would like to give this Convention a few of the highlights of what the committee has gone into. The committee had a total of 16 proposals submitted to it and one resolution. It also received nine letters covering the subject. Twenty-one citizens and five delegates also appeared before the committee to support some of the particular proposals in which they were interested or which they differed with. We also had, in addition to the attorney members of the Convention, the assistance of Miss Rhoda Lewis, assistant attorney general, who gave us a great deal of advice. We had 25 committee meetings and they lasted for two hours or longer. In fact three of them were evening committee meetings and they lasted for considerably longer than two hours.

I would like to suggest that we follow the pattern that has been adopted previously in this Convention and take up the proposal paragraph by paragraph in their respective sections. I am assuming that the members of this Convention have read their committee report. If they have not and sufficient of them wish the chairman of this committee to read the report, I would be very glad to read the report, but otherwise I will assume that they have read the committee report. I would therefore like to suggest that there be a motion to consider Section No. 1 of the committee proposal.

CROSSLEY: I move at this time that we tentatively adopt Section 1 of Committee Proposal No. 27.

APOLIONA: I second that motion.

CHAIRMAN: Motion made and seconded on Section 1. While you are thinking of possible checks, shall I just read it? "The legislature shall promote the conservation, development and utilization of agricultural, mineral, forest, land, water, fish, game and other natural resources."

RICHARDS: May I speak on that for a moment? We feel - - the committee feels that this is a general statement of principles and should be incorporated in the Constitution, as it is a matter of philosophy which applies to all the natural assets of the territory. I would like to have it noted that there is no restriction to just state-owned lands or state-owned assets. That is the idea of the committee that for the public good this general principle should apply to all natural resources of the territory.

HEEN: I would like to ask the chairman of the Committee on Agriculture as to why we left out animals. He said, "mineral, forest, water, land, fish, game and other natural resources." Animals ought to be included there, domestic animals. You speak of wild game there. I take that to mean wild deer, wild goats or wild birds. You left out a very important item there of animals.

RICHARDS: In answer to that question, the committee felt that agricultural - - the term "agricultural" also included all of these bovines, and the pigs and chickens and the rest of it were also taken care of in that particular point. If we had wished to go to the extent of using Latin terms we should have referred to "piscis" instead of fish.

CHAIRMAN: Is that agreeable, Senator Heen?

HEEN: I move an amendment. I move that the words "of agricultural" - - no, that the words "agricultural, mineral, forest, water, land, fish, game and other" be deleted, and insert in lieu of those words the word "all," "of all," so that that section will read: "The legislature shall promote the conservation, development and utilization of all natural resources." And add at the end of that sentence, "of the State."

ANTHONY: Second the motion.

CHAIRMAN: Does the chairman want to explain why they spelled it out?

RICHARDS: There is some question in our minds as to when we refer to a fish, not knowing what the boundaries of the State are, that unless we mention the word "fish" we are somewhat uncertain. As far as natural resources the chairman, without speaking for the committee, can agree that possibly there could be some shortening of that particular paragraph. But we do feel that fish, without knowing the boundaries of the State, is something that we are interested in even if we have to go over to Japan to get those fish. The vice-chairman has something to say on that point.

BRYAN: When the question came up of adding the words "of the State" at the end of that section, some of the members wondered what the boundaries of the State would be and whether, if that was in there, it would be possible for the legislature to provide funds for exploration of fishing, deep-sea fishing possibilities. For that reason the words, "of the State," were left out so that funds could be appropriated to investigate deep-sea fishing outside of the three mile limit.

ASHFORD: I think there was another reason for leaving out the words, "of the State," and that was that there is some question in putting in "of the State," whether that referred to natural resources within the State or owned by the State. The purpose of the committee was certainly not to restrict the promotion of conservation and development only to State-owned resources.

RICHARDS: I wish to also reiterate what the delegate from Molokai has stated. That point was definitely brought up in the discussion in the committee.

CHAIRMAN: Any other discussion?

KAWAHARA: May I ask a question of the committee as to why the word "legislature" was used at the beginning instead of probably the words, "The State shall promote." I notice in all the sections - - the various sections you have "The legislature shall promote"; Section 2, "legislature shall promote." Is there any particular reason why you use the term "legislature" instead of "The State shall promote"?

ASHFORD: May I answer that? It is our opinion that the correct expression is the legislature and not the State. We are following the very excellent example of the Constitution of the United States which requires that the Congress shall promote.

CHAIRMAN: Could we leave discussions like that perhaps to Style Committee? Would that be agreeable?

RICHARDS: I don't think it is a matter for the Style Committee. When you refer to the State, you have all components of the government of the State. Now in this particular section we felt that it was a legislative matter. This committee feels that much that we have proposed tonight is for the matter of the legislature and therefore we feel the legislature has the power to promote these various things.

CHAIRMAN: Any other discussion?

SHIMAMURA: I see no very serious objection to the section as drafted by the committee. As a matter of fact it follows very closely the language of the Model Constitution.

LEE: In determining how to vote on the amendment, I believe the words, "of the State," should be eliminated. On the other hand, the amendment which uses the words, "all natural resources," instead of enumerating the same, the question is whether all of these subjects are natural resources. If they are, then the amendment seems to be well taken except for the words "of the State." Can the chairman answer that point?

RICHARDS: There is some question and that was one reason why it was enumerated. The point is, is a forest necessarily a natural resource? Many of the forests here in this territory, state to be, are planted forests, and there is some question as to whether it might be constituted a natural resource. I believe one of the members of the committee, Mr. Crossley, has something to say on this point.

AKAU: I was going to ask also the question about fish. Don't we have certain fisheries that we really don't have as natural fisheries? We put the fish in there and raise the fish. Now in this interpretation, could you call that a natural resource?

RICHARDS: I think that point is covered in the committee proposals and also in the committee report. We provide for the fact here in Section 3 regarding the rights of the citizens to fish. We also provide in Part 2 of this report, which I perhaps should have amplified on in my preliminary remarks, a part of the Constitution which is put into the so-called schedule of ordinances, yet is still a part of the Constitution, that private fishing rights should be condemned by the State for public purposes.

LEE: I haven't finished or released the floor at this time. Then I am to conclude that it was the concensus of opinion of the committee that there is a distinction between the items mentioned there and the term "natural resources." Was that the feeling -- the opinion of the committee?

RICHARDS: I doubt if that is the opinion of the committee. We wish to enumerate everything in which we could consider that there might be some doubt, and then also put in the additional catch-all to get all the rest of the natural resources.

LEE: Well, when I read the phrase, "and other natural resources," I have the feeling that all of the items previously mentioned are items of natural resources. That is the reason why I raised the point. If it is, then the amendment is proper. If, however, there is a distinction and a possible doubt on the thing, then I say that the possible enumeration would be proper.

CROSSLEY: May I answer that? I'd like to answer Delegate Lee --

CHAIRMAN: All right, fine.

CROSSLEY: -- in speaking to that point, I think Delegate Lee has raised a very good point and I think that there is a feeling in the minds of the majority of the committee at least that these are something over and beyond natural resources. That's the reason that they were spelled out. Now some of these things undoubtedly could be classified as a natural resource, but when you begin to spell out for us fish and game, those are not natural resources in the true sense.

CHAIRMAN: May I ask, are pineapples natural resources?

CROSSLEY: Fortunately not.

LEE: The point that was previously raised also concerning the term, "The legislature" instead of "The State," I remember that I argued that the term, "The legislature," should have been used in the health and welfare section. But the Convention by majority felt that the term, "The State shall promote." Now I'm questioning whether or not that is a matter of substance to be dealt with by this committee or whether it should be left to Style to make it uniform, as far as the entire Constitution is concerned.

CHAIRMAN: Well, the committee chairman here in this case felt it should be "legislature."

ANTHONY: If you will read the language you will find that the items enumerated clearly indicate in the mind of the draftsman that he was enumerating natural resources. Just read it. "Agricultural, mineral, forest, water, land, fish, game and other natural resources." In other words a clear construction of those words is that they are referring to all things which are natural resources. That being so, the amendment should carry, I think. You don't have to enumerate these items but adopt the amendment proposed by the delegate from the fourth so that the section would read: "The legislature shall promote the conservation, development and utilization of all natural resources of the State."

BRYAN: May I answer that question please, or speak to that point? If you are going to assume that the amendment should pass just on the construction of this, or to draw the intent of the committee from this construction, it could well be that the committee felt that none of those were natural resources except game, and the thing would read as it is written now. There was some doubt in the committee's mind whether they were all or some natural resources.

ASHFORD: I just wish to say this, that if that amendment is accepted, it seems to me it would be all right if the report of the Committee of the Whole referred to the fact that the Committee of the Whole considered that the words deleted were within the term "natural resources."

CHAIRMAN: And your interpretation of "natural" would be anything that grows on the land or in the water?

ASHFORD: My interpretation is that all those things enumerated are natural resources, but I think that might be subject to construction; and, therefore, if they are to be deleted, I would like very much to have put in the report the fact that the committee regards them as unnecessary because repetitious.

RICHARDS: I agree heartily with the delegate from Molokai. We have a particular problem that is now being discussed in the papers at great length. That is the matter of transporting deer from the island of Molokai to the island of Hawaii. Now, it is not a natural resource on the island of Hawaii now, and yet if it is transported there as game, should or should it not be considered a natural resource? The point of the committee's report was to make sure that it was all-inclusive. If this Convention -- this committee wishes to make certain that in the committee report it is so stated, that all natural resources will include the items which are going to be deleted, regardless of how they might have

their original start, it is perfectly all right with the committee, or at least with the chairman of the committee, to have these specific items eliminated from this report.

CHAIRMAN: O.K. Any other discussion?

HEEN: That word "natural" might be deleted. "All the resources of the State." Or you might add after that, "natural or otherwise."

RICHARDS: May I answer that? There is some question. Of course, the geologists tell us that there is no chance of finding oil or some other items that are not specifically enumerated here, and yet I would still consider that a possible natural resource as differentiated between pineapple fields.

DELEGATE: The committee - - several members of the committee have given the reasons for not putting the last three words "of the State," in here. The movant of the amendment continues to read the amendment with that in it.

CHAIRMAN: Delegate Heen, do you want to take off those three words, after the discussion? Well, just a question of getting it into one sentence. The question was whether you wanted to leave off "of the State."

HEEN: I'm not taking those three words out. They should be in there. All fish within the three-mile limit would be within the state; when they swim out of the three-mile limit, they are out.

RICHARDS: In answer to the delegate from the fourth district, does he wish to preclude the legislature from appropriating any money to investigate the fishing resources of the whole Pacific area, which could be a supplier of income to the State?

HEEN: That would not prevent any legislation along that line. The legislature - - or the legislative power extends to all rightful subjects of legislation, and this is not a limitation on the power of the legislature. In fact, the whole section should be deleted. Under the legislative powers, the provisions of the legislative powers extend to all rightful subjects of legislation and would take care of all these things.

CROSSLEY: I don't know how the other delegates feel about this, but it seems to me that when a committee meets, week after week, and puts in the time that this committee put, to have a section taken and considered so facetiously—to me it sounded facetious—it's like some of the amendments that went - - one of the amendments that went around here today, to amend the Constitution. There has been an awful lot of work go into this thing. Now, if there is a good reason this should be deleted, let's have a good reason, and not, "I think the whole thing should be deleted. We don't need any of it."

LEE: I don't think that's called for. There should be a little humor now and then. I think we all appreciate it. On the other hand, I feel that we appreciate the work of the committee, but apparently that is the treatment that is being given all committee reports. It is not prejudice to - - only to the Committee on Agriculture.

CASTRO: Point of information. Would the movant state the amendment - - state the manner in which the section would read with the amendments that have been - -

CHAIRMAN: I can read it off. "The legislature shall promote the conservation, development and utilization of all natural resources of the State." Am I correct, Delegate Heen?

HEEN: Yes, Mr. Chairman.

CASTRO: I would like to ask my colleague from the fourth district if he would accept the amendment to delete the word "of" and substitute in lieu therefore the word "within" or "in"?

HEEN: I think that has the same meaning.

CASTRO: I'm thinking now in terms of that second paragraph in Section 2 which discusses the natural resources under the control of a political subdivision.

HEEN: I think that second paragraph in Section 2 is all wrong.

CASTRO: Well, that isn't the point. The point is that I think "within the State" is a broader phrase than "of the State"; "of" indicating control directly by the State, and it is possible some of these natural resources would not be under the direct control "of the State," but would be within the geographical boundaries.

CHAIRMAN: That would preclude deep-sea fishing.

CASTRO: We have no jurisdiction over anything outside of the State boundaries, so we are begging the question if we discuss anything outside.

RICHARDS: I beg to differ with the last speaker of the fourth district. The point involved is whether we are permitted as a State to promote fishing outside of the particular three-mile limit. If anyone in this Convention did attend the committee meeting at which we had representatives of the fishing industry; aside from bait, there is nothing within the three-mile limit that is of any commercial value at all. Now, if we are to promote the fishing industry of the State of Hawaii, we should permit the legislature—I don't say this thing mandates the legislature, it merely permits the legislature—to appropriate funds when, as and if they see fit to investigate fishing possibilities in the Pacific Ocean close enough to the State of Hawaii so that they can be of economic value.

PORTEUS: I don't think that this section is the sole source of legislative power. It certainly had better not be. The words "all rightful subjects of legislation" are so broad that it would let us cover almost every purpose for which legislation may be rightfully written. Here, however, like with other sections of the Constitution, there is a desire on the part of many to point out that agriculture plays a large part in the life of the Territory, and as with health, some recognition should be given to that in the Constitution.

I believe that the legislature, after this Constitution is written, can, as I believe it has done in the past, provide money to assist in research with respect to fish. That research and the people that are hired do not - - the research is not confined to Hawaii nor the attention of the people confined purely to the Territory of Hawaii, because it is recognized that in order to get the fish, that it's necessary for the fisherman to go far beyond the bounds of our territorial jurisdiction. Once caught, however, the fish so captured are returned to the territory and taken to canneries, canned, put on the market, sold and eaten.

Now, I think that as the Chairman has said here, that he sees - - does not believe that any great violence is done to this section if the wording that has been suggested in the amendment is made with a provision in our report that we believe that the words, "all natural resources," cover this. I prefer to see usually, speaking for myself, a broad word used rather than to get into the enumeration of a number of specific ones. It seems to me that when you say "all natural resources," that it covers all of these things. When you speak of the natural resources of a country, if you were to go to some unknown land to appraise and to report on them, you would report on the topography, you would report on the location, you would report on the climate, you would report on what animals were there, what the rainfall was, what the forests, what the cover was. You would report on the minerals, on the animal life; you would report on the water, the fish, the game; all the things that are specified here, and I think you might even go further into some other matters

not here referred to, such as climate, and as I said, the topography of the area. So, I think that this will do the trick, if we use the amendment.

I understand the concern of some when they say that they object to the words, "of the State." In the minds of some, they prefer to, as I understand it, skip the use of that wording because it seems to imply owned by the State. "Of the State," I think, is used in a more general fashion here, and what it means is resources found within the boundaries, those things possessed by the State and within this area. I think "of the State" is fairly accustomed language under such conditions.

KELLERMAN: I wish to speak against the amendment. It seems to me that we would like our Constitution to be self-explanatory, and I think it's stretching the term "natural resources" very far to say that it includes agriculture. I notice that the speaker who just preceded me, in enumerating what any foreigner visiting a country and reporting on its natural resources, he did not use the term agriculture. Agriculture is not natural, it is the result of the work of man. If we are going to adopt the provision and have to resort to a committee report for its interpretation, when we admit that agriculture is possibly the most important factor in our economy, it seems to me that it's quite foolish to delete the language that makes your intention clear, and then say -- resort to a committee report to find out what we intended.

I think from that standpoint, also, "of the State," as long as that is ambiguous and can be construed in two different ways, why not omit it, as the committee quite intentionally did omit it. We obviously are not going to develop and conserve the natural resources of any other state except Hawaii, and if we can aid -- if we can conserve, develop or utilize or investigate the fish without the three-mile limit, it seems to me that does not need the enumeration of "of the State" or limitation in any way. I think the original language of the committee is quite clear and I don't think the use of the term "other" makes it ambiguous, because there are certainly some items in this enumeration that everyone will admit are natural resources.

ANTHONY: The word "agriculture" is not used, that's the trouble. There is an adjective used here, and the adjective defines natural resources.

H. RICE: It seems to me in this we ought to have an all-inclusive sentence here. "The legislature shall promote the conservation and development of all the resources of the State." Because I can see in the future, if we want to have full employment, we should develop other things than natural resources. There are by-products in the sugar industry that should be developed and other things. They are not natural resources; they are resources that we should promote, though, to get our country into a better economic state.

CHAIRMAN: Do you make that a recommendation to change the amendment?

HEEN: No, delete the word "natural" from my amendment.

H. RICE: That would make it, wouldn't it?

HEEN: That's right.

H. RICE: It should read: "The legislature shall promote conservation and development of all the resources of the State."

CHAIRMAN: Will you accept the "all," Delegate Heen?

HEEN: That's correct.

CHAIRMAN: Are we ready for the question?

HEEN: No, the word "utilization" in there, that should remain.

RICHARDS: Point of information. I notice that they said, "promote the conservation and development," and did not use the word "utilization." Is "utilization" to be left out in this amendment?

CHAIRMAN: I think they meant to leave it in. That right? I'll read it as it will --

H. RICE: If you develop something, you utilize it.

HEEN: Have the section read, "The legislature shall promote the conservation, development and utilization of all the resources of the State."

CHAIRMAN: Are we ready for the question?

ROBERTS: I am in general accord with the idea that the State or the legislature, as they case may be, take appropriate steps and action to protect the best interests of the State, whether it be in natural resources or elsewhere. I think we're talking in this section, basically, about agriculture and natural resources. If we put a very broad grant of power in here and it goes beyond the natural resources, I think it could be very effectively argued that human resources, which to me are extremely important and vital, might also be the base for action in this section of the Constitution. Putting in very broad language, such as we suggested, "all of the resources of the State," human resources are the most vital, in my mind, resources of the State.

Are you granting a general broad power to the legislature to take any action with regard to resources of any kind? I don't think it's the intention, certainly; I think that that language could be so construed. I think you want a confined language dealing with the specific problem before you, which is the natural resources of the State. Now, other sections have taken care of the health resources, and there will be sections going beyond that within the legislative powers, which are quite broad. I certainly would be careful about putting such broad language in the section dealing with agriculture.

RICHARDS: May I speak on that particular point? Whereas I as an individual have no particular objections to the utilization of all resources available, I feel that that is completely beyond the scope of this committee. This committee was dealing with agriculture, conservation and land, and if you try to write into this particular report the handling of all resources, I feel that that is completely without the scope of this committee's report.

The other point that I would like to bring out is, if it is definitely the feeling of the movant and the seconder and the amender that "of the State" means within the State and not confined to merely the ownership of the State, that is something that I think the committee would probably agree with; but we do wish to make this section broad enough so that it is not confined just to the assets owned by the State.

CHAIRMAN: Now, are there any other opinions? Are you ready for the question?

CASTRO: No, Mr. Chairman. If we mean natural resources, let's say "natural resources." If we mean within the State, let's say "within the State." I don't see that this deletion of the word "natural" gets to it at all. I would move then to amend further and to place after the words "all the" the word "natural." This is an amendment, adding the word "natural" before "resources" and deleting the word "of," and placing in lieu thereof the word "within," so that the section would read: "The legislature shall promote the conservation, development and utilization of all the natural resources within the State."

CHAIRMAN: Delegate Heen, will you -- are you willing to accept that as a --

HEEN: No, I'm not. The word "natural" was deleted in order to take care of agriculture and other resources that

are not natural. The committee said it was intended to cover both.

PORTEUS: I would like to see this matter brought to a vote. I second the amendment made by my fellow delegate from the fourth district, because I believe that there is a disposition on the part of many of the delegates here who wish to retain - - disposition to retain the terminology "natural resources." Now, if the amendment doesn't carry, we go on to the amendment as suggested. If it does carry, we've got that question behind us.

SAKAKIHARA: Second.

CHAIRMAN: The question is then, you want to move first on Castro's amendment. Do you all know what it is, the difference between one and the other? Instead of - - what we are moving on now shall be: shall we include "natural" and "within the State"? Are you ready? All those in favor of this amendment say "aye." All those opposed. Sounded like more ayes. Do you want to show hands?

DELEGATE: Is it a ruling of the Chair the ayes have it?

CHAIRMAN: That's what the ruling was.

DELEGATE: Well, that's sufficient. We'll abide by the ruling of the Chair.

CHAIRMAN: Thank you.
Then are you ready for the next amendment, Delegate Heen's amendment?

PORTEUS: That will be Delegate Heen's amendment as amended?

CHAIRMAN: Yes, that's right. Are you now ready for accepting Section 1 as amended?

ROBERTS: Will the Chair please read the amendment?

CHAIRMAN: The amendment as it stands now reads as follows: "The legislature shall promote the conservation, development and utilization of all the natural resources within the State." Are you ready for the question? All those in favor say "aye." All those opposed. I'm afraid the noes have it.
Are you now ready for the question? The question is as follows: "The legislature shall promote the conservation, development and utilization of agricultural, minerals, forest, water, land, fish, game and other natural resources."

HEEN: I move an amendment by deleting the word "other," and substitute for that word the word "the."

CHAIRMAN: You get it? You take out - -

HEEN: The word "other" and substitute for that word the word "the."

CHAIRMAN: Did you all get it? The last line will then read, "and the natural resources." Are you ready for the question?

DELEGATE: A point of order, please. There's no second to the motion to amend.

DELEGATE: I second the motion.

CHAIRMAN: I think there was.

CROSSLEY: May I ask the movant a question? Delegate Heen, what do you think that that will do that this language doesn't?

HEEN: Because all that is stated before that, all of the various items before that, ties up with the word "other." "Agricultural, mineral, forest, water, land, fish, game and other natural resources." They are all supposed to be natural resources, what goes before those words, "other natural resources."

CHAIRMAN: May I ask Delegate Heen, would that then sort of infer that agriculture, mineral, land and so on are not natural resources?

HEEN: That's correct.

DELEGATE: Question.

CHAIRMAN: Are you ready for the question? The addition of the word "the," the elimination of the word "other." All those in favor - - Delegate Roberts, go ahead.

ROBERTS: I suggest that some of the items listed obviously are natural resources. It seems to me that leaving the language as it is meets the problem. It covers those items and covers other natural resources as well as those mentioned within the paragraph. I think we ought to adopt Section 1 as proposed by the committee.

CHAIRMAN: Is there any discussion?

MAU: Point of information. I wonder if the committee would explain the word "agricultural" as it relates to natural resources. Could there be better language than that? I think maybe those who have been trying to amend this are calling attention to the fact that agriculture is not considered a natural resource. How do you tie the two - - those three words together?

BRYAN: May I answer that? If the delegate would tell me if there is no such thing as an agricultural natural resource, I might agree with him.

CHAIRMAN: Satisfied? Any other questions? Are you ready for the question? Ready for the question? The amendment is to leave out "other" and put in "the." All those in favor say "aye." All those opposed?
[Motion did not carry.]
Are you ready for the question? Section 1 as submitted by the committee. All those in favor say "aye." All those opposed. Section 1 is carried.

ARASHIRO: I now move tentatively for the adoption of the first paragraph of Section 2.

DELEGATE: Second the motion.

CHAIRMAN: It has been moved and seconded.

LEE: I move to delete Section 2. I don't think it's needed. The first paragraph anyway is not needed in this particular section about setting up executive boards. That's all covered in the article on executive powers and functions.

FUKUSHIMA: I second that motion.

RICHARDS: If we are to delete Section 2, we might as well delete the balance of the committee proposal. And if that is the wish of this committee, the Committee on Agriculture, Conservation and Land must naturally expect it to be deleted.

SAKAKIHARA: I so move.

CHAIRMAN: Wait till we hear a little discussion here. Delegate Roberts.

RICHARDS: I still think I have the floor on this particular point.

CHAIRMAN: I thought you had finished. Go ahead.

RICHARDS: The point, if the members have read the complete committee report, is that the committee feels that there is a definite feeling of trust that should be exercised regarding the natural assets of the State to be administered to the best interests of all of the people of the State. In the committee report of Executive Powers and Functions we noticed, as we passed on today, that it does provide for executive boards. The department of education feels that it is essential to have a particular executive board, and there is a feeling that in dealing with the assets of the

State which are expendable that there should be more minds than just one in handling such a disposition. Naturally, it will be handled by law under the manner of - - by the legislature, general laws passed by the legislature, as is taken care of in other sections in the proposals. This particular point merely raises it before the Committee of the Whole to decide whether the disposition of the assets of the State and the administration of those assets—and by disposition I mean leasing, licensing and other problems to be handled by the State—should be handled by a board, an executive board, or should they be left to an executive official appointed by the governor, confirmed by the Senate, who has no further responsibility thereafter.

CHAIRMAN: Any more discussion?

ASHFORD: I think one of the reasons the committee felt that this should be boards or commissions was after hearing particularly from the land board. I think we are pretty well convinced that we, the committee certainly was, that the land board over the course of years has done an excellent job. Their complaint throughout was that they were hampered by not having full authority. One of the points that they brought out was that, particularly in the matter of handling the public lands, there were immense pressures brought to bear. And they felt, and we felt, that those pressures could best be withstood by a board than by an individual.

CASTRO: As I understand it the reasons for the motion to delete this section had to do with the fact that a similar section or adequate provision is made in the proposal for legislative powers and functions. Now, this, of course, we have not yet seen.

It is true that one of the most important items of interest to any person in Hawaii is the land. I don't think that this statement can be made only of Hawaii, but in Hawaii particularly, which is an island, the question of land utilization is so important that it becomes a matter that you cannot always deal with, with only direct reasoning and fact. It becomes almost a sentimental thing, and we thought, after going through all of Section 73 of the Organic Act and meeting with the attorney general and with the members of the attorney general's staff, I should say, and with Mr. Tavares and his vast experience with the public lands, that this first paragraph of Section 2 is a very minimum of provision.

I call attention to the lines, the fourth line, "and such powers of disposition thereof as may be authorized by law." Now the disposition of the public lands is something that will come up later this evening, or at least later in the discussion of this committee proposal, but to indicate that there must be proper powers of disposition of the public lands is very important. Now, whether or not this section stays as it is in view of some coming proposals by the Legislative Committee is something that perhaps we can take up later on. But I suggest to the delegates here that we consider the proposal before us, in the light of what has gone before, and not what we may anticipate as coming in the future. If it develops that there is some inconsistency, some overlapping, I'm sure we can take care of it. Therefore, I think the motion to delete should be defeated.

LEE: Technically the sentence following the statement that the legislature shall commit to one or more executive boards, which reads, "The legislature need not commit to such boards or commissions the jurisdiction over resources set aside for public purposes other than those of conservation," doesn't mean a thing. It's purely redundant. The legislature doesn't have to do that anyway. Also the following sentence, "Resources which by authority of the legislature are owned by or under the control of a political subdivision, or department or agency thereof, are not covered by this section," things of that sort could be well covered in the report. I can't see any need for the cluttering up of the Constitution by such language.

RICHARDS: I thought - - the first point, I thought we were discussing this paragraph by paragraph, and we are now cluttering up our discussion with entering into the second paragraph.

CHAIRMAN: Point is well taken. We will proceed.

LEE: Point of order, please. The motion was to delete Section 2.

CHAIRMAN: No, the first paragraph of Section 2, I think. That was under discussion. Any other - -

RICHARDS: As regards to the question raised by the delegate from the fourth district on the second sentence, namely, "The legislature need not commit to such boards or commissions the jurisdiction over resources set aside for public purposes other than those of conservation," that was to take care of the assets that were set aside for the Aeronautics Board; for the assets that were set aside for the buildings, public buildings; for the assets that were set aside already for public parks. This merely gives the legislature the opportunity not to put into a particular board assets already set aside for other public purposes. It's merely a clarification of the first sentence. And the "other than conservation" means that land set aside for forest reserves, which are a conservation purpose, must be submitted to a board.

CHAIRMAN: Any other discussion?

AKAU: I'd like to say that I think it's not only redundant, but certainly inconsistent. The first sentence, as has already been explain by the chairman, says something "shall" be committed, which is a positive statement; and then the second sentence, "The Legislature need not," while it is a sort of proviso, it says yes and it says no. I would like to say that we vote on this because it doesn't make sense even to me.

FONG: May I ask the committee a question? I want to ask what is the purpose of Section 2? Is it primarily for the purpose of restricting the power of legislature, or is it a reiteration of what has been done?

CHAIRMAN: Bryan, you want to answer that question? Or does Castro want to answer it?

CASTRO: I'd like to answer that. The purpose of Section 2 primarily is to insure that the boards or commissions which are set up to oversee the natural resources of the State have full powers as opposed to the situation in the land board today where, as you know, the board of public lands does not have full power over the management of the land under its, quote, "control," unquote. That is a prime purpose. So long as that purpose remains in this section, I'm sure that amendments to the wording are possibly in line. But that is the main purpose.

FONG: In other words, you are telling us that, with this section, you will force the legislature to place all natural resources in a board. Is that right?

CASTRO: By "us," you mean the legislature?

FONG: Beg your pardon?

CASTRO: By "us"?

FONG: I mean the legislature. We here who are drawing up the Constitution are now telling the legislature under Section 2 that they have to deal with natural resources in this manner; that is, they must set up a board to take care of the natural resources. Is that right?

CASTRO: That is correct.

FONG: Then it is a limitation upon the powers of the legislature, is that not right?

CASTRO: If you wish to interpret it that way, that is also correct.

FONG: Yes, then there's another way of telling the legislature, we don't trust you; you've got to do it this way.

CASTRO: That is incorrect.

FONG: I see, thank you.

BRYAN: Delegate Fong, I think that this was put in here, not primarily out of fear of the legislature, but more out of fear of the governor. Therefore, I should think you should be very much in sympathy with this.

A. TRASK: Mr. Chairman.

CHAIRMAN: Just a minute, Mr. Trask. Fong, want to answer that?

FONG: Fear of the governor, and yet it says, "The legislature shall commit." Now, if you fear the governor, then you put - - insert in this section here something about the governor, but here you start off by saying, "The legislature shall." Now when you say "The legislature shall," the legislature must; and when the legislature must, the legislature has taken away powers from itself. That's what you are doing. You are not reiterating what the legislature has done. If you are reiterating what the legislature has done by saying that the legislature has done a good thing by putting the water resources on the water board, and the agriculture and forestry under the board of forestry, then I say that it is redundant, it need not be here. But if it is your purpose to tie the hands of your legislature and say that it must be done this way, then you have something here. The only thing I have to do is to vote against it.

KELLERMAN: It seems to me that that is one of the purposes of drafting a constitution. The Federal Constitution so limits the hands of the Congress in many respects. If the legislature were deemed to be trusted in all circumstances for all things, there would be little need of writing a constitution. It seems to be perfectly legitimate and reasonable, and it's one of the purposes for which we are here, at times to restrict the powers of the legislature in whatever fields we feel that is essential for good government.

A. TRASK: I want to - - was quite attentive to the remarks of the delegate from Molokai when she said that experts from the department of agriculture and so forth came to the committee and made observations on how their work was being hampered. Well, that's one viewpoint. I wonder how many people of the legislature were called in to give their own particular viewpoints, and how other people from the other sections of the island who are affected by this legislation or this grant of power are going to feel about this situation. The viewpoint of the people who are attentively attending to their own work will always complain about the lack of power, that's not strange at all; and the purpose of the Constitution is to restrain such things, rather than to give more expansive power.

It seems to me, if you agree—and this I address to the recent speaker from the fourth district—if you say that, "The legislature shall promote the conservation, development and utilization of all natural resources," you are saying to the legislature: "Here, take it all, how and in what manner you do from time to time, or how you may change the law from time to time, is your business." But after giving that full plenary power, you come to the second section that says, "But, legislature, please transfer this full power to boards and commissions who are not responsible to the people directly." And I am against this second amendment, and I am supporting its deletion.

DELEGATE: Correction, Mr. Chairman. There is no "please" in the sentence.

RICHARDS: I feel that there are certain points which have been raised which should be answered. I believe that the delegate from the fourth district who spoke last was considerably in order regarding the point of a constitution is a matter of restriction. However, I do want to assure the delegate of the fifth district that this particular section was not put in primarily to curb the hands of the legislature. He particularly pointed with pride to what the legislature has done regarding natural resources. I grant they have done considerable regarding water and some of the others, but they haven't done a single thing regarding land because they didn't have the power to. It was handled entirely by the Congress of the United States, with their land commissioner and their setup of a land board. We are - - the committee was trying to make a setup which would give the legislature power to create boards to handle the natural resources. You will note that the committee report does not say everything shall be committed to one board or another board or another board. That is entirely up to the legislature.

The feeling of the committee was that it should be - - the assets should be committed to a board, so that no one appointee of the governor, similar to the present commissioner of public lands, would have the exclusive power that the commissioner of public lands now does hold under the territorial setup. We are interested in seeing that there is a control, but a control that can be exercised for the benefit of all the people of the State without having a single dictator.

CHAIRMAN: May I generally suggest that we leave out of our discussion the tone that the legislature is fighting the Constitution, and the Constitution is fighting the legislature. Let's work together on the idea, let's make a Constitution that is for the whole community.

Are you ready for the question? The question is, it has been moved and seconded that we delete Section 2. All those in favor of this say "aye."

DELEGATE: Point of order.

CHAIRMAN: State your point of order.

DELEGATE: Isn't it paragraph one of Section 2?

CHAIRMAN: I stand corrected. Paragraph one of Section 2.

ANTHONY: Isn't it the first sentence?

CHAIRMAN: No, it's the whole section. The whole paragraph, I'm sorry.

ANTHONY: I'd like to speak to that last sentence.

CHAIRMAN: All right.

ANTHONY: It's saying what the legislature need not do. Now, the legislature need not do a great many things. They need not go out and set fire to the police station. Why put this in the Constitution, that they need not do anything? That sentence is absolutely meaningless.

CHAIRMAN: If this motion passes, that goes out with the other.

BRYAN: I'd like to answer that, clarify it. If we put in the Constitution the legislature must set fire to every building in Honolulu, but we want to leave out the police station, then we put in they need not set fire to the police station. That should answer your question. It says here they shall commit to the board natural resources, but they need not commit certain ones as described in the second sentence.

CHAIRMAN: Any other discussion? Are you ready for the question? The question is the deletion of the first paragraph of Section 2. All those in favor of deleting this paragraph say "aye." All those who want the paragraph remain-

ing say "no." The chairman is at a complete loss as to which side has the motion.

PORTEUS: Can we test this by sight, and not by sound?

CHAIRMAN: All right. All those who wish Section 2, paragraph one deleted, would you kindly stand. I get 23. All those -- would you kindly sit down? All those who favor retention. I get 27. 27 to 23. The motion to keep the section in -- I mean the deletion motion is lost.

ANTHONY: I move to delete the last sentence of the first paragraph.

DELEGATE: Second the motion.

CHAIRMAN: Any discussion on this motion? Question? All those who want to delete the second sentence of Section 2, paragraph one, say "aye." All those who wish to keep it. The ayes have it. Is there any objection or do you want a show of hands?

APOLIONA: I now move for the adoption of Section 2, as amended.

DELEGATE: Second it.

CHAIRMAN: The motion has been seconded. All right.

ROBERTS: On line two of the first paragraph of Section 2, they have the words "full powers." I suggest that the word "full" be deleted. "To one or more executive boards or commissions powers for the management of."

CROSSLEY: I second that motion.

RICHARDS: The committee will accept that amendment.

CHAIRMAN: It's accepted.

FONG: You will note that Section 2 reads as follows: "The legislature shall commit to one or more executive boards or committees full powers for the management of all natural resources." Now, it seems to me that the English is not correct there. "The legislature shall commit to one or more executive boards full powers -- of all the natural resources." I think the meaning which is -- which the committee is trying to convey is this, that the legislature shall commit to such boards such powers over such natural resources as it may deem necessary.

BRYAN: Mr. Chairman.

CHAIRMAN: Do you want to make an amendment?

FONG: Well, I just haven't got my finger on it.

BRYAN: I think it would help the construction of this thing if we took the word "all" out, with the committee report stating that the intention was that through these boards they would cover all natural resources.

CHAIRMAN: Do you want to make that as a motion, Fong? Remove "all" and "full"?

FONG: Beg your pardon?

CHAIRMAN: The question is, do we want one amendment to remove "full" and "all"?

FONG: Yes, I think that is better. I so move.

DELEGATE: I second that motion.

CHAIRMAN: Any more discussion? Are you ready for the question? All those who wish these two words --

ANTHONY: What is the question, Mr. Chairman?

CHAIRMAN: The question is another amendment on Section 2, paragraph one, removing the two words "full" and "all." Therefore, it will read, "The legislature shall commit to one or more executive boards or commissions powers for the management of the natural resources owned or controlled by the State, and such powers of disposition thereof as may be authorized by law." Are you ready for the question?

ANTHONY: I wonder if the Convention appreciates the fact that this would abolish the superintendent of public works. Would the chairman want to answer that?

CHAIRMAN: How?

RICHARDS: I don't see where the superintendent of public works goes out. We're discussing natural resources. Now, I don't suppose that a bridge, a street or a highway or a building is a natural resource.

ANTHONY: I thought we had that all out when the Convention over-rode the objection to the first sentence. I was endeavoring to confine it to natural resources, but the body did not agree with that.

CHAIRMAN: I think you are wrong. I think natural resources won out.

ANTHONY: Yes, but the word "land" is in there. Land is not a natural resource.

DELEGATE: What?

DELEGATE: What is it?

RICHARDS: May I remind the delegate from the fourth district that at his instigation the second sentence, which would cover his particular problem, at his motion was deleted from the first paragraph.

ANTHONY: Well, Mr. Chairman, I thought I had the floor.

CHAIRMAN: You have.

ANTHONY: This sentence, if adopted, will do just exactly what I said it would do. Now, I don't think we want to take the jurisdiction away from the superintendent of public works for instance, over land and put it in some board. I suggest to the Convention we have already adopted an executive article this morning, it deals with the departments of government. We don't need this, in any respect.

BRYAN: I think that the chairman of the committee on this article already answered the question. Delegate Anthony, the reason that the proviso was put in in the form of the second sentence was to cover just the objections that you now raise, and at the time that you raised that question and there was a motion to delete the section, the first reaction of the chairman of the committee was, "I wonder if he knows what he has done?" The next question we heard was, "Does the committee know what they have done?"

ANTHONY: Yes, but the difficulty is we have already taken care of it in the executive section. Then this committee comes along and puts into its proposal something that's already been adopted by this very Convention this morning, creating executive departments of government. I think we ought to delete the entire section.

RICHARDS: As I recall the action taken this morning, the action did provide, regardless of the various amendments which were offered on the floor, that the legislature may create executive boards. We are merely committing to one of those executive boards which the legislature may create certain assets and natural resources of the State.

CHAIRMAN: Are you ready for the amendment?

PORTEUS: I'd like to ask a question. I don't want to be taken as trying to harass the committee, because that's certainly not my intent, but I would like to know whether or not we might not find language a little more suited to our purpose than possibly that which is used now. The point I have in mind is this. "The legislature shall commit to one or more executive boards or commissions the full powers"—but I think if you take out "full," then if you give

it to - - you can divide the powers apparently between more than one board. As I understand it, however, it will be necessary to have a board. You cannot use a department where you have a single department head that will administer one of these matters, but rather than that, the legislature must set up a board or a commission. Isn't that so?

RICHARDS: That is correct. The idea of the committee was that the legislature should commit to one or more boards.

PORTEUS: In other words, it must be a board or a commission, not a department. Now, this morning when we were concerned with that section which came from the Executive Powers Committee which is Proposal - - Committee Proposal No. 22—I think you'll find it on page 4, page 3 and 4—it made it necessary that all executive and administrative offices, departments, and so forth, and their respective functions, powers and duties, have to be allocated by law among and within not more than twenty principal departments. Now, then, once the legislature allocates one of these executive boards to a particular department, how is the legislature going to work out, do you have in mind, the question of who will regulate the activities? It seems to me that you have rather a pointless section if you say that you will have 22 divisions, but within those 22 divisions - - 20 divisions, you are going to have various executive boards and departments that will not be regulated either by the board that heads that department itself or by the administrative officer of that department. Therefore, you will have to try to find - - either you will have to put this executive board under some department that's handled by a single executive and say that this board doesn't have to listen to you, or you have got to get some sort of classification where you can put all these boards that rule on the duties and powers that have been given them specifically.

In other words, what I'm basically troubled with is, when you set up the 20 departments, how do you place in these various boards? Had you said, it must be left to a department, that would have left it open to the legislature to have utilized this department head or made them subordinate to someone else. But it seems to me that under this language the legislature, under your intent, would not be carrying out your intent unless it gave this executive board or commission full power without being subject to regulation by a head of a department in which it might be placed.

CHAIRMAN: Delegate Castro wants to answer that.

CASTRO: Referring the delegate to page 4 of the committee proposal, as I read that, there is a provision that a board or commission may be the head of a principal department, so that I don't see that the point is well taken.

PORTEUS: May I point out to the last speaker that it says, "except as otherwise provided in this Constitution, when a board, commission or other body shall be the head of a principal department, the members," it provides how those members shall be appointed. That's all it does. You could have a department headed by a board. Let us suppose we have a department that is headed by a board, but under that department you have got to place one of these other executive boards. I'm not sure how you do it, with the proper flow of authority and regulation. That's my only concern.

CHAIRMAN: Would you two neighbors get together and see if you can understand the language and then maybe present it later.

RICHARDS: May I answer that particular point that is raised? If the delegate from the fourth district will remember, I raised that particular point last night during the matter of the discussion of the limitation to 20 boards or departments, and debated that when this committee came forward with its report and its proposal it was going to propose that there should be one or more executive boards created to handle the assets of the State. We do feel in the committee - - we discussed at great length the spelling out of a board or boards to handle these assets. We, however, felt, after full discussion—and by full discussion I mean many hours discussion—that it was a matter to be left to the legislature as to whether these assets should be handled similar to the example that was brought up last night of the Constitution of the State of Connecticut, where the assets were all under one board with departments or bureaus subservient to this one board, or whether they should be boards of equal standing. The committee feels that that is a matter for study by the legislature, and, therefore, is recommending that the legislature do place in one or more boards this particular function.

HOLROYDE: Could we have a short recess to see if we could reconcile this problem a little bit?

CHAIRMAN: All right, a short recess. Less than five minutes.

(RECESS)

CHAIRMAN: Meeting come to order. One minute more? Are you ready? Have you some new wording here that will satisfy the rest of them, Delegate Richards?

BRYAN: I would move to defer this paragraph. The intent of the committee was that these things should be committed to an executive-type board. That was their prime intent. Now, in the three-minute recess we didn't have time enough to work up any more suitable language. I therefore move that this paragraph be deferred.

SAKAKIHARA: Second it.

CHAIRMAN: Could you hold it a minute? There is a motion before the house to delete "full" and "all." It has been seconded.

SAKAKIHARA: I move we defer everything.

CHAIRMAN: Defer that as well? All those in favor say "aye." All those opposed. Carried.

Go on to Section 3.

RICHARDS: I assume that we also defer the second paragraph of Section 2 because that does relate very closely to the first paragraph.

J. TRASK: I move we tentatively approve the first paragraph of Section 3.

CHAIRMAN: Second to that?

APOLIONA: I second that motion.

CHAIRMAN: Any discussion? I'll read it. "All fisheries in the sea waters of the State not included in any fish pond or artificial enclosure shall be free to the public, subject to vested rights and the right of the State to regulate the same."

MIZUHA: A question. I would like to ask the chairman of the committee what he means by that phrase, "subject to vested rights"?

RICHARDS: In answer to Delegate Mizuha, the point is that there has been established by Hawaiian law the konohiki rights of fisheries, and those are vested rights according to law. If you will note later in the report, under part two of the committee proposal, Section 4, we are including or suggest including in the Constitution the mandate already in the Organic Act that all private fishing rights be condemned, so that eventually there will be no private fishing rights.

FONG: I notice this is only restrictive to the fisheries in the sea. Now, as I understand, we will be utilizing,

developing and conserving the fisheries in the streams. It is conceivable that that is a natural resource. Now, did the committee consider that?

RICHARDS: The committee definitely did consider that, but that is tied up with water rights and is also tied up with the land on either side of the streams that govern those particular areas for the propagation of fish; and the committee felt that under Section 1 the legislature would be empowered to condemn if it's necessary, or to provide for the proper regulations to permit the public to operate and fish in those areas.

CHAIRMAN: Thank you. Any other questions?

A. TRASK: Pursuing that same inquiry by Delegate Fong, in the first section you do not differentiate between sea and river waters, you just say "water," and yet in Section 3 you say "sea waters." Now, when I first saw the expression "water" in Section 1, I thought it had reference to all waters; ocean, sea and inlets and outlets and streams and rivers and so forth. I had occasion some time ago to represent some people who had—I think it was the Coney family in Nawiliwili Harbor, not the Coneys, but the other people who were poaching on the Coneys, in Nawiliwili Stream entering into the harbor there—and I believe they do have konohiki rights, and vested rights, so-called. It seemed to me, in view of that, I'd like to move if the committee would consider it, striking the word "seas," so that —"seas," Section 3—so that it would conform with the expression in Section 1 to be all-inclusive, all bodies of water.

RICHARDS: I feel that the committee discussed that particular point and it was felt by the committee that that might be unconstitutional under the Federal Constitution, as it might be depriving vested rights without due process of law and compensation therefore. That is the reason why we went ahead with Proposal No. 4 of Part 2, so that in case of any particular right being involved that the legislature would proceed with the proper condemnation thereof.

CHAIRMAN: Is that clear?

ANTHONY: I'd like to ask the chairman a question. Are there any rights of fisheries that are not vested rights that are not free to the public? Is that the idea of the committee? That there are some rights which the public may not enjoy?

RICHARDS: Oh, yes, as I recall - -

ANTHONY: That are not vested rights?

RICHARDS: I beg your pardon, I didn't get the question.

ANTHONY: That are not vested rights?

RICHARDS: You mean rights that are not vested rights.

ANTHONY: Yes.

RICHARDS: Oh, no, no, no; there is only vested rights.

ANTHONY: Well, then if that's - -

RICHARDS: That's been established by law.

ANTHONY: Well, then if that's the case, this is just a statement of the existing law. All it says is that the rights to fish in the sea shall be free to the public, subject to vested rights. In other words, that's a statement of the existing law.

RICHARDS: There is a slight difference. If the last speaker will read on to the end of the sentence, "and the right of the State to regulate same" is added because it is important in the matter of conservation, inasmuch as this committee was charged with the matter of investigating conservation, that the right of the State to regulate such fishing within the State areas should be preserved.

DELEGATES: Mr. Chairman.

ANTHONY: Mr. Chairman, I believe I still have the floor. I asked the chairman a question. If that's a fact, then there is no purpose to make any rights free; it's a purpose to regulate vested rights, and the section should therefore be redrafted to say just that. Because, certainly, if they are not vested rights then they are free to the public, and if it is the intention of the section to make them subject to regulation, then it should be a simple statement that rights of fishery, even vested rights, are subject to regulation for purposes of conservation.

MIZUHA: I would like to ask the committee chairman a question. Isn't fisheries a natural resource as mentioned in Section 1?

RICHARDS: May I answer that question, Mr. Chairman?

CHAIRMAN: Go ahead.

RICHARDS: When one discusses fisheries, there are two particular parts of a fishery; one is where you catch your commercial size fish, and the other is where you secure your bait. Now, in the matter of conservation, it is important that the bait reserve be regulated. That is, I believe, the point. Does that answer your question?

DELEGATE: Mr. Chairman.

MIZUHA: The point - - Mr. Chairman, I believe I still have the floor. The point I'm asking is, if fisheries are a natural resource of the State, whether it is bait fish or eating fish or some other kind of fish?

CHAIRMAN: The Chairman rules they are a natural resource.

MIZUHA: Then I believe that Section 3 is unnecessary, that it is covered under Section 1 inasmuch as the legislature will have the power to regulate whatever bait fishing or commercial fishing they would want to have; and as far as vested rights is concerned, it will be taken care of under existing laws.

SHIMAMURA: May I ask the chairman of this committee a question? Doesn't this language in Section 3 follow very closely the language of the Organic Act?

DELEGATE: It does not.

RICHARDS: In answering that question, I believe it does. There is one other point which I have neglected to mention for the inclusion of Section 3, and that is that whereas there is a permissive part of this article to permit the leasing of the assets and the licensing of the assets of the State to private individuals, this particular section is in there for the purpose of precluding any such licensing to any individual. In other words, it's important that the fishing should be free to the public and should not be restricted by licensing to any private individual.

HEEN: It's quite apparent to me that the committee did endeavor to follow the language in the Organic Act. If you will read the section as proposed by the committee, I will read what appears in the Organic Act. Section 95 has this language—it's almost identical with that in the proposal—"All fisheries in the sea waters of the Territory of Hawaii not included in any fish pond or artificial enclosure shall be free to all citizens of the United States, subject, however, to vested rights." The only change there is change from "Territory of Hawaii" to "State" and change the term "citizens of the United States" to the word "public."

KING: There's a further change, "and the right of the State to regulate the same," which I think is important.

ANTHONY: The purpose of Section 9—Delegate Heen didn't read the next sentence—the purpose of Section 95 of the Hawaiian Organic Act was to terminate vested rights in sea fisheries, because the next succeeding sentence of the

Hawaiian Organic Act says that within three years unless they are established they shall be terminated. Now I think that there's a subsequent section in this article which deals with that, carries on the same mandate. But I see no occasion for this unless it's simply a matter to regulate the rights of fisheries, and if that's the intention, it can be stated very simply.

LUIZ: I want to ask a question of the chairman. The last five words where you say, "State to regulate the same," is that referring to the laws of how you can fish, instead of using dynamite and lime and things of that sort?

RICHARDS: That does cover that, to avoid poison, dynamite and all of those other cases. It's a matter of regulation also, catching fish and lobsters out of season, all of those matters of regulation.

ARASHIRO: It seems to me that this is to make all sea water fishes free to the public, and so under that intention I wish to make an amendment by putting a period after "public" and deleting "subject to vested rights and the rights of the State to regulate the same."

DELEGATE: I second that motion.

CHAIRMAN: A motion has been made and seconded.

KING: I was going to speak in favor of the section as it is. If the delegate who offered that last amendment will turn to the committee report and read Section 4 of Part 2, he'll see there is a very direct mandate to extinguish those vested rights. Now, we can't extinguish vested rights that have been established by law by striking those few words out in this article or in this section of the Constitution. If we are going to strike it out, there will have to be some further language directing the legislature to extinguish them. Well, that language is contained in Section 4 of Part 2 of the committee's recommendations, so I really feel the last amendment is uncalled for.

I wanted to speak for the approval of this section as written. It doesn't seem to me that any argument has been made against it. If it re-uses the language of the Organic Act and establishes in the Constitution of the State of Hawaii that same language, well, then, all the more reason why it should be retained. Then further on, the following section in the Organic Act is embodied in Section 4, Part 2 of the committee report.

Now, while I'm on the floor I'd like to say further that it seems to me rather unfortunate that we put a committee through the hoops here. After all, they have spent many weary hours and discussed this and have done the best they could and they bring their report out here. We should accept it as prima-facie in good faith, and merely attempt to amend or change it in a constructive way rather than in a critical way. As I look over the membership of this committee, I think they are very distinguished members of this body, and entitled to have their efforts considered in entire good faith and not be subject to such criticism and such questioning as to their reasons for doing this or doing that. I'd like to, if the gentleman who made the last amendment, I'd like to ask him if he read Section 4 of Part 2, and if he's prepared to withdraw his amendment. I make that suggestion.

ARASHIRO: Your suggestion is for me to withdraw my amendment?

CHAIRMAN: Yes.

ARASHIRO: I'll do so.

PORTEUS: May I point out that the section of the Organic Act, for those who are interested in looking it up, Section 95, and the heading of that is—I'd like to call the attention of the last speaker—is, "Repeal of laws conferring exclusive fishing rights." This was the section that was designed to repeal the laws of the Republic of Hawaii, and it's so definitely stated in the first portion, which conferred exclusive fishing rights upon any person or persons, and it says that those laws that conferred those rights "are hereby repealed and all," and it went on to show what happened after they'd repealed those rights, that it should be wide open as fishing rights were throughout the rest of the United States. I think that's the section.

KING: This section on fishing rights has been a "hot potato" in the political arena for many years. The legislature has deliberately, over the 50 year period, neglected to extinguish those private fishing rights. There used to be a gentleman in my fifth district who used to run repeatedly for office on the issue of the fishing rights. It seems to me that this section that will make the sea fisheries open to the public and the private sea fisheries subject to State control is a desirable feature of the State Constitution. Later, when we get to Part 2, we can act on Section 4. I have served on two appraisal boards appraising the value of the sea fisheries, turned in the reports to the attorney general, and nothing has ever happened to it from that time to this day.

PORTEUS: I'd like to point out something in connection with those fishery rights. The legislature has been making provisions and has on numerous occasions asked the attorney general's office to please report to the legislature the progress made. There was a report made within the last several years, naming which fishing rights, and naming the order in which condemnation process would be proceeded with. As the gentleman said, he was on an appraisal board and there has developed a situation, and I might inform him that in at least one of those, the case has been watched through the courts and distribution of money made to the owners, and in at least one instance that I know of, those fishing rights have been opened on the island of Maui. I think the gentleman was on that appraisal board.

KING: I'm very happy to stand corrected as to the record of the legislature in the last seven years. But that still leaves the preceding 43 years that haven't been rather - -

KAWAHARA: In regard to this statement here as to the fishing rights of persons, I'd like to ask the committee how far the fishing rights are extended to, whether the right includes only fishermen who are out at deep sea, in deep water sitting, crouching or standing on a boat, or does it, the fishing right, extend to those people who also fish from land? As we know there are two types of fishing, deep sea and shallow water fishing, and those people who are going to fish from land, I'm just wondering whether this section will cover those people or not, because some of us do come from communities where much fishing is done from land, I mean offshore fishing.

RICHARDS: May I answer that question? The feeling of the committee was that all the fisheries should be open to the public subject to reasonable regulation by the legislature. The point that the committee was interested in is that the fisheries that are restricted at present, that do have vested rights, are those shore fisheries which do not permit the public to always go in and catch certain types of fish. As I understand the law, it's either a perpetual taboo on one type of fish or the taboo on all fish for one month out of the year. The point is that we are interested, or rather the committee was interested in seeing that the public eventually secured all fishing rights so that they could fish from shore as well as out away from the present vested rights.

KAWAHARA: Do you mean then, that this section does take care of people traveling adjacent to the waters, that is, within the high-water mark? Does this section take care of people wanting to travel within those areas other than in private ponds? I'm interested in that particular phase of fishing.

RICHARDS: There is a legal point involved there, that most of the land titles where they are not by metes and bounds, do go to high-water mark. Now, there is a definite problem that was brought up in the committee by, I believe, Delegate Nielsen as to the difficulties that are occurred by fishermen on the Kona coast, namely that property rights going to high-water mark means they go over the edge of a cliff and that therefore there is no way of going from one particular beach to the next beach. We realized -- the committee realized that that is a definite problem, but it does involve the condemnation of property rights which are already vested in the individual, and that is a matter that the legislature for the public good could proceed to condemn a pathway along the front of somebody's property to permit the fishermen to go along.

KAWAHARA: In connection with what the chairman has just said, we have a situation there where every once in a -- every so often the boundaries adjacent to the waters suddenly change by volcano and so that it's a very difficult situation there. We don't know where the private property ends and where the public property begins.

RICHARDS: In answer to that, unfortunately we have a strange bit of law—I'm not a lawyer and the lawyers may correct me—but as I understand it, having owned beach property, there are two types of title to beach properties, one specifically by metes and bounds, and the other by metes and bounds and then the added phrase "and thence to high-water mark." Now, we have on this island a particular example down at—it used to be Pierpoint, and then it went to various and sundry hotel names, I forget what the name of the hotel is now, Niumalu, I believe—where there was a title of that particular kind. The legislature has provided that where there is that type of a title, the land owner may go before—I think it's the land board, although I do not know the details—and claim accretion under that particular law. Now, if on the coast of Hawaii where they do have lava flows there is a title involved, which is "and thence to high-water mark," then the owner of the property could go ahead and claim accretion, I imagine under the law. But where there is not that type of title and where it is a metes and bounds title, anything beyond those metes and bounds automatically becomes public property. I'm no lawyer, so if I'm wrong I'd appreciate the attorneys correcting me, but that is my understanding.

CHAIRMAN: Have you had enough fish stories, and are you ready for the question?

HEEN: I am in favor of the adoption of Section 3 as it is written. I'm in favor of that because of Section 4 of Part 2.

CHAIRMAN: Question? Are you ready? All those in favor of Section 3 say "aye." All those opposed. Carried.

APOLIONA: I now move for tentative adoption of Section 4.

DELEGATE: I second that motion.

CHAIRMAN: Open for discussion. Shall I read it?

> The legislative power of the State shall extend to lands owned by the State and its political subdivisions, and to lands under the control of the State and its political subdivisions, except as otherwise provided in this Constitution, but such legislative powers shall be exercised only by general order, except in respect of transfers to or for the use of the State or a political subdivision or a department or agency of either.

Any questions? Are you ready? All those in favor of Section 4 say "aye." All those opposed. Well, it's -- is there somebody who wants to discuss that? Delegate Kellerman, did you want to talk about that?

KELLERMAN: I wanted to suggest an amendment which I think will cut out some unnecessary language. It doesn't change the sense of the paragraph.

CHAIRMAN: The vote was tied, so we'll have to have it over again, so go ahead.

KELLERMAN: My suggestion would be to insert after the word "by" in the second line, "or under the control of," and then delete in its entirety the third line and the word "subdivisions." It provides exactly the same without repeating the language. It would then read, "The legislative power of the State shall extend to lands owned by or under the control of the State and its political subdivisions, except as otherwise provided in this Constitution, but such legislative power" and so forth. It's a matter of just deleting a sentence because of repetition.

HEEN: I would like to find out what is intended by this language. "The legislative power of the State shall extend to lands owned by the State." Does that mean that the legislature may authorize the condemnation of land belonging to the State?

CHAIRMAN: Mr. Chairman, can you tell us where you got that?

HEEN: If the land is owned by the State, you don't have to condemn it in order to get it again.

RICHARDS: The main purpose of this particular section was to provide for the exercise and control by the legislature by general law except for the matter of transfer to or for the use of the State or various political subdivisions or departments thereof. It is put in so as to restrict possible special land exchange deals or things of that nature which as we know in the past have definitely caused a considerable loss to the Territory.

CHAIRMAN: Does that answer you, Delegate Heen?

HEEN: I still don't understand the language.

ANTHONY: I've got a suggested amendment. In lieu of Section 4, I would suggest the following:

> The legislative power over the lands of the State shall be exercised only by general law, except in respect of transfers to or for the use of the State or a political subdivision or a department or agency of either.

I think that accomplishes what the committee wanted to accomplish and eliminates part of Judge Heen's objection. I make that in the form of a motion.

ARASHIRO: I second that motion.

RICHARDS: If I could hear that again, I think it might satisfy the committee.

CHAIRMAN: Could you read it a little slower.

ANTHONY: This is a little rough.

> The legislative power over the lands of the State shall be exercised only by general law, except in respect of transfers to or for the use of the State or a political subdivision or a department or agency of either.

Now, you'll note that that eliminates the first part of Section 4. I think it accomplishes what the committee had in mind and dissipates some of Judge Heen's doubts as to the section. I'd be glad to have that typed out if the body would like to see it.

CHAIRMAN: We have had a motion to amend and a second, but before we have that, could we have some more discussion in case there is something else you want to go in.

RICHARDS: I think the committee would be prepared to accept that particular amendment.

KELLERMAN: I would like to withdraw my motion to amend in favor of this one.

HEEN: I move that action on this section be deferred, so that the amendment proposed by the delegate from the fourth district may be put into writing.

LEE: In seconding the motion, I'd like to call attention to the person who suggested the amendment, the phrases "except as otherwise provided in the Constitution." How would that be reflected? So that I second the motion to defer.

CHAIRMAN: You mean adding that to Delegate Anthony's - -

LEE: No, I still don't understand this language, but referring to the amendment, I call that to his attention.

CHAIRMAN: I have to compliment the committee when they stumped three lawyers on language. Delegate Anthony, would you have that printed?

ANTHONY: It's not the lawyers' language that is being stumped here; it's the committee's language.

RICHARDS: May I state that the language was drawn by an attorney.

CHAIRMAN: The motion before the house is to move that it await the language of Anthony. Are you all ready for the motion? All those in favor say "aye." All those opposed. I think the voice was loud, but always remember, the louder the voice the less the thought.

WOOLAWAY: I move that we adopt - - approve Section 5 tentatively.

DELEGATE: Second the motion.

CHAIRMAN: Open for discussion, Section 5. I'll read it, while you are thinking about it.

SILVA: Point of order, first. The results of the vote was not even mentioned by the Chair. If there is any doubt in the Chair's mind as to how loud the voice can be, then perhaps the Chair should call for a show of hands.

CHAIRMAN: I'm sorry, there was no question about the chairman's idea; he felt the number of voices that were soft outweighed the number who were loud.

SILVA: Then I ask for a show of hands.

CHAIRMAN: All those in favor raise their right hands. This is for deferment of Section 4 while Anthony is typing. It's almost unanimous, which seems to infer the correctness of the louder the talk, the less the thought.

Section 5 is open for discussion. I'll read Section 5: "The public lands shall be used for the development of farm and home ownership on as widespread a basis as possible, in accordance with procedures and limitations to be established by law." Any discussion? Are you ready for the question?

SERIZAWA: I would like to have the chairman of the committee explain a little more in detail what Section 5 means. To me it doesn't seem very much.

RICHARDS: As the committee report states, Section 5 is the result of telescoping approximately six or eight pages of an original amended proposal that the committee discussed. Originally, the committee went into the point of discussing many of the restrictions and regulations contained in Section 73 of the Organic Act. Now, as I recall it, there are about five or six pages in the Revised Laws, 1945, that cover Section 73—it may even be longer—and the committee discussed all of these points wondering whether or not certain of the features might not be constitutional matter. It was finally decided by a majority of the committee that matters of that nature should be provided for by law; and, therefore, the committee came forth with this particular section, "The public lands shall be used for the development of farm and home ownership on as widespread a basis as possible, in accordance with procedures and limitations to be established by law," feeling that the legislature, taking into consideratic the remainder of the committee report, would provide for this proper distribution of the lands in accordance with H.R. 49.

ROBERTS: I have a question with regard to the language on lines three and four of Section 5. The last part of that section reads, "in accordance with procedures and limitatior to be established by law." Are you mandating the legislature to provide limitations on the use and development of farm and home ownership? The legislature may want to place limitations or may want to have no limitations. Wouldn't the same thing be accomplished by using the words "in accordance with law" and put a period there, and delete the subsequent language, "the procedures and limitations to be established by law"? "In accordance with law" would take care of whatever action the legislature may take dealing with procedures, limitations or anything else. Would that be satisfactory with the committee?

CASTRO: I think the delegate is correct insofar as he has gone. The committee went that far and went a little further. If you read the first phrase, "The public lands shall be used for the development of farm and home ownership on as widespread a basis as possible," if you put a period there—I'm trying to develop a thought—if you should put a period there that would be a wide and sweeping authorization to the point where it might even become dangerous, with all due respect to the legislature that has been eulogized by the delegate from the fifth district—and to say "in accordance with law" might also leave a wide open door.

It must be remembered that Section 5 is the section which takes the place of all of those various articles and phrases and sentences that might have gone in here, in this committe proposal, indicating how the public lands were to be used for development, and how many areas per annum, and how many acres in a homestead, and how many acres in a farm lot, et cetera, et cetera, those things which Section 73 of the Organic Act deals with. But in discussing this with Miss Lewis of the attorney general's department, we came to the conclusion that, in the first place, it would be improper material for the Constitution; and in the second place, it would be a patch upon a patch, that the land laws of the Territory today represent 50 years of patchwork and that a new set of procedures and limitations must be set down by the legislature of the State to take care of the loopholes that might exist, to look into the future development, to set up a schedule of distribution of the lands; else a careless but nevertheless sincere legislature could dispose of the lands to the point where mortgage values might be affected, to the point where people might be induced to buy and develop long before the land could be used because of lack of water source et cetera.

So this mandates, and the answer to the delegate's question is yes, it does mandate, it mandates that procedures of disposition and development be set up, and that limitations as regards possibly - - the limitations which they see fit, but the committee reports indicate that there would be limitations as to areas and number, those limitations would be set up. In other words, a system would be established by the legislature after due study, of which it is very capable, and then by general law the lands would be disposed of.

I might also say for the benefit of those who may not have looked into this question during the time the committee was studying, that there were several proposals brought before the committee asking for the condemnation of private lands along the lines that have been publicized to some great extent, along the lines of the mortmain statute, that famous statute of Puerto Rico. The point was brought out very clearly, we thought, that this Constitutional Convention

should not appoint itself a policeman of private lands for private use when there is public land available to the people. This Section 5 is the attempt to make available as soon and on as equitable a basis as possible, the public lands that would be available to people for farm and home use, but on a systematic basis; and I hope that that answers the question of the delegate.

CHAIRMAN: Delegate Roberts, are you satisfied? Delegate Ashford.

ROBERTS: Mr. Chairman.

CHAIRMAN: Delegate Roberts, if you don't mind.

ROBERTS: May I continue for a moment. This section as I read it deals only with the public lands. I'm not talking now about private lands. When we say that the legislature shall act in accordance with law, it seems to me that you leave it to the legislature to prescribe the conditions, the procedures and limitations or the nature of the limitations they care to put on it. Suppose, under the present language, the legislature says these are the limitations, but in actuality they may be very meager limitations. Now, it seems to me that if the committee doesn't indicate the nature of the limitations, or how far they are to go, I would therefore move that the words, "with procedures and limitations to be established by law," be deleted and the words, "with law," be inserted. So that the language of the section would read, "The public lands shall be used for the development of farm and home ownership on as widespread a basis as possible, in accordance with law."

DELEGATE: Second the motion.

CHAIRMAN: You have heard the question.

ASHFORD: Speaking not for the committee but for myself, I gladly accept that amendment. There has not been unanimity at all in the committee upon the method or whether any restraint should be put in the Convention here in the Constitution which we write upon that widespread settlement of farms and homes, and certainly some of the members of the committee are not in the least interested whether mortgage values fall or not.

KING: I'd like to speak in favor of the amendment. I've read the committee report and am not in accordance with the philosophy or the discussion of the committee report. It seems to me that what we need to do is to provide out of the public domain all suitable lands for small farms, house lots, ranches, as rapidly as possible; all the lands that are eligible for subdivision and homesteading. That was the spirit of Section 73 of the Organic Act and that should be the spirit of the State Constitution. I hope that the legislature, when it provides the laws to implement this section, will bear that principle in mind and not the discussion of the committee report.

FONG: In reading the sentence here, "The public lands shall be used for the development of farm and home ownership," now that conveys a thought as to what the committee is trying to do. As I understand, we have now the question of homesteading, the question of having some of the homesteads broken up into farms and fee simple farms, and some of the homesteads broken up into fee simple lots. Now, there are three questions there. One is a question of the fee simple title resting in the State with a 99-year lease, or whatever number of years lease, in the tenant. There are some homesteads that are built upon that basis, and many of the tenants prefer to remain upon the land for probably 99 years, not wishing to have a fee simple title for fear that they will be able to alienate it. There are other people who are asking for fee simple land from the public domain, that is, fee simple land for farming and fee simple land for home ownership. I was just wondering whether this sentence really conveys the thought of -- conveys those three thoughts. I was wondering if this would be better wording, "The public lands shall be used for homesteading, for the development of farm -- farming and housing on as widespread a basis as possible."

ASHFORD: The first part of the language used, up to "as possible," is the language from H.R. 49.

FONG: It may be according to the language of H.R. 49, but I'm just wondering as to whether this is conveying the thought of this Convention, that we have in our minds that there are various types of homesteading; fee simple homesteading, and homesteading on a tenant basis, that is, on a leasehold basis which many of our homesteaders are now holding their land, like the Molokai homesteaders. I understand that they have a 99-year title, a 99-year lease to their land, and that there is no possibility by which they may obtain fee simple title to these lands. Now, if those are the situations which we are now facing, let us write it very plainly so that we do intend to carry on the three types of ownership, that is tenant ownership, farm ownership in fee simple, and home ownership in fee simple.

BRYAN: I think the answer to that is, that same question came up in committee. The word "ownership" was left in in this manner because it takes care of those who want their land in fee. The word "development," the committee thought, would take care of long leases for both homes and farms. Also, I believe this is partly a mandate from H.R. 49 and that was the third reason for leaving the language the way it was.

FONG: In reading this language, it gives me the idea that the only thing you are saying here is that you are trying to develop it for farm and home ownership only, and that the question of homesteading is left out entirely. Now there is a very big section of our community here that have homestead lands which are not granted to them in fee simple.

CHAIRMAN: Is there any further discussion? Senator Heen.

HEEN: Mr. Chairman.

RICHARDS: Mr. Chairman.

CHAIRMAN: Wait, just one moment. You want to answer it?

RICHARDS: I would like to answer the delegate from the fifth district that the --

CHAIRMAN: You want to wait, Delegate Heen? Let Delegate Heen, maybe he'll answer the same thing.

HEEN: Delegate Bryan said that there might be persons who would like to own their own homesites in fee simple. Now, was it intended that while a person may own his homesite in fee simple, that there should be some limitations on that ownership? The language here as to limitations seem to indicate that some limitation must be prescribed by law or established by law even for homesites owned in fee simple, and I was wondering what that limitation might be.

RICHARDS: I can answer that and that question falls in line with the delegate from the fifth district's question. The idea of the committee was to provide fee simple ownership for home sites and homesteads. The limitation suggested was the question as to possible size of the homesteads and possible size of home sites, as to how much could one individual acquire of the public lands. There is also a prohibition in the Section 73 regarding corporations acquiring public land, and that is a point that I feel is definitely a matter of policy that the committee—some members felt it should be handled in the Constitution, and others felt it should be left up to the legislature—and the committee decided that matters of that nature should be handled by the legislature. It was

not a question of limitation of ownership. It was quantitative rather than qualitative as far as it was concerned by the committee. Does that answer the question?

CHAIRMAN: Any questions?

FONG: Have you any objections to the words, "shall be used for the development of farm and home ownership and homesteading on as widespread a basis"? That would include those people that we will encourage on the homesteading where title will not be given in fee simple, but the leasehold on the land will be for a very long period.

RICHARDS: I don't think that there was any particular discussion on that point within the committee, Mr. Fong. The committee was mainly carrying out the mandate for a complete fee simple ownership. The proposal is in such a manner that there would be no restriction on the legislature if they wished to provide for these long term lease homesteads. That was one reason why the language was so broad.

Now, I would like to speak to one other point. The matter of using the words "procedures and limitations" is that the committee had pointed out to it the matter of what occurred at Waiakea and what also happened to occur to the Hawaiian Homes Commission on Molokai. It was mainly felt that this was a cautionary measure to the legislature to fully develop the land prior to its being cut up. In other words, making sure that the purchasers or the homesteaders taking over the public lands were not going to be placed in a position where they would economically suffer.

CHAIRMAN: I have a very serious request here, if we could just hold your discussion for a moment. I want the engineering department to put out these top lights here, because some of the delegates complain that their eyesight is being impaired by the reflections from the bald heads.

FONG: I was wondering why I was so confused; now I can see why.

I'd like to make a motion that we add the words "and homesteading" to the word "ownership."

CHAIRMAN: Second to that?

RICHARDS: The members of the committee would, I think, be willing to accept that amendment.

KING: I cannot understand "homesteading" to mean leasing. Delegate Fong's idea is that the word "homesteading" carries with it the implication of a lease. If we're going to have leased homesteads I would be in perfect sympathy with his idea, but it should be "developed homesteads under lease" or "leased lands for homesteading."

FONG: Well, what do we call the Hoolehua homesteads?

KING: Well, that's under a special act of the Hawaiian Homes Commission, but when we open up government lands for general settlement, they file on it a patent - - a preference right of purchase and they acquire a fee, and they are the homesteaders. All of those who acquired the fee simple title to the land at Kalaheo, Kapaa, Waiakea, or Halekou are all homesteaders.

FONG: What about Kalawahine up there?

KING: That's again under the Hawaiian Homes Commission. Those homesteaders do get a 99-year lease.

CHAIRMAN: It seems to me the discussion is getting outside of this question here. Are we?

KING: No, no, Delegate Fong has suggested an amendment that we include the word "homesteader" - - "homesteading" with the implication that that will be leased land, and I'm trying to point out to him that the use of the word "homesteading" will not automatically mean the land under lease. The homesteader, under our practice here, is a man who takes up a piece of government land on a right of purchase and buys the fee of it. If it's his intention to provide small farms and homesites under lease, then there's additional language needed in the proposed amendment to the amendment.

DOI: I think all this discussion here can be handled simply and directly by amending the first line there by deleting the word "use" and inserting in lieu therefor "shall be sold or leased for the development of farm and home ownership," et cetera.

BRYAN: I'd like to speak to that point.

FUKUSHIMA: I was wondering if the delegate from the fourth district would accept this amendment. Delete the words "home ownership" and substitute the words "homesites." That I believe will take care of ownership in fee and also leasehold. So that it will read, "The public lands shall be used for the development of farm and homesites," et cetera.

CASTRO: In answer to that and the previous suggestions, it would considerably weaken Section 5 to make a direct reference to leasing. The intent of the committee, I believe - - Now Miss Ashford points that this might not have been a very unified committee, but I believe that on this point the intent of the committee unanimously was that the public lands should be used on as widespread a basis as possible for ownership. Now, the question that Delegate Fong raised about leasing, in my humble opinion, is covered in the phrase "as possible." Now, if the government cannot find a market for a particular tract in fee, then it can certainly turn around and lease that land. It may be impossible to sell it in fee, possibly because of the demand for the market, or the lack of demand, but that would be the only time where it would be acceptable because it is the understanding of the committee, after speaking with several people who have been mentioned in the report, that the demand is for the ownership in fee of the land, and that the demand for lease is, as far as quantity goes, is incidental in number. I don't think that this section as it is worded excludes leasing. It merely points to the opening up in the fee.

CHAIRMAN: Does that answer you, Fong? All right?

DELEGATE: Question.

CHAIRMAN: Question.

A. TRASK: The report of the committee—and in all due respect to the committee, I think it's done a fine job and I don't think our inquiry is any way derogatory of the wonderful work of the committee—Section 5 is without doubt lifted from H.R. 49, and the words "farm and home ownership" —and I'm addressing myself immediately to the suggested amendment offered by Delegate Fukushima who wants to strike out the words "home ownership" and put in "homesites"—the expression on page 13 of H.R. 49 as of March 8, 1950, among other things, "The lands patented to the State of Hawaii from Congress"—that's referring to the 180,000, among other provisions made for the proceeds—"shall be held for the development of farm and home ownership on as widespread a basis as possible and for the making of public improvements." Now, I think telescoping is a good word, but we must not, as I see, get the impression that all the 180,000 acres which we may be speaking about—which are, as I understand, the most tillable and usable and best agriculturable land—is to be devoted perhaps solely to home development when the proceeds and so forth are to "be held by such State as a public trust for the support of public schools and other public educational institutions, for the betterment of the conditions of native Hawaiians, as defined in the Hawaiian Homes Commission Act as amended, and for the development" and so forth of farms and homes.

So, I wanted to direct the attention of the Convention to the situation that this particular section, this particular expression, taken out of the context and its applicability

with respect to lands patented to the Territory from the U.S., must be given its proper place inasmuch as Part 2, Section 2 refers and makes these other provisions with respect to support of public schools, et cetera, subject to legislative provisions.

Now, in one place you have a mandatory situation, namely as suggested in that same page 13 of the draft of March 8, 1950, of H. R. 49. You have in there that the "foregoing purposes with respect to the lands be handled in such manner as the Constitution and later the laws of said State may provide." Now, I certainly feel, and I think that's the general tenor of everyone here, to have farm and home ownership made immediately and as soon as possible and to be on as widespread a basis as possible, but at the same time, from a constitutional sense, should or should not, if you treat one section as a direct constitutional mandatory provision, should you not also consider Section 2 with respect to public school purposes, and the Hawaiian Homes Commission Act? Give it the same tenor and the same mandatory provision and action, I mean I submit that respectfully as consideration with respect to this Section 5 as relation in Section 2 in Part 2.

RICHARDS: May I answer the delegate from the fifth district? That was the particular point involved in the matter of including the phrase at the end of Section 5, "in accordance with procedures and limitations to be established by law." That was a caution to the legislature to make sure that the other provisions were taken care of and that, however the legislature is mandated, that as the demand developed, it shall make certain that the lands will be available for homes and farms in fee simple ownership.

Now, with regard to the matter of homesteading, I'm advised that the last legislature petitioned Congress to abolish the 99-year lease homesteads. I was not a member of that legislature, so I do not know, but I'm informed that. Therefore, it would tend to further the idea of the committee, we would like to see, for the best interests for the State of Hawaii, home owners and farm owners.

CHAIRMAN: Any further discussion? Are we ready?

FONG: Does the question include long term leases to homesteaders?

BRYAN: This section, I think Delegate Castro pointed out, was not intended to prevent that. We felt that the words "on as widespread basis as possible" and the word "development" would cover that.

CHAIRMAN: Are we ready for the question?

FONG: I'm afraid if we do not say anything about it, it will be construed as excluding it, so I'd like to make an amendment after the word "ownership," "and for long term leases to homesteaders."

DELEGATE: Second.

CHAIRMAN: A motion has been made and seconded for an amendment. Are you ready for it?

BRYAN: I'd like to speak against that amendment. I think that by putting that in there, you weaken, as has been stated before, you weaken the word "ownership." That means that the lands could be made available primarily for leasehold and not primarily for home ownership, and it was the intent of Congress and it was the intent of this committee to point strongly to home and farm ownership.

CHAIRMAN: Could I clarify my mind by asking Fong, why do you want homesteads in there?

FONG: The reason is that our public lands are now being put into various uses, and one of the primary uses is the leasing of it on long-term basis. Now, that is one of the primary uses of our homestead -- of our public lands, and as far as homestead is concerned, as far as I know, that seemed to mean 99-year leases. Now, I'm afraid that if we exclude it that the emphasis will be too much on home ownership, excluding those people who have leased the land for long-term basis, and there are quite a number of our Hawaiian people who prefer to have their land leased to them on a 99-year basis, rather than have the fee simple title.

CASTRO: Mr. Chairman.

SILVA: Mr. Chairman.

CHAIRMAN: I think Silva did rise first, so give him a chance.

SILVA: I was going to say --

MAU: I've been standing here for ten minutes.

CHAIRMAN: Oh, I'm sorry I missed you. I apologize to my neighbor. I'll get to you after Silva, here, if I may.

SILVA: -- in reference to the 99-year lease, it should have come off under the Hawaiian Homes Commission Act from -- As far as I'm concerned, Section 5 as written by the committee is, in my opinion, very much in order, and I would like to move that the Chair put the question on Section 5.

CHAIRMAN: We have two more requests. Chuck Mau.

MAU: Mr. Chairman, it took you a long time to see me.

CHAIRMAN: I'm sorry, apologetic.

MAU: I hope it isn't the reflection of light.

CHAIRMAN: I'm afraid it is. It made me not see you.

MAU: I'd like to ask the committee whether they looked into the subject of leases for farmers, and what is the demand in that regard?

BRYAN: You speaking to the term of leases for farmers?

MAU: No, whether or not in your investigations, any facts were brought out that farmers were interested, not so much in owning fee simple land, but rather in leasing land for farm purposes.

BRYAN: As it was stated before, we felt that this would not prevent that. However, we did want to point the way to home and farm ownership if the people were so inclined. If they wanted it in fee, they should have it that way. However, if they prefer to lease we felt that this did not prevent it.

CHAIRMAN: Does that answer you?

MAU: I don't believe that the language unamended takes care of that proposition, because your statement here is "the ownership of farms and homes." As I listened to part of the debate, one of the speakers was of the opinion that the words "as possible" could be construed to mean that leases would be possible under this provision.

BRYAN: I think the word "developing" also covers that.

CHAIRMAN: That would be possible, as I understand it.

CASTRO: I am in complete sympathy with the thoughts of Mr. Fong and Mr. Mau on this that we must make sure that leaseholds are allowed. Now in view of the hour, I would like to suggest that we defer action with the thought that we will get to this thing and settle it amongst ourselves.

A. TRASK: I second that motion.

CHAIRMAN: I had a feeling we were almost ready to settle it.

CASTRO: Rather than have the wishes of Mr. Fong, which I, as I say, I sympathize, I would not like to see this section passed to the exclusion of a leasehold provision. But I am of the opinion that if you put this amendment in,

you weaken the intent of this particular section. Which is why - -

CHAIRMAN: Shimamura.

SHIMAMURA: The words "farm and home ownership," "ownership" includes leaseholds. When you own land, an owner of land and ownership of land includes a leasee, an owner of land.

CHAIRMAN: Does it include homesteads?

SHIMAMURA: Legally it does include leases.

CHAIRMAN: Does that answer - -

SHIMAMURA: That can be so construed by the courts.

HOLROYDE: I'd like to call attention to the delegates who have been questioning this Section 5 as to leases, et cetera, the committee report went into quite some length on that, and it seems the sentiment of Judge Shimamura on the legality of the verbiage there was also substantiated in the committee report.

CHAIRMAN: I think what's been very evident here is that many delegates don't read the reports. The chairman would gently suggest that we all read them.

SAKAKIHARA: I would like to be enlightened as to the status of Section 5. As I recall, Dr. Roberts offered an amendment to Section 5 to read, "in accordance with law " period.

CHAIRMAN: I don't remember whether that was seconded. Was it?

SAKAKIHARA: Yes, it was seconded.

CHAIRMAN: O.K., then that's the amendment, and seconded. Ready for the question?

SAKAKIHARA: Is that the amendment?

CHAIRMAN: That was the only amendment we have before the house that - -

SAKAKIHARA: Then I ask for a previous question.

DELEGATE: Point of order.

CHAIRMAN: Go ahead.

DELEGATE: There is a motion to defer, which has been seconded. That is what is before the house.

CHAIRMAN: Was it seconded?

DELEGATE: That's correct.

CHAIRMAN: All right; question is to defer. Are you ready for the question? All those in favor say "aye." All those opposed. It was lost.

NIELSEN: I think that this Section 5, the quickest way to explain it is to take the Territory out of the category of being a landlord; in other words, let's get the Territory itself out of being a landlord, and in the rental and leasing of lands, and then maybe we can attack the situations regarding the largest estates that are holding up land from homesteads and for small farms and so forth. That will probably occur in another 20 years, but the main thing is to get - - Now, in order not to just have the first legislature that looks over this Section 5 proceed to just dump all the land that the Territory owns on the market and therefore in that way depreciate realty values, that is the reason for adding "in accordance with procedures and limitations." I think the whole section is solid, sound and something that we should consider as a move in the right direction. Puerto Rico has passed a land law where the people have to sell the land, private land. Now let's get towards that, by saying the Territory must get out of being a landlord.

CHAIRMAN: All right, have we heard enough discussion? We have two questions; one, the first one is an amendment which ends with "in accordance with law." If that fails, then we can pass on the whole section.

ARASHIRO: I now move to the previous question.

DELEGATE: Second the motion.

CHAIRMAN: Second the motion.

FONG: I don't agree with the previous speaker saying that the Territory should get out of the landlord business. There are quite a few of the people of the community that we have to protect; there are quite a number of people in this community that do not want to have their lands in fee simple. They want to be sure that they will be able to hang on to their lands. And if the land is given to them in fee simple - -

CHAIRMAN: The chairman orders this is out of order. You are discussing something that I don't think has to do with the present question.

FONG: I'm afraid that this is going down in history and many a time later on when the supreme court will look at this to see whether the home ownership is going to be included here, whether the leases are going to be included here, they are going to look at some of the debates here.

RICHARDS: May I answer the delegate from the fifth district's question? If he will notice the first paragraph of Section 2, the last sentence, it says, "and such powers of disposition thereof as may be authorized by law." And then if he will look at the bottom of page 9 of the committee report, "You will also note that provision is made for the sale or leasing of these assets as may be provided by law." I think the committee report covers that particular phase.

CHAIRMAN: Are you ready for the question?

FONG: I don't want that statement to go unanswered, that this Convention is not in full accord with his statement, that the Territory of Hawaii, or the State of Hawaii should go out of the landlord business. I for one feel that the Territory should remain as superlord over some of these lands, so some of these lands would not be alienated.

CHAIRMAN: I felt that was a private discussion that didn't have to do with this.

FONG: I feel as of the moment - -

DELEGATE: Mr. Chairman.

FONG: I still have the floor.

CHAIRMAN: All right, I'm sorry, Fong, go ahead.

FONG: Since our learned friend, Mr. Shimamura here, stated that the word "ownership" includes "tenant," and I think that he is correct, I'll withdraw my motion with the understanding that that includes leasing of land.

PORTEUS: Mr. Chairman, may I be recognized?

CHAIRMAN: Go ahead.

PORTEUS: It seems to me that the discussion has not been completed and others want to talk. It's now half past ten and so I now move that this committee rise, report progress and ask leave to sit again.

SAKAKIHARA: I second the motion.

CHAIRMAN: A motion - -

MAU: Point of personal privilege. It will just take a moment. The other day when I asked a question on the hearing - - on the homestead - - Hawaiian Homes Act provision, I wanted to find out whether the committee had considered the public lands and the possibility of putting those lands into the market. I was called out of order by the President that day, but tonight I'm very happy to hear

him say that these lands ought to be put out for farm and home ownership, and I appreciate that very much.

CHAIRMAN: Are you ready for the question?

KING: Also a point of personal privilege. The President has forgotten why he called him out of order, but if the President called him out of order, he evidently was out of order. Nevertheless, the President as an individual delegate is very completely sold on the idea that the public domain should be homesteaded in fee simple. I'm in full sympathy with the sentiments expressed by the delegate from the second district of Hawaii, and Hawaii as a - -

CHAIRMAN: All apologies accepted and recorded. Are you ready for the question? All those in favor of - - is it adjournment or deferment?

SAKAKIHARA: Rise, report progress, ask to sit again.

CHAIRMAN: All those in favor say "aye." All those opposed. The noes lost.

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CHAIRMAN: Meeting come to order. That's better. Is the chairman of the committee ready? We were discussing - - Is Mr. Anthony here?

VOICE: No.

CHAIRMAN: Not here yet. Shall we continue on Section 5? Let me read Section 5, so we'll get our minds back on the ball here. As it stands, "The public lands shall be used for the development of farm and home ownership on as widespread a basis as possible, in accordance with procedures and limitations to be established by law."

ARASHIRO: Isn't the pending motion to read as follows, "in accordance with law"?

CHAIRMAN: Well, that was one of the amendments. Is Dr. Roberts here? Was that amendment still in good standing?

ROBERTS: When we adjourned yesterday, to report on the Committee of the Whole, that proposal was still pending. I assume when we go back into the Committee of the Whole that that proposal and the amendments are still on the table.

CHAIRMAN: Were there any other suggestions on that, or discussions? The way it would read would be as follows, "on as widespread a basis as possible, in accordance with law," leaving out, "with procedures and limitations to be established by law." But as I remember it, the chairman and I think Mr. Castro gave certain reasons why they felt " procedures and limitations" should be included. Do you want to just repeat that? Was that Mr. Castro?

CASTRO: Yes.

HEEN: I think it should be left the way it is. After the debate and full discussion upon the subject, I believe this is the proper language to be used here. I was a little confused at first. I thought that the word "limitation" was to be considered as limitations in the way of restrictions, and I don't think it means that. I think it means just as was explained last night, I think by Delegate Crossley. You may—or someone else—you may want to limit the area to be sold or set aside for farming purposes. So I think this language is - -

CHAIRMAN: Leave as is. Any other discussion?

TAVARES: As one who was not here last night, for which I apologize, I would just like to see if I'm correct in understanding that this section does not mean that the public lands cannot be used under proper legal authorization for some other purposes than development of farm and home ownership. I would hate to have that interpreted as the sole use to which our public lands could be put. Is that understood?

CHAIRMAN: I think Delegate Shimamura can answer that. That's correct.

HEEN: After listening to the discussion and conferring with the chairman of the Committee on Agriculture, I don't think that this section is exclusive, that it limits the disposition of public lands only for farm and home ownership. In Section 2 is the provision that, "The legislature shall commit . . . such powers of disposition thereof "—that is referring to natural resources, which includes land—"as may be authorized by law." In other words, they then can, as I understand it, can dispose of or lease other lands to those who may want to take leases instead of taking fee simple title.

SILVA: I personally believe that we've had enough discussion on this Section 5; we spent all night last night, now we're starting all over again. Most of us, I believe, are under the opinion that as written, Section 5 seems to suit the purpose which it was intended for. I now move the previous question.

A. TRASK: I think the inquiry made by Delegate Tavares needs a full answer. The situation is this. This language in Section 4 is secured from H.R. 49. Now, it has specific reference to the 180,000 acres, and those 180,000 acres, patents to be issued and income therefrom have four distinct public purposes. That's the answer to Delegate Tavares. In other words, support of schools; betterment of native Hawaiians, defined in the Hawaiian Homes Commission Act; development of home ownership and the making of public improvement. So I have - -

CHAIRMAN: Such as an air field, would you assume?

A. TRASK: Pardon?

CHAIRMAN: There would be no inhibition to developing an air field in that - -

A. TRASK: No, no; that's the situation and it has particular reference to this section of H.R. 49. So, to obviate at the same time the matter raised by Delegate Fong last night, I move for this amendment, that in Section 5, after the word - - the third word, namely, "the public lands," insert, amend "patented to the State of Hawaii." Now that language is taken from H.R. 49, Section 4, paragraph D.

CHAIRMAN: Would you mind telling us what would that accomplish?

A. TRASK: That would have specific reference - -

CHAIRMAN: We have one amendment before the house; so before yours is seconded, I think we ought to pass on the first one.

TAVARES: I wanted to say that the explanation has satisfied me.

CHAIRMAN: You want?

TAVARES: I'm satisfied with the explanation.

CHAIRMAN: O.K. One lawyer down, about three to go now.

A. TRASK: There's no other on the field.

ASHFORD: I think if the gentleman would look at Part 2, Section 2, his feelings may be a little relieved.

A. TRASK: Yes, I understand they are in there; but I think the consideration of that should have reference to the specific items in H.R. 49. And I do move this amendment, "public lands patented to the State of Hawaii."

CHAIRMAN: Would you mind waiting till we clear up this first amendment? We have one on the table. Delegate King, did you want to say something?

KING: In my opinion the language as is is quite all right. It simply reaffirms the general policy that the Territory has been carrying out under Section 73 of the Organic Act of opening up certain areas of government land suitable for farming, ranching or for house lots, for sale, right of purchase lease or special sales agreement. We've been doing it for 50 years; we've done it for about 10,000 applicants to the extent of 116,000 acres. Out of the remaining public domain there are suitable areas for homesteading, for cutting up into house lots, and this simply directs that the legislature shall continue that policy on as broad a basis as possible.

CHAIRMAN: Do you feel that the amendment by Mr. Trask is necessary?

KING: I feel it's unnecessary. I'm not out of sympathy with it. The delegate wishes to tie it down with little more explicit language. But it seems to me, there's no contest or conflict between this language and the language that's put into Part 2, Section 2.

SAKAKIHARA: I move to second the previous question.

CHAIRMAN: That's twice now. Hawaii is getting restless, so we better move before they get nervous. The motion before the house is an amendment by Dr. Roberts, which is as follows: "in accordance with law" in the last line. Are you ready for the question? All those in favor of this amendment say "aye." All those opposed. The noes have it.

ARASHIRO: I move for the adoption of Section 5.

CHAIRMAN: We have a motion that hasn't been - - an amendment that hasn't been seconded, by Mr. Trask. Do you want to withdraw? No second to it; we'll go to the question. Are you ready for the question? All those in favor of Section 5 as it stands say "aye." All those opposed. It's carried.

Do you want to go back to Section 4? We have two sections here. We have Section 2 that wasn't straightened out last night.

HEEN: I was just going to inquire what disposition was made of Section 2. I believe that action on that was deferred.

CHAIRMAN: Section 2 was deferred, as I remember. We are to discuss that now, I think.

HEEN: All right, Mr. Chairman.

WOOLAWAY: In order to expedite matters, I move that we consider Section 2, bring it up this time for tentative approval.

DELEGATE: Second that motion.

CHAIRMAN: Now open for discussion.

HEEN: I have before me the first paragraph of Section 2, which has been rewritten by Miss Lewis of the attorney general's office. I think this will clarify the situation. May I read it then? No, it hasn't been printed yet.

CHAIRMAN: Do you want to read it, and then have it printed?

HEEN:

> The legislature shall commit to one or more executive boards or commissions full powers for the management of all natural resources owned or controlled by the State, and such powers of disposition thereof as may be authorized by law; providing that lands set aside for a public use, other than for a reserve for conservation purposes, need not be committed to the jurisdiction of such a board or commission.

This one brings out the word "land," whereas before I think it spoke of resources.

Now, the second paragraph reads:

> Resources which by authority of the legislature are owned by or under control of a political subdivision, or a department or agency thereof, are not covered by this section.

There's no change so far as that paragraph is concerned.

CROSSLEY: So we don't hold up work, how about deferring this section until the end, go on with other sections, and get this typed up and printed in the meantime. So moved.

DELEGATE: Second it.

CHAIRMAN: All those in favor of deferring this section for a short time say "aye." All opposed. Carried.

Then we are on Section 4, I think.

FUKUSHIMA: I move that we adopt tentatively Section 4.

APOLIONA: I second the motion.

CASTRO: Before he left last night, Mr. Anthony dictated an amendment to the section. Now it's my understanding that this amendment, as I recall, this amendment was read and seemed to have general approval, but the - -

CHAIRMAN: There's a new one on the table this morning.

CASTRO: That is correct, and the section was deferred to give Mr. Anthony a chance to make a final draft. So, in his absence, I would like to move now that the amendment which has been distributed, offered by Mr. Anthony, be adopted.

HAYES: I second that motion.

CHAIRMAN: May I read the amendment, so we are sure we know what we're - -

CASTRO: Yes, please.

RICHARDS: If there is no objection on the part of any member of the committee, I think the committee can accept this wording as a proposal rather than voting on it, if there's no member of the committee that has any particular objection to this.

CHAIRMAN: We would still have to vote on the section.

RICHARDS: I'm saving voting on the amendment.

KING: As a point of order, it would be simpler to just vote for the amendment to replace the language of the committee report.

CHAIRMAN: I'll read the amendment.

> The legislative power over the lands of the State and its political subdivisions shall be exercised only by general laws, except in respect to transfers to the State, a political subdivision thereof, or any department or agency of government.

MAU: I move that Section 4 be adopted tentatively as amended.

CHAIRMAN: Second to that?

CROSSLEY: Second the motion.

CHAIRMAN: You have heard the question. Is there any discussion?

CROSSLEY: Point of order. I think you first have to vote on the amendment itself and then vote on the adoption of the section.

CHAIRMAN: We'll assume that there was such a motion made. Are you ready for the amendment?

HEEN: May I rise for information? What is the amendment, please?

CHAIRMAN: What?

HEEN: The amendment.

CHAIRMAN: You want me to read it again?

HEEN: Or is this the one - -

CHAIRMAN: This is the one I just read.

ASHFORD: I rise to a point of information. Is it the opinion of those who are endorsing this amendment that that would cover the lands which it is provided that the University of Hawaii shall own?

CHAIRMAN: Would you answer that, Mr. Chairman.

RICHARDS: That matter was taken up with Miss Lewis of the attorney general's department last night, and it was felt that there was no conflict.

CHAIRMAN: Are you ready for the question?

H. RICE: I don't quite understand this amendment, that "The legislative power over the lands of the State and its political subdivisions shall be exercised only by general laws except in respect to transfer to the State." What does the legislature have to do with lands transferred to the State? I don't understand that. Maybe some of the lawyers can explain it to me, but to me that doesn't make sense.

ASHFORD: I disavow the baby, but I think I know the purpose. I think it was so that there could be exchanges between the various subdivisions or the taking over of lands of subdivisions, and the interchange between various - - the State and its various subsidiaries, of lands other than by general law.

CHAIRMAN: But do I assume that even to you it's not clear?

HEEN: Could not there be a general law relating to exchanges between the State and private individuals? Or between the State and political subdivisions? You can still have a general law to cover those acts.

CHAIRMAN: Are you satisfied with the wording as is?

HEEN: No, I'm not altogether satisfied.

SILVA: You have in Mr. Heen's opinion, an authority on Territory laws in the audience here, Miss Ashford, I mean Rhoda Lewis. Maybe she could clarify that question for us here.

CHAIRMAN: Does the delegate wish to hear from the authority on this? All those in favor say "aye." Miss Lewis, could you clarify? Would you kindly step up?

I think when lawyers work all night, and they come in the morning, and they still can't understand it, how can we possibly understand it.

MAU: While we are waiting for Miss Lewis to get to a mike, I'd like to speak on a point of personal privilege. I want to say for myself that you have been one of the best chairmen yet. Last night when tempers were running high, your - -

CHAIRMAN: I blush very easily, so please don't continue it.

MISS LEWIS: Well, the section I would construe as referring to a special law which made a transfer of land that was owned either by the State or a political division, and was transferred to any government body, for instance, from the county to the State. That is, if the State took over tubercular institutions as had happened in the past, it could transfer from the county the title to those particular institutions and transfer to the State at the time it took over the management of them. Similarly, it could pass a special law transferring to a county lands such as the Waikiki natatorium, which was formerly managed by public works, but is more suitable a county park.

CHAIRMAN: Is that clear? Are we ready for the question?

FONG: I'm still confused as to what this section proposes to do.

CHAIRMAN: Can Miss Lewis tell us that?

SAKAKIHARA: It's only fair that the introducer of this amendment, who is now here, be given the opportunity to explain.

CHAIRMAN: Mr. Anthony, could you rise to defend - -

SAKAKIHARA: I think he's about the only man who understands this.

FONG: I think that the thought is the thought of the committee, and not the thought of Delegate Anthony. I was wondering what the committee is trying to do here?

CHAIRMAN: Point well taken.

NIELSEN: In the fourth line, "laws, except in respect to transfers to the State, if it is between the State, political subdivisions thereof, or any department or agency," would that be more clear? I wonder if we could get something from Miss Lewis on that.

CHAIRMAN: Perhaps Mr. Anthony, who wrote this out, might clarify it. Could you?

NIELSEN: Because I think this is made to work both ways, not only to the State, but from the State to the political subdivisions and departments.

SILVA: I'd like to make a correction. I don't think the statement made by the Chair is correct or by Mr. Fong is correct. The amendment was introduced by Mr. Anthony, a delegate to this Convention; it has nothing to do with the committee. The committee has in its report - - the committee's interpretation of the language in Section 4 is written in their report and in Section 4.

CHAIRMAN: That's right, but the committee has accepted this amendment.

CROSSLEY: I move five minutes recess to enable Mr. Anthony and Miss Lewis to get together and speak on the amendment.

CHAIRMAN: We'll make it four minutes; it's too early to have five.

(RECESS)

ANTHONY: Is the amendment to Section 4, first paragraph, before the committee at this time?

CHAIRMAN: Correct.

ANTHONY: I would move that the amendment which was offered by myself last night, the fourth line, read as follows—I'll read the entire line—"Respect of transfers to," then insert "or for the use of the State, a political - -" In other words, the words "or for the use of" are inserted after the word "to." Then the entire section would read as follows - - the entire paragraph would read as follows: "The legislative power over the lands of the State and its political subdivisions shall be exercised only by general laws, except in respect of transfers to or for the use of the State, a political subdivision thereof, or any department or agency of government."

Now that would simply accomplish this. It would permit the transfer of land only by general laws, and it would have the saving clause that there would be an exception in the case of governmental agencies, the State or any political subdivision; and it would work both ways—either to the

agency or from the agency, or to the political subdivision or from it.

I offer that as an amendment.

MIZUHA: I would like to ask the author of the amendment a question. Would he consider the lands of the State and its political subdivisions, any lands held by the university fee simple title as being lands of the State and its political subdivision under the education article?

DELEGATE: Mr. Chairman, first I'll second the amendment.

CHAIRMAN: Mr. Anthony, do you want to answer that?

ANTHONY: They are lands of the State in this sense. The delegate will recall that we adopted a proposition whereby the university should have title, upon trust, nevertheless. In other words, the beneficial owners of the university lands are the people. So in that sense it is lands of the State, but strictly the legal title would be in the university. Does that answer your question?

MIZUHA: O.K. I have another question. [Part of speech not on tape.] . . . this section, to take away certain lands from the university, to transfer into another political subdivision of the State, let us say the City and County, would the university receive remuneration for those lands?

ANTHONY: No, that wouldn't be necessary. The way I see that this would work out as to university lands, before this Constitution goes into effect, the chief executive would make up a complete review of his executive orders setting apart lands, not only for the university, but to other agencies of the government. Now as to those lands which the university wants to have title to in order that it may encumber them, they would stand in one kind of an executive order. As to other lands, strings could be put on those lands so that they wouldn't have the full title, they would be subject to a reverted condition. I think what is troubling the last speaker can be adequately met by a review of executive orders at the time the - - just immediately prior to the effective date of the Constitution.

TAVARES: May I try to answer that further, Mr. Chairman? As I interpret what we've done for the university, the result it seems to me would be this. If the legislature wants to provide for a special transfer of lands that are unconditionally owned by the university, to which the university has title after this Constitution goes into effect, the legislature can make a special law to that effect. However, since the regents, being a self-governing body or autonomous body to that extent, have title to their lands, the legislature would have to provide for the consent of the regents to that transfer. In other words, it might be an exchange authorized by law, under which, for one piece of land given to the university, if the regents transfer another piece of land, the Territory or the State would give them another piece. As I understand it, the autonomy given to the regents would prevent the legislature from, without their consent, taking away a piece of land, but it would permit a special law authorizing a transfer of land from the university to the State, or from the State to the university, or an exchange. That's the way I interpret this.

MIZUHA: The reason why I'm raising the question is because we have to have the record clear here in our adoption of this section or it will result in continued litigation between the political subdivision of this State, including the university.

As I understand it now, there are two types of lands that the university would receive under executive order. One which will not contain any conditions of reverter. They will own it entirely in fee simple which they can encumber for purposes of securing federal loans or other types of loans. And there will be other types of land in which there will be conditions of revertal, that the Territory may reclaim for its use - - for general use by other political subdivisions of the State. For the type of lands that under executive order are given directly to the university without any conditions attached thereto, in the event the legislature desires to take back those lands for use by other political subdivisions of the State or for the State itself, then remuneration must be made to the university on the appraised value, so to speak, of those lands. Is that my understanding, is that?

TAVARES: I will go as far as to say that the regents' consent would have to be given. I don't know necessarily if remuneration would have to be given. I think that would probably amount to the same thing because I can't imagine the regents, after they become autonomous, giving up anything without some quid pro quo.

MIZUHA: Then it is my understanding that, according to the educational article as written with reference to the university and with this section as proposed, that the legislature may have to pay the university for certain types of lands; and for other type of lands in which we have made certain reservations or conditions in the deed or the patent, or whatever it is, that on those lands the legislature need not pay the university. If that is clear for the record, I would like to have the record so state; when the committee rises and reports, that the committee report so state so that there will be no confusion with reference to land that may be turned over to the university when we become a state.

SHIMAMURA: I didn't rise for this purpose in the first instance, but I think one statement of one of the previous speakers should be cleared up, that is as to the possibility of reverter. Just because there is a possibility of reverter does not make the land necessarily less than a fee.

I think this is a very good amendment. However, the Section 4, Section 4 rather, as originally drafted, was in respect to lands owned by the State or any of its political subdivisions, as the language shows. Now as I say, the amendment is a good one, but by abbreviating it I think we've left it with possible construction that "lands of the State" would be construable as meaning all lands in the State. Therefore, to take care of the original intent of this section and the proposal and proponents of this section, I think to clarify it, it should be amended by inserting in the first line after the word, "over the," the word "public"; so that it shall read in part, "The legislative power over the public lands of the State." I so move it.

CHAIRMAN: Wait a minute. Mr. Anthony, do you want to accept that as part of your amendment?

TAVARES: The word "public lands" has a very technical definition in the Organic Act. I feel afraid to put that in. It doesn't even cover all the lands owned by the State. I'd be very much afraid of putting that word "public" in.

HEEN: I think the delegate will recall that when we dealt with the lands controlled by the University of Hawaii, it was to have title to those lands for public purposes, for the purposes of the university and with the power to administer those lands. I take the word "administer" to mean to manage and control, and it does not include the power of disposition by fair sale or exchange. When that is in the Constitution, the legislature will not be able to enact a law authorizing an exchange or sale of those lands. I have in mind that a time may come when some of the university lands may not be needed for the purposes of the university, and they might want to exchange that for other lands, lands belonging to private individuals. It seems to me that some consideration should be given to that aspect of the disposition of lands that might - - that come into the possession and control of the university solely for the purpose of administration.

CHAIRMAN: Do you want to make an amendment, Senator Heen?

HEEN: This is not the place for the amendment; it should be the other place.

A. TRASK: Point of information. May the chairman of the Education Committee read the provision with respect to the title of land having been vested in the University of Hawaii for -- to be held in trust. Now there were several amendments made by Delegate Anthony and Delegate Heen. Some were passed and some were not passed, and I'm a bit concerned about which one it is. May the Secretary, if that is available, read that, because it is my view that this matter is probably in conflict with the other provision.

CHAIRMAN: Could you read that? Tavares, do you happen to know what that is?

TAVARES: No, Mr. Chairman.

CHAIRMAN: The one of the Education Committee that has to do with land?

TAVARES: No.

A. TRASK: I have a section here, but I'm not certain that it is it. It reads as follows: Section 5, as amended. "The University of Hawaii is hereby constituted a body corporate, and shall have title to all of the real and personal property now or hereafter set aside or conveyed to it, which shall be held in public trust for its purposes and administered in accordance with law." Now if that is the provision --

ANTHONY: That is the provision, and I don't see any conflict between that provision and the one we're debating here.

FONG: I have no fear about the transfer of land between our political subdivisions because the primary purpose in this provision here is to prevent the alienation of lands to private individuals. Now, as far as political subdivision is concerned, whether it's the university or the county, or the Territory, it still is for the public use. And as far as the public is concerned, the public still is getting its consideration for it. What puzzles me about this amendment here and this section here is, what is the purpose for which this provision is put in? As I construe the -- as I look over the report of the committee, it is for the purpose of preventing the alienation of the lands of the Territory to private individuals without proper consideration. Isn't that, Mr. Chairman, correct?

CHAIRMAN: Richards, is that correct?

RICHARDS: I didn't get the full question.

CHAIRMAN: Is the real purpose of this section to prevent alienation of lands into private hands?

RICHARDS: Yes, it was; that was part of the purpose. It was to prevent transfers by special law, I mean exchanges by special law which would work to the disadvantage of the State.

FONG: Following that thought, I think this section and this amendment does not carry out that intent. The intent here, which the committee is trying to convey to us, is that the Territory or the political subdivision has certain lands; therefore, they should not transfer it to other people by special law. Is that right?

RICHARDS: I didn't quite get the meaning of that question.

FONG: What I'm trying to say is this. That in the first instance, the Territory has certain lands; then you are trying to prevent the Territory from alienating these lands by special laws or by private exchanges. Now isn't that the intent?

RICHARDS: That is part of the intent, yes.

FONG: If that is the intent, why should we couch in language like this? "The legislative power over the lands of the State and its political subdivision shall be exercised by general laws." Why don't we say, that if you alienate land, you should have a general law? But even then, I'm afraid that you run up against obstacles. Now, I have in mind, for example, the exchange of land by the Territory with a private individual in a manner of condemnation. Do you say that if the law was passed, that the public lands commissioner could exchange private lands -- exchange government lands with private individuals if the government wishes the land for public use, and there were fair consideration? Would you call that a general law, or would you call that a special law?

RICHARDS: As I understand it, it could be a general law. It could be done in the way of a general law.

FONG: Then what do you accomplish here when, if you call that kind of a law a general law, when the legislature could say to the land commissioner, "You exercise your discretion in the matter, and if you feel that we are getting fair consideration, you can alienate the land." Will that be general law or special law?

RICHARDS: I feel that -- you see, this general law is to govern the commission or boards that handle the land. Now, if the legislature should pass the general law, as I believe is now in Section 73, that the commissioner of public lands may exchange lands up to a value not exceeding $5,000, I believe, or $10,000, or whatever the legislature wishes to put in, it still will permit exchanges. But that would be a general law. At least, that was my understanding.

FONG: That would be a general law, as far as you understanding is concerned?

RICHARDS: Yes.

FONG: Then under those circumstances then, this section is meaningless to the extent that the legislature -- you are trying to prevent the legislature from doing the very thing which you say it could do by general law, that is, exchange it with private individuals, the government lands. You feel the section here is put in only for the purpose to deter the public officials from exchanging land. If you say that that could be embodied in a general law, giving to the public commissioner -- land commissioner the right to exchange land, then you haven't got anything here. That's the way I've concluded.

TAVARES: I don't think that doesn't mean anything. I don't think the section of the Organic Act today that provides -- that limits exchanges to certain areas and values is meaningless. It's been very meaningful. It has stopped many a large exchange; and when we wanted to make specially -- exchanges larger, as we did for the Hilo flood sufferers, we had to get a special act of Congress to do it. I don't think it's meaningless. I think it means this. Even private exchanges can be the subject of grave abuse, if a special individual goes into the legislature and tries to get a special law to exchange a special piece of land for his special piece. Therefore it seems proper, under safeguard laid down by a general act of the legislature, to authorize the commissioner of public lands or some other department of government to make the exchange under those conditions. That does not prevent the legislature from passing special laws as it does today saying that the commissioner of public lands or some other public officer is authorized to acquire by condemnation, exchange, purchase or otherwise, a certain piece of land. Then the general law about disposing of government lands in exchange would apply to the exchange. But it wouldn't be a special law saying we are going to give this piece of public land for that piece of private land, which is what we want to avoid. And I think in that case,

you have full effect to the provision about a general law, because you have a general law authorizing exchanges in general under certain conditions and then your officers follow that general law in making the exchange.

CHAIRMAN: And you feel this section accomplishes that?

TAVARES: I do.

FONG: Following that, Mr. Tavares, if the Territory of Hawaii desires to condemn a certain piece of property, and the land commissioner says -- desires to attain certain piece of property, and the land commissioner says that we could exchange land from Punchbowl for this piece of land, will that be prohibited by this provision in the Constitution?

TAVARES: It would not be prohibited if there is a general law on the books authorizing an exchange, and if the legislature has not -- otherwise, if that particular land to be exchanged has not been set aside. As I see it, there is nothing to prevent the legislature from saying land in a certain area shall not be disposed of by exchange. That would not be a disposition. It would be holding out from disposition.

FONG: You call that a general law, or you call it a special law?

TAVARES: That I think would not come within the meaning of this prohibition against dispositions except by general law because that is setting aside to the State.

FONG: Yes, but you are alienating government lands.

TAVARES: No, because as long as it's set aside -- Let me explain, perhaps I haven't made myself clear, that a law passed by the legislature, for instance, saying that the Punchbowl lands shall never be disposed of or exchanged is not a disposition. It's a retaining of natural resources; it's a retaining in the State; it's not a disposition of the land.

FONG: Now what I'm saying is this, that we have a piece of land and we must alienate that piece of land before we get another piece of land, which you are constantly doing, you are exchanging one piece of property for another piece of property. Now will this provision prohibit that kind of exchange?

ANTHONY: Will the speaker yield for a statement for just a moment?

We have on the statute books, under the Organic Act, a statute which provides that there may be sales and exchanges, this is the general law of public lands of the Territory, which do not exceed the sum of $5,000 nor 40 acres. Now within that general provision, day after day, month after month, the land office engages in investigating and executing exchanges. Naturally they're done with individuals, but that is a general law; it has the framework whereby the Territory can make exchanges. The valuations are passed on by the land board, and if they are fair and just, they are accomplished. That is the present section of the -- Section 73 L of the Hawaiian Organic Act. Now this section would permit just this sort of general law. I think the committee will bear me out on that. Certainly the language would permit it. Does that answer your question?

FONG: No, it doesn't, Mr. Anthony. What I'm trying to find out, as far as lands of the Territory are concerned, can you alienate the government lands by a special law if this provision goes into effect?

ANTHONY: No.

FONG: All right. Now if you can't, then can you exchange one piece of property for another piece of property?

TAVARES: The words, "under a general law," I tried to make that clear, it can be exchanged but under this provision the exchange would have to be done by -- under a general law previously made by the legislature, applying to all exchanges.

FONG: And what would this general law be?

TAVARES: Similar to Section 73 L of the Organic Act which says -- which authorizes exchanges not exceeding $5,000 in value, or 40 acres in area. Similar general laws could be passed by the legislature, laying down other restrictions for exchanges.

FONG: But if you have such a law, why, then this is . . . [inaudible].

ANTHONY: I think this debate is getting a little bit out of hand. The general law that we are talking about, the kind of general law, is a statute such as this. "No sale of land," and I'm reading from Section 73 L of the Organic Act, "No sale of lands for other than homestead purposes, except as herein provided and no exchange by which the Territory shall convey lands exceeding either 40 acres in area, or $5,000 in value shall be made," period. Now that is a general law. That will prevent any large exchanges, either large in area or large in value. Now, if they want to change those limits, the legislature could do it, but it still would have to be a general law.

FONG: As far as this amendment is concerned, the exception in respect of transfers to or for the use of the State, now that exception need not be in this amendment, due to the fact that as far as transfers between political subdivisions, there is no -- we need not worry because it is for benefit of the public. And under those circumstances, why should the legislature be circumscribed in their powers?

TAVARES: I don't think the question is well taken because this provision specifically authorizes the State -- the legislature to provide by special law for transfers between political subdivisions. That's exactly what this provision does do. Insofar, however, as providing for acquisition of lands not owned by the State and transferred to the State, that is covered by the general power of eminent domain, anyway.

MAU: I think the subject is getting so confusing that it might be wise to have the Convention appoint several of the individuals who feel that they can clarify this to work this problem out together with the committee. Involved also in this proposal from this morning's discussion, is another confusion resulting from the article on education giving the fee simple title to the university regents. If the delegates feel that there is any way, after once they provide for the fee simple title to the regents, that those lands can be disposed of as easily and as plausibly as has been said this morning, they are mistaken, because once that title is in the regents, they don't have to consent and those lands will remain with the university forever and ever, unless you change it by Constitutional Convention again.

CHAIRMAN: May I ask the delegate just a question?

MAU: Yes.

CHAIRMAN: Don't we have to assume occasionally that the regents of the university are men of good will and they are not going to do something crooked on that?

MAU: No, I'm not saying that. I agree with you, but I'm wondering whether the delegates realize that the thought expressed this morning that the regents would have to consent and the explanation given was so plausible that it would be easy. It won't be easy. They must know that once that title is given to the university, it stays with the university regents, regardless of whether it's held in trust or not, regardless of whether it's just a bare legal title.

But my point on this amendment proposed is this, it is so confusing, particularly with Section -- the last clause

of the first sentence of Section 2 which we have deferred, that it is either a repetition or a taking away of what is said in one clause and repeated or pronounced in another clause. I submit it is confusing that we ought to appoint several of these individuals who think they can clarify the situation to work it out together with the committee. Otherwise we'll be here all morning. I don't understand what they've been trying to say.

CHAIRMAN: Just to encourage those non-legal minds, let me remind you that this problem has been going on since 1700 when Montaigne said, "How is it that our ordinary language, so simple for every other purpose, becomes obscure and unintelligible in a contract and a testament." It's still a problem. What is the wish of the committee?

PORTEUS: It's the same problem that is encountered where before man used to have an ache or pain, he now has any of 23 different hyphenated names which may be applied to his malady.

CHAIRMAN: But a good diagnostician doesn't take all morning to find out the cause of the pain.

PORTEUS: I agree with that, Mr. Chairman; it sometimes takes them several months with different experts and then they don't agree.

SHIMAMURA: May I suggest this amendment: "The legislative powers shall extend over the lands owned or controlled by the State and its political subdivisions, except as otherwise provided in this Constitution, and shall be exercised only by general laws," and so forth. In other words, after the word "power" in the first line, I have inserted the word "shall extend over," and in the second line, after the word "land" delete "all," insert "owned or controlled by," and after the word "subdivisions" in the second line, comma, insert the words "except as otherwise provided in this Constitution." In my humble opinion, I think that will to a large extent meet the objections of some of the delegates.

CHAIRMAN: Now I'm completely confused. I wonder if Mr. Mau's suggestion wouldn't be a good one. If we get the five lawyers who have been arguing, perhaps they can get to one side and clarify the language and then we won't have to sit here and become more confused.

A. TRASK: I second the motion.

CHAIRMAN: Second the motion that a committee of five be appointed to straighten out the language?

PORTEUS: Up until now we have avoided this appointment of special committees within the Committee of the Whole. If people want to get together in an informal fashion and then submit something, let them do so. Otherwise we're going to have our Committee of the Whole broken down into all sorts of subcommittees. It may impede progress because we may have to wait for them to make a report. I'd like to proceed with the matter at hand, if we possibly could.

LEE: At first, I was very confused on this matter, but it seems to have been adequately explained by the two ex-attorney generals what "a general law" meant, and this merely is conforming with what has occurred in the past. There is a constitutional restriction in our Organic Act similar in effect to what is now being proposed, and how the legislature may take care of that situation. It seems to me we've had enough debate. I am opposed to the matter of a special committee at this particular time because actually what might be done is that, if there are some doubts in the minds of the delegate of the fifth district, we might defer this matter and then during a particular recess we might come over to the "supreme court" here and talk it over. But I think a special committee will merely add to the confusion.

SILVA: I would like to remind the delegates of this Convention that this Constitution is not to be written for attorneys, but to be written for the people of this territory, and the explanation given by the attorney general a moment ago -- the assistant attorney general, Miss Rhoda Lewis, was very plain and satisfactory to me, and I don't know whether the other delegates felt the same way. And I now move the previous question.

SAKAKIHARA: Second.

CHAIRMAN: Are you satisfied, Mr. Mau?

MAU: There is a motion that the Chair put --

CHAIRMAN: We have several motions here that we would have to dispose of. The first one is an amendment to the present section made by Mr. Anthony. After "transfers to," he added, "or for the use of the State."

ANTHONY: Point of order. That being by the original movant and I presume accepted by the second, does not have to be voted on. It's part of the proposed amendment.

CHAIRMAN: Is the second satisfied?

MAU: Then we have before us the amendment proposed by Delegate Anthony, without any other amendments to it. Is that correct?

At this time I'd like to amend the amendment by striking out the words appearing in the second line, starting with "and its political subdivisions."

CHAIRMAN: May we ask what you want to accomplish by it?

MAU: This Convention is giving the fee simple lands --

CASTRO: Point of order, Mr. Chairman.

DELEGATE: I'll second the motion.

CASTRO: Point of order.

CHAIRMAN: Castro, what is it?

CASTRO: There has been a motion duly seconded for the previous question. I believe the delegate is out of order.

CHAIRMAN: I believe the delegate is discussing that motion, isn't he?

CASTRO: No, sir, the --

CHAIRMAN: All right, it wasn't recognized. We now have the motion before the house. I'm sorry.

DELEGATE: Mr. Chairman, I'd like a point of order.

ANTHONY: Mr. Chairman, I don't think we should -- I'm anxious as anybody to bring this matter to a head, but if the delegate has something to say, I suggest that the movant of the previous question give him the opportunity to say it.

SAKAKIHARA: Mr. Chairman, I withdraw my second.

CHAIRMAN: O.K. Go ahead, Delegate Mau, go ahead.

SILVA: He was trying to amend. Not having something to say. He's trying to offer an amendment. I just wonder what -- is there an amendment to be offered, or something to say on the amendment, on the previous question? I don't know.

MAU: Well, I'm offering an amendment, Mr. Chairman. You would recognize me? Do I have --

CHAIRMAN: Go ahead, Delegate Mau.

MAU: I understand that that amendment to delete these words has been seconded. Speaking on that motion, we have in another article of this Constitution given the fee simple titles to lands to the regents of the university. There are certain other agencies of the government, municipal and otherwise, which might hold fee simple titles. I don't see

why, if we can do that for the regents and make them autonomous, why the county governments should not receive autonomy. Why should their lands not be held in fee simple by the respective counties? Why should the legislature have any control over those lands if they don't want to control the lands of the university? It seems to me on the basis of autonomy to municipalities, on the principle of home rule that we've been talking about so much, that this should go out of the Constitution and that the lands owned by the county governments should remain with the county governments, and they can do with their lands what they will. It seems to me that's the only fair thing to do.

CHAIRMAN: Mr. Anthony, do you want to answer that.

PORTEUS: Perhaps we can agree with the gentleman from the fifth district. The removal of this will permit the legislators to pass special laws interfering with the county land. Take the sentence, vote for his amendment, and you'll open it up to the legislature to deal by special law with this. This is a protection to the county by leaving it in. It means that the legislature may only pass laws of general application and not special application. So if you take it out, unless you can amend some other part of the Constitution forbidding the legislature to have the power, the legislature then can pass special acts. This is more protection.

MAU: I don't agree with that reasoning, because if we can look into the history of legislative acts insofar as the counties are concerned, they have not been responsive to the will of the people in the counties. They have not taken care of the counties in the way that the member of the House there has spoken of. I would prefer that they leave out any consideration about the counties insofar as the lands are concerned, that their land should remain in fee simple with the county government, and that's the way it ought to be. Here they have it within the power of the legislature to do what the legislature wants with the county lands, in each of the four separate counties.

LEE: Will the Delegate from the fifth district yield to a question? Would you mind explaining to the delegates and for my information, what is the status now as to lands held or administered by the county? Do they own the fee simple title land?

MAU: There have been condemnations, exchanges of land, and many other types of disposition of county lands without interference by the legislature, and I will assume that when the legislature meets without all of this in the Constitution, that the same laws will remain in effect. Highways, of course, are, even though condemned by the county and in the name of the Territory, all public highways.

CHAIRMAN: Mr. Anthony, is that acceptable to you?

ANTHONY: Well, from the standpoint of drafting the article, I have no feeling one way or the other. It is a substantial change in the intent. The way this thing is drafted, it would prevent the State or any county from dealing, except by general law, with the public lands. I don't think that the problem of the public lands which are actually owned by the counties is a very large one, but I don't have the information that the last speaker has. I understood that their public lands were confined to the city hall and various sites for the offices of the county buildings. If that's all that it is, nobody is going to take them away from them, and I don't really see any vice to the proposed section. I don't feel one way or the other, but it is a substantive change.

MAU: We might terminate this. If that is the understanding, then I'm willing to withdraw my - -

CHAIRMAN: We'll write it into the report.

TAVARES: I don't know whether that is all the understanding, but I'd like to make this suggestion. When we were dealing with university lands, we put the provision in relating to the university. If it is the intent of this Convention later on when we consider local government to put in a freeze there so the legislature cannot touch any lands owned by a county, then let's put it in the local government section and not here. Then it will control this, but as this stands it would seem to me, it's perfectly clear and properly worded.

SHIMAMURA: As I said formerly, this is an improvement in abbreviated form, but in the process of abbreviation I think we've changed the substance and sense of that original section. As pointed out by a previous speaker, this original section provided for two things: first, the power of the legislature over lands owned or controlled by the State; second, it provided for the transfer of such lands, as pointed out by Delegate Fong.

SILVA: I now move the previous question, again.

SHIMAMURA: I still have the floor and I think it's not proper in the Committee of the Whole to move for the previous question.

SILVA: We have been acting out of order; we might as well go all the way back.

CHAIRMAN: Mr. Shimamura has the floor. Go ahead.

SHIMAMURA: Now in the process of amending it, we've made it to read, "The legislative power over the lands of the State," which is construable as meaning all lands including private lands, because the word "of" is construable as meaning "in." In other words, the original purpose of this section was not to control all lands, public and private. But when I made my original suggestion to insert the word "public," Delegate Tavares had a point there that we should not use the word "public," and I think he is correct as to that. But we have still left it up in the air, and we have in effect included in this section control by the legislature of all lands, public or private. Therefore, the original language of this section should be inserted, which is "owned or controlled by the State." I think that's a serious matter here.

In the second place, some of the delegates have made the point that there is no exception as to university lands or as to county land. Therefore, we should insert back in this section the exception contained in the original Section 4, which was as follows, "except as otherwise provided in this Constitution." Then if you do that, I think you will substantially meet all the objections raised here.

Therefore, I respectfully move that this amendment be made, that the word "over" be struck out, be deleted in the first line, and the words "shall extend to" be inserted in its stead; and that in the second line, after the word "lands," the word "of" be deleted, and the words "owned or controlled by" be inserted; and that in the end of that line, after the word "subdivisions" and the comma following the word "subdivisions," the words "except as otherwise provided in this Constitution," comma, be inserted.

PORTEUS: May I point out that that's the language of the original section; and if you want that language, the best thing to do is to vote against the Anthony amendment. Following it just then, it seems to me it's the same thing that we had before.

SHIMAMURA: As I've tried to point out, the original section provided for two things; the power of the legislature over the land, and not over all lands in the State, private or public, but lands owned or controlled by the State.

PORTEUS: "Of" means "owned by." I think there was a long discussion on that earlier this morning. In substance, you are making the replacement. There is the section, then the amendment, then you are going back to the original section. If you want the original section, vote down this amendment.

DELEGATE: Mr. Chairman.

CHAIRMAN: Wait a minute, Mr. Shimamura still has the floor.

DELEGATE: Point of order. I second this motion.

CHAIRMAN: What was the motion?

DELEGATE: To add - -

SILVA: Point of order, Mr. Chairman. I can't see how a man can second someone else's motion when he still has the floor.

CHAIRMAN: I don't either. Go ahead, Shimamura.

SHIMAMURA: One of the delegates pointed out, and I think correctly, that this section as rewritten only provides for transfers of land; whereas in the original Section 4, there was definite provision of the power of the legislature over lands owned by the State. Now my first objection to this amendment is that we have not restricted this section to lands owned or controlled by the State, but we have widened it and expanded to include all lands in the State. And I said "lands of the State" is subject to two constructions; first, owned or controlled by the State, and all lands in the State; therefore there is an ambiguity there. If it is the - -

ANTHONY: Can't we just straighten that one point out? If I am referring to the lands of Dr. Shimamura, I'm certainly not referring to the lands of Dr. Larsen. And it's perfectly clear in this language, it's lands owned by the State, nobody else.

SHIMAMURA: If you mean lands owned by the State, well why don't we say so? It was in the original section as such, and I say "lands of the State" is construable in two ways, lands owned by the State, and lands in the State. Therefore why have such an ambiguity in this Constitution?

CHAIRMAN: The original section had "owned and controlled by the State."

SHIMAMURA: Yes.

CHAIRMAN: Mr. Anthony, did I infer that you don't feel that's necessary?

ANTHONY: I do not, Mr. Chairman.

FUKUSHIMA: I believe Delegate Kellerman made that same amendment, and when she made it I thought it was a very good amendment. What Delegate Shimamura is doing is merely doing what Delegate Kellerman tried to do and she - - when Delegate Anthony made his amendment, she withdrew her amendment in favor of Delegate Anthony's.

CHAIRMAN: Have we had enough discussion on this?

FONG: One more question. I want to ask Mr. Tavares this one question. The land - - the State has a piece of land known as land A. I have a piece of property known as land B. Now say the value of these two pieces of property is such that no general law applies to it. Say it exceeds the sum of $25,000. The legislature feels that it's a good exchange, and I'm willing to exchange with the Territory; the Territory is willing to exchange with me, land A for land B. Will the legislature be able to pass such a law allowing the exchange, and will that law be a special law or a general law?

TAVARES: The first answer is no; the second answer is yes. It will be a special law and the legislature can't do it that way; it will have to be done under general law, if at all. But there is still the power of condemnation by which the State can acquire lands; and if the legislature has fixed a policy that, generally speaking, lands over a certain size and over a certain value shouldn't be exchanged, then I think it's perfectly all right to have it condemned, as we do now instead of exchanging, because over a certain size, you are, perhaps to some extent, whittling down your public lands.

CHAIRMAN: And you are not afraid of these fears that have been expressed here?

TAVARES: No, Mr. Chairman, not a bit.

FONG: The only purpose for that question is to get this clear as to what we are voting for, and what we are not voting for. Now I'm clear in my mind as to what we are voting for.

CHAIRMAN: Are we ready for the question?

HEEN: I think there is something in what Delegate Shimamura has said. Let's clear it up. I would move this amendment. After the word "lands," second line, insert the words "owned by or under the control." That will read "The legislative power over the land owned by or under the control of the State and its political subdivisions." Then there's no more room for argument.

CHAIRMAN: Mr. Anthony, are you willing to accept that?

ANTHONY: That is exactly what it means, but I'll accept the amendment.

HOLROYDE: Point of information. Don't we have Delegate Shimamura's amendment before us?

CHAIRMAN: I think it wasn't seconded, was it?

HOLROYDE: It was seconded.

SHIMAMURA: I'll withdraw it as far as amended. The only thing, I'm wondering if the good judge will also concur with me that the words "except as otherwise provided in this Constitution" be included.

CHAIRMAN: Are you willing to accept Anthony's compromise here of leaving it out as they feel it's not necessary?

HOLROYDE: Mr. Chairman, will you then read what is before us at the present time?

CHAIRMAN: Are you ready to hear it? "Section 4. The legislature shall have power over the lands owned by and under the control of the State and its political subdivisions."

HEEN: That's not the correct - -

CHAIRMAN: All right, then, would you read it, Senator Heen?

HEEN:

> The legislative power over the lands owned by or under the control of the State and its political subdivisions shall be exercised only by general laws, except in respect of transfers to or for the use of the State, a political subdivision thereof, or any department or agency of government.

CHAIRMAN: Is it clear?

BRYAN: One question. What happened to the words "except as otherwise provided in this Constitution"?

HEEN: Those words evaporated.

BRYAN: Thank you.

A. TRASK: Point of information of the chairman of the committee. The word "land," does that include under the sea, over the sea, and over the land, in the air? It's not as facetious as somebody might think. We've had a very great contested case in the Supreme Court over the question of the oil lands under the sea of California and in Louisiana, and I'd like to see this - - If we're a deliberate body at all, I want to find that answer.

RICHARDS: I should imagine that the term, at least as far as the committee is concerned, is the use of the word

"land" as is normally understood. That if the State owns the land that's under the sea, it owns the land under the sea.

A. TRASK: Was any information given to the committee with respect to this situation? Because I'm concerned. We have now existing a situation with respect to coastal waters, navigable waters; of course we know they are under the federal government. But there are many situations that may arise in the future with respect to this matter, and I just wonder whether maybe Mr. Nils Tavares could say something with respect to that situation.

CHAIRMAN: Tavares, do you want to answer that? Seems to me if we had put in "owned by and under the control of," it covers that point.

TAVARES: In the first place, I don't think the amendment is necessary. In the second place, the word "lands" does mean lands whether under the sea or any other place.

CHAIRMAN: Are you ready for the question? Now the question is that Section 4 as amended be accepted. Am I right? Because the movant accepted all the amendments. Right? Are we ready for the question?

ARASHIRO: Aren't we supposed to vote on the acceptance of the amendment at present?

DELEGATE: That's right.

CHAIRMAN: No, the movant of the motion accepted all the amendments as part of the motion.

ARASHIRO: But we have not voted on it.

DELEGATE: Point of order.

CHAIRMAN: Go ahead.

CROSSLEY: The movant did accept all of the amendments.

CHAIRMAN: He did not?

CROSSLEY: He did, but we are now voting on the amendments, after which we will not -- In other words, the section offered by Mr. Anthony is an amendment. So that we are voting on Mr. Anthony's amendment with all of the other amendments pertaining to it included.

CHAIRMAN: I think that's understood. That is, what we are voting on is this paper with the additions. Are you ready for the question? All those in favor say "aye." All those opposed. Carried.

FUKUSHIMA: I now move that Section 4 as amended be tentatively approved.

CROSSLEY: I second the motion.

CHAIRMAN: The motion has been made and seconded. Are you ready for the question. All those in favor of Section 4 as amended say "aye." All those opposed. Carried.

WOOLAWAY: Now I move that we tentatively adopt Section 2, which has been deferred.

DELEGATE: I second that motion.

CHAIRMAN: Is there any debate?

ARASHIRO: Before acting on Section 2, do we have the appropriate language for Section 2 at present?

LEE: I believe there is an amendment that was proposed by Delegate Heen.

CHAIRMAN: Would you mind reading it?

LEE: Delegate Heen, would you mind reading it?

HEEN:

> The legislature shall commit to one or more executive boards or commissions full powers for the management of all natural resources owned or controlled by the State, and such powers of disposition thereof as may be authorized by law; provided that lands set aside for a public use, other than for a reserve for conservation purposes, need not be committed to the jurisdiction of such a board or commission.

The word "full" is not there in the mimeographed copy. That is the word "full" --

CHAIRMAN: You mean under "full powers"?

HEEN: No, no, omit "full."

> Resources which by authority of the legislature are owned by or under the control of the political subdivisions or a department or agency thereof, are not covered by this section.

CHAIRMAN: Is that clear? We had a lot of discussion on that last night. Are we ready for the question?

MIZUHA: I would like to ask a question of the movant of this amendment as to the construction of paragraph two. Does he presume that no political subdivision of this State can own resources by itself unless by authority of the legislature?

HEEN: This is the exact copy of that paragraph in Section 2 as submitted by the Committee on Lands. Perhaps some member of the committee can explain that.

BRYAN: I think that Delegate Mizuha may have misunderstood this. It just means that those lands which are owned or under the control of a political subdivision or a department thereof need not be committed to the boards or commissions which are set forth in the first paragraph. That's all.

MIZUHA: If that is the case, I have an amendment to make to the second paragraph. To strike out the words in the second paragraph, "which by authority of the legislature," and to have the second paragraph read as follows: "Resources owned by or under the control of a political subdivision or a department or agency thereof are not covered by this section.'

ASHFORD: I don't think that changes the substance of that paragraph. The political subdivision only has such authorities as are granted to it by the legislature in any event.

MIZUHA: The reason for this amendment -- it wasn't seconded, but I wish to point out very clearly that this Convention already has given to the university the fee simple title of certain lands as a body corporate. The political subdivisions and counties of this State will be perhaps, and it is not known at the present time inasmuch as we have not considered the article on local government, whether the counties can own lands in fee simple title. And that is, under this section, the second paragraph, it is presumed that they will not be able to own lands in fee simple title. If that is so, I believe we are giving to the university something that the counties are entitled to at the present time. Under a recent supreme court decision, it was made very clear that a county does not have the fee simple title to the highways. The question as to whether other lands where the water tanks are and where the county seat is and where the county buildings are, there is some question as to who owns those lands, but a strong interpretation of this decision of the supreme court reveals that perhaps the Territory of Hawaii owns all of the lands by the counties in fee simple title and that the counties do not hold a fee simple title. By adopting this section, the second paragraph, it presumes in the Constitution that our political subdivisions, those counties, will never be able to own the fee simple title of their lands, and only by consent of the legislature.

MAU: I second the motion.

LEE: If that is true, Mr. Mizuha, wouldn't it be better to delete the last sentence? Last paragraph?

MIZUHA: I would like to withdraw my original motion and move to delete the last paragraph of Section 2.

LEE: Second the motion.

TAVARES: I was going to second that motion. I think that's what the first paragraph means anyhow. It sets aside; if a county has it, I think it's set aside sufficiently so that it's not covered.

CHAIRMAN: So you don't feel this is necessary? Senator Heen, I think last night you made a statement that you thought possibly it was necessary. Are you willing to withdraw that? That last paragraph?

HEEN: No, I think it can be withdrawn. It's covered by the language in the first paragraph.

ASHFORD: I call the attention of the delegates to the fact, "other than for purposes of conservation."

CHAIRMAN: That's in the first paragraph.

BRYAN: I think that's correct. The delegate from Molokai has a good point there, that that would mean any lands of the county that are not set aside for conservation, would not be included. Is that correct, Delegate Ashford?

CHAIRMAN: What did you want to add to it?

TAVARES: I confess error. I think Miss Ashford is correct.

CHAIRMAN: Now as we stand, Miss Ashford, it means we should retain this paragraph. Is that correct?

ANTHONY: I was just going to remark that, doesn't the word "set apart for public use" include use of the counties? "For public use"? It seems to me that meets it with the deletion of the last sentence.

CHAIRMAN: Bryan, do you want to answer that?

BRYAN: I'm just a little bit confused, but I think that "set aside for public use" is modified by the words "other than for a reserve or conservation purposes." And I believe that the second paragraph is actually a protection for the counties.

ASHFORD: That was what it was designed for. In other words, it was the theory I think, of the committee that the counties might have conservation areas for water and other purposes as well as the State.

CHAIRMAN: And you feel it was necessary to protect the county interests.

ARASHIRO: I have a question for the committee as to the reasons why the word "executive" is there before the word "board."

HEEN: That word can be well deleted, but the Style Committee can eliminate it.

BRYAN: In the opinion of the committee, I'm quite sure that word cannot be deleted without a change in substance. It was the intent of the committee that these boards should be executive boards in nature, that the boards should appoint its executives. That was the prime purpose, actually, of this whole section.

ARASHIRO: Because to me, executive would then limit the board to only executive boards, whereas there might be a possibility of creating some advisory board, instead of an administrative board.

BRYAN: That was the point that the committee wanted to make in this section. The committee felt that this subject should not be committed to a single executive. It should be committed to a board, that the board would appoint their executive, and the executive would be subservient to the board. Now, it is possible, under this section, I believe, that this whole subject could be committed to one board, one executive board, which in turn could have subdivisions where you would have advisory boards or commissions, and so forth. But the intent of the committee was that this subject should be headed up by an executive board.

MIZUHA: I wish to withdraw my motion for the deletion of the entire second paragraph because upon further study of the second paragraph, it serves a definite purpose. But I wish to move for my original motion which would delete those words, "which by authority of the legislature," and have the second paragraph read as follows: "Resources owned by or under the control of a political subdivision or a department or agency thereof are not covered by this section."

DELEGATE: Second the motion.

OHRT: I'd like to pose a question. The board of water supply in the last ten years has purchased about $250,000 worth of land in the name of the City and County of Honolulu. That's in connection with forest reserves. We can't get anybody else to look after the forest reserves back of Honolulu except ourselves; so we proceed to buy this land, and we bought it in the name of the City and County of Honolulu. What is going to be the status of that particular land under all of this?

CHAIRMAN: Mr. Bryan, could you answer that?

BRYAN: I think the status will be the same as it is now. That's the purpose of the last paragraph.

TAVARES: In supporting the proposed amendment, it seems to me one understanding should be kept in mind—at least that's my understanding—that if, for instance, the legislature should provide for the temporary transfer of property to a county with a string on it, that so long as that control was in the county, this wouldn't apply; but if by chance, that land got back into the hand of the State, then the section would then - - the first part of the section would then apply again. That's correct.

CHAIRMAN: That would protect you, Mizuha. Do you want to withdraw it?

MIZUHA: No, that is correct. I think the amendment should stand but the understanding for the committee report I think is proper to avoid any confusion later on in interpretation.

CHAIRMAN: You withdraw the amendment?

MIZUHA: I'm not withdrawing the amendment, but I'm accepting the remarks of the delegate from the fourth district with reference to interpretation as to lands that may be transferred to the political subdivisions and later transferred back to the State.

BRYAN: I can't speak for all members of the committee, but I know that several have accepted the amendment as being O.K. I don't know about the other members of the committee.

FUKUSHIMA: I move for the previous question.

CHAIRMAN: Are we ready for the question? The question is an amendment to the last paragraph. Mizuha, would you read it as you got it? Slowly.

MIZUHA: The last paragraph would read as follows: "Resources owned by or under the control of a political subdivision or a department or agency thereof are not covered by this section."

CHAIRMAN: Are you ready for the question? This is an amendment to the last paragraph.

MIZUHA: To delete the following words from the last paragraph, "which by authority of the legislature are."

CHAIRMAN: Question. All those in favor of this amendment say "aye." All opposed. Carried.

FUKUSHIMA: I now move that the second paragraph of Section 2 as amended be tentatively approved.

WIRTZ: Point of order. The original amendment was Delegate Heen's amendment which is supplemental one for Section 2 which he moved for the adoption of. We've just passed on an amendment to that amendment; so that amendment, I think, is still before the house.

CHAIRMAN: Delegate Heen, could you read that?

BRYAN: I move the adoption of this amendment as amended.

CHAIRMAN: Well, could we get from Senator Heen, I don't - -

WOOLAWAY: That's right, I second that - -

HEEN: I think that procedure is correct, Mr. Chairman.

CHAIRMAN: Are we ready then for the paragraph? All those in favor say "aye." All opposed. Carried.
Now can we have a motion for the whole section?

A. TRASK: I move that we tentatively approve Part I of Committee Proposal No. 27 as amended.

CHAIRMAN: Section 2.

A. TRASK: Oh, Section 2 as amended.

DELEGATE: Second.

CHAIRMAN: Second the motion. Motion made and seconded that we tentatively accept Section 2 as amended. All those in favor say "aye." All opposed. Carried.

A. TRASK: Now I move that Part I of Committee Proposal No. 27 be tentatively approved as amended.

DELEGATE: Second the motion.

CHAIRMAN: Any discussion? Otherwise we'll go to the question. All those in favor of accepting Part I say "aye." Opposed. Carried.
We're now on Part II.

RICHARDS: In explanation of Part II, this covers the requirements of H.R. 49, or at least it's supposed to provide for the different requirements in obtaining statehood under H.R. 49.

CHAIRMAN: May I ask just one question? Does H.R. 49 require this many words?

RICHARDS: Well, in most instances, we have quoted verbatim.

CHAIRMAN: Verbatim. Any discussion? Are we ready for the question?

ANTHONY: I don't see why this should go in the Constitution. If it is a requirement of H.R. 49, then it's one of these things of a temporary nature. Let's not put it in our Constitution. Let's transfer it to the ordinance section and let them put it in there, or maybe the Style Committee can handle it.

TAVARES: One of the most important things that we had to do when we went to Washington was to take care of these public lands. If this represents the draft, I'm sure it must have been prepared with the aid of the assistant attorney general. It's something that I would very, very carefully think over before I deleted it, and if there's any disposition to that effect, I'd want a recess to discuss it for a few minutes.

BRYAN: I think I can clear up this question.

CHAIRMAN: Wait a minute.

TAVARES: I thought I had the floor, Mr. Chairman.

CHAIRMAN: Mr. Tavares, a - -

A. TRASK: Point of order, point of order, Mr. Chairman.

CHAIRMAN: Wait a minute.

A. TRASK: Point of order. There is nothing before the committee.

BRYAN: Right.

A. TRASK: Well I move, Mr. Chairman, that we tentatively approve - -

ANTHONY: Mr. Chairman, I thought I had the floor.

CHAIRMAN: You have the floor, I think, but - -

ANTHONY: I was interrupted by two speakers.

A. TRASK: Point of order, Mr. Chairman.

CHAIRMAN: Wait a minute. Point of order. State it.

A. TRASK: There is nothing before the committee, so I move at this time - -

ANTHONY: Mr. Chairman, the chairman called for debate on it.

CHAIRMAN: I think that's correct.

ANTHONY: But that is before the committee.

CHAIRMAN: There's no motion made on the first section.

A. TRASK: Am I in order, Mr. Chairman?

CHAIRMAN: I think he's in order. All right. The motion has been made. Second it.

DELEGATE: Second the motion.

CHAIRMAN: Seconded. All those in favor say "aye."

BRYAN: Mr. Chairman.

CHAIRMAN: Contrary, "no." Carried.

BRYAN: Mr. Chairman. Right here.

PORTEUS: Mr. Chairman.

BRYAN: I think I can clear up this trouble.

PORTEUS: Mr. Chairman. You don't carry the motion. All you do is have the motion before the body in order that it may be discussed. So under this, we've already passed it. I think we'd better go back.

BRYAN: Mr. Chairman.

ANTHONY: Mr. Chairman.

CHAIRMAN: Wait a minute!

ANTHONY: Mr. Chairman, I think I had the floor. This question was put before the house. The Chair asked whether or not there was any debate.

CHAIRMAN: I think that's correct.

DELEGATE: Point of order.

ANTHONY: Mr. Chairman. May I finish, Mr. Chairman?

CHAIRMAN: Mr. Anthony, go ahead.

ANTHONY: I got up to debate on it.

CHAIRMAN: Correct.

ANTHONY: The Chairman ruled me out of order and permitted the motion to adopt the entire section.

KING: Mr. Chairman, point of order, please. Delegate Anthony was out of order, because no motion had been made tentatively to adopt Section 1.

CHAIRMAN: I think that's correct. The Chairman was out of order.

KING: It has now been seconded, and now the Chair can recognize Delegate Anthony to debate it, but the section is now before the Convention.

CHAIRMAN: The motion was not - -

LEE: In order to correct the present situation, I move that we reconsider our action on passing - -

SAKAKIHARA: Second it.

ARASHIRO: I second that motion.

CHAIRMAN: All those in favor - -

SILVA: Point of order, Mr. Chairman, point of order.

CHAIRMAN: All those in favor - -

SILVA: In the first place, the Chair did not correctly state the question after it was stated. The motion did not carry. There was not a vote taken. All you have to do is rescind your action in saying that the motion carried.

CHAIRMAN: The Chairman rules that the motion was not carried. Section I is open for debate. Mr. Anthony.

BRYAN: Mr. Chairman, Mr. Chairman.

CHAIRMAN: Delegate Bryan.

BRYAN: I think that if we may consider what Mr. Anthony did say was in order and before the house—at least we heard it—I can clear up some of his objections. It was the intention of the committee in dividing this into two parts that Part I would be in the Constitution and Part II would be either in ordinances or in the schedule.

CHAIRMAN: Will that be acceptable, Mr. Anthony?

RICHARDS: Mr. Chairman.

CHAIRMAN: Mr. Anthony has the floor.

ANTHONY: That's what I was trying to get over while the Convention adopted the whole section. With that explanation and leave it up to the Style Committee to put it where it belongs, why, that's satisfactory to me.

RICHARDS: May I suggest that the delegate from the fourth district read page 7 of the committee report, in which it says: "We recommend that Part I be incorporated in the main body of the Constitution as a separate article, and that Part II be incorporated in the schedule or ordinances, nomenclature to be determined by the Style Committee, which, although an integral part of the Constitution not subject to change by the legislature, is placed at the end."

CHAIRMAN: Is that acceptable, Mr. Anthony?

KING: Along the lines of the remarks made by Delegate Tavares, it is most important that we have this in our Constitution, either in the schedule or in the body of the Constitution. I believe the argument that it ought to be in the schedule is correct. However, we have read in the press just the other day that they have amended H.R. 49 in committee, but it has not passed out of the committee yet, to require that the Constitution shall be presented to Congress as well as to the President; so that we should comply with the various provisions of H.R. 49 definitely in the Constitution that we submit to Congress if H.R. 49 passes.

HOLROYDE: This is a rather lengthy section, and it deals primarily with the transfer of the material from H.R. 49 to this section and it's strictly for the legal minds to decide definitely whether this meets the requirements of H.R. 49. So I would like at this time to suggest a short recess while the attorneys go over this to make sure it does comply before we vote on it.

CHAIRMAN: May I suggest this. We have had four days, the attorneys have gone over this, and it seems to me from the discussion that they agree that it did cover H.R. 49. Are there any objections to that? Mr. Anthony agrees, the others agree, this is part of H.R. 49, it's supposed to be in the Constitution - -

A. TRASK: What Delegate Tavares had in mind, perhaps, is on page 13 of H.R. 49 which says, with respect to Part II, which does appear wordy, but it does provide in H.R. 49 that the foregoing purposes—and that's the four purposes that I enumerated this morning—must be provided in, quote, "in such manner as the Constitution and laws of said state may provide." Now the first word is "Constitution" and the next word is "law." Now whether or not that would be in the schedule, it may be so, it may be not; but I do think I should bring it to the attention of the assembly.

CHAIRMAN: Any other discussion? Are we ready for the question? The question that we once passed, see if we can pass it again. Are you ready for the question on Section 2 going in the Constitution? All those in favor - - Wait a minute. Mr. Anthony.

ANTHONY: I don't want the statement of the Chair to stand uncorrected. I don't know; I myself have not checked this carefully with the provisions of the latest print of H.R. 49.

CHAIRMAN: Would you rather defer it?

ANTHONY: It seems to me that we ought to get that before us before we definitely - - unless we all pass it with the understanding that when that print comes in, we'll be free to reconsider the thing and redraft it, if necessary.

CHAIRMAN: Could we pass it tentatively?

ANTHONY: That would be satisfactory to me.

WHITE: I'd like to move a 15 minute recess while this subject can be given some consideration, and during that period the Tax Committee can get together and complete their work.

FUKUSHIMA: I'll second Delegate White's motion.

CHAIRMAN: All right. A motion has been made for a 15 minute recess. The Tax Committee wants to get together for 15 minutes; so we declare a 15 minute recess.

KING: We are faced with this dilemma that we are trying to draw provisions in our schedule that will comply with H.R. 49. There have been amendments adopted by the committee that has H.R. 49 in consideration, and we have no present information as to what those amendments are. It would seem wise at this time to defer action on Part II and have the committee rise and report progress, and ask permission to meet again.

SAKAKIHARA: Will the President make that in a form of a motion? I'd be glad to second it.

KING: I was going to recite the little circumstances briefly first. And then perhaps, even go to the extent of instructing the chairman of the committee to bring in a report on Part I, so that we can treat the two parts separately, if that's agreeable.

CHAIRMAN: Mr. King, you don't want to discuss Sections 3 or 4 then?

KING: No. Section - -

CHAIRMAN: All right. Motion made - -

KING: - - one. I haven't made a motion yet, Mr. Chairman. Sections 1, 2 and 3 cover the same subject matter. Section 4 does stand by itself, but since it was proposed to put it in the schedule, it might be delayed until we consider the whole of Part II. I now move that we defer consideration of Section 1 of Part II and the remainder of Section 2 until some - - of Part II, I mean, until we've made - -

CHAIRMAN: Motion made and seconded by Sakakihara. Are you ready for the question?

DELEGATES: Question.

CHAIRMAN: We defer all of Part II. All those in favor say "yes." All those opposed. [Carried.]

BRYAN: I move that we rise, report progress and ask leave to sit again.

PORTEUS: I'll second the motion.

CHAIRMAN: All those in favor - -

HOLROYDE: Before we vote on that, I'd like to amend that so that the chairman would be instructed to prepare a report on Part I of the committee proposal, so that the Convention could act on that if Section 2 is delayed for quite some time.

BRYAN: I accept the amendment.

CHAIRMAN: Accept the amendment. Are you ready for the question? All those in favor say "aye." So carried.

Afternoon Session

CHAIRMAN: The committee come to order.

ANTHONY: We are dealing with Committee Proposal No. 27, Part II. Two amendments have been distributed. They are on the desks of the delegates. The one has been erroneously numbered as "Section 2, Amendment to Committee Proposal No. 27, Part II, RD 1." That should be changed, that number to "Section 1" in two places where it appears.

If I may, I will read the proposed amendment which I offer.

> Section 1. The United States shall be vested with or retain title to or an interest in or shall hold the property in the Territory of Hawaii set aside for the use of the United States and remaining so set aside immediately prior to the admission of the State, in all respects as provided in the act or resolution admitting this State to the Union.

Now, what that accomplishes is this. I move that that be adopted.

PORTEUS: I second the motion.

CHAIRMAN: All right, go ahead.

ANTHONY: What that accomplishes is this. Part II, Section 1 of the committee proposal is an effort, and probably a pretty good effort, to paraphrase the requirements of H.R. 49. However, that is flexible and may change from time to time. This proposed amendment incorporates all of the requirements of that act as it now exists or as it hereafter may be amended, and it preserves the flexibility of that situation, which will require no further revision if H.R. 49 is revised. It will also take care of the situation if we are admitted to the Union by joint resolution. I have submitted this to the chairman of the Committee on Agriculture, Conservation and Lands and also Deputy Attorney General Rhoda Lewis and it meets with their approval. I think this should be adopted.

CHAIRMAN: Any further discussion? Are you ready for the question? All those in favor of Section 1, Part II, say "aye." Opposed will say "no." Carried.

TAVARES: That was the adoption of the amendment. I move now that the section as amended be tentatively approved.

WOOLAWAY: I second that motion.

CHAIRMAN: You've heard the question. All those in favor say "aye." Negative, "no." Carried.

Section 2.

ANTHONY: Addressing ourselves to Section 2 of Part - - of Proposal No. 27, Part II, Section 2. Another amendment had - -

MAU: I move that we adopt Section 2 tentatively.

BRYAN: I second that motion.

CHAIRMAN: O.K., go ahead, Delegate Anthony.

ANTHONY: A proposed amendment which I now move has been distributed - - printed and distributed on the desks. I will read it.

> Any trust provisions which Congress shall impose, upon the admission of the State, with respect of lands patented to the State by the United States or the proceeds and income thereof, shall be complied with by appropriate legislation.

I move its adoption.

PORTEUS: Second the motion.

ANTHONY: If I may speak to that. The section of the H.R. 49 which this is an effort to comply with is not a mandate. I want the delegates to understand that. We do not have to have this particular section in the Constitution. However, in the minds of some of the legal fraternity, the act, H.R. 49, does require that the income from our school lands be held in a trust for certain purposes, as to be established either by the Constitution or by the laws of the State. This will be a clear acknowledgment that we are accepting and will perform the trust. It may look on first instance that this is an open-ended matter, but the Congress has been eminently fair with the Territory in regard to our public lands. Our difficulty has been only with the Department of the Interior. I would have no hesitancy in urging that the Convention adopt this, if they adopt anything, or the other alternative would be to delete Section 2 in its entirety.

ASHFORD: The matter of construction, should you say "with respect of," or should we say "in respect of" or "with respect to"? "In respect of " is better, I think.

HEEN: That could be handled by the Style Committee.

CHAIRMAN: Style Committee want to make any comment on that? Can we leave it to Style?

ANTHONY: It's a matter of style, I think. It can be corrected by the delegate. She's a member of that committee.

ASHFORD: I'd like to say that I shall vote against this for the same reasons that I stated in my objection to the report.

CHAIRMAN: Any other comments?

RICHARDS: There is one point I think should be clarified a little bit. The language as originally or at one time proposed for the committee was somewhat similar to this and at that time the committee felt that it was somewhat of a blank check in agreeing to terms and conditions which we didn't know might or might not be included in such an act. However, the chairman of the committee has been assured by the attorneys that we would have a reasonable chance of not having our pockets picked too much by Congress. Therefore, I'll go along with it.

CHAIRMAN: Any other discussion? Otherwise, question. All those in favor of including this say "aye." All those opposed. Carried.

CROSSLEY: I now move the adoption of Section 2, Part II, as amended.

WOOLAWAY: I second that motion.

CHAIRMAN: You have all heard the question. Amended Section 2. All those in favor say "aye." Opposed, "no." Carried.

CROSSLEY: I now move the adoption of Section 3 of Part II, Proposal 27.

WOOLAWAY: I second that motion.

CHAIRMAN: The motion -- any comments?

ANTHONY: I move a simple amendment which likewise has the approval of the lady from the attorney general's department. In the third line after the word "Congress" delete "of the United States." There is only one Congress that we are talking about. Everybody agrees to that, I believe.

CROSSLEY: I second the motion.

CHAIRMAN: Do you want to carry it especially on that or will everybody --

CROSSLEY: That's an amendment. We will have to vote on the amendment.

CHAIRMAN: All right; you know the amendment. Any other amendments? All those in favor --

ASHFORD: That's a matter of style, and I think the gentleman's a member of the Style Committee and can look after it there.

CHAIRMAN: I think the point is well taken.

APOLIONA: Anthony withdraws his amendment.

ANTHONY: I withdraw it.

CHAIRMAN: Now, we are ready then to vote on Section 3. Are there any other comments? All those in favor of including Section 3 say "aye." Opposed. Carried.

CROSSLEY: I now move the adoption of Section 4, Part II, Proposal 27.

WOOLAWAY: I second the motion.

CHAIRMAN: The motion has been made and seconded.

PORTEUS: I'll only take one moment on this. I've discussed this matter with the chairman of the Committee on Agriculture, Conservation, et cetera. Referring back to Section 1 [i.e. 3] of Part I, it stated there that "All fisheries in the sea waters of the State not included in any fish pond or artificial inclosure shall be free to the public, subject to vested rights and the right of the State to regulate the same." It seems to me that since Section 4 is the proviso which directs that the legislature have condemned and provide the money for the elimination of these various sea fisheries, that vested rights, rights in the sea fisheries, which under our law are vested rights, konahiki rights and so forth, that the provision with respect to the regulation of vested rights in that interim period could well appear in this Section 4 rather than in Section 3. Following the elimination of those vested rights, I think this is a matter which will -- this portion will then become functus, except for the statement that fisheries shall be free to the public, and I think that as with other public facilities, they'll be free anyway. But I'm satisfied, after talking to the chairman of the Committee on Agriculture, that if the Committee on Style concedes that this is unnecessary, that they can easily rewrite it and that would obviate having a discussion and reconsideration. But I did want to point out that there is the possibility that the Committee on Style may consider that to be adequately covered

ASHFORD: That provision for regulation refers not merely to regulation while there are vested interests, but after the vested interests have been condemned.

PORTEUS: May I add that the legislature will have the power to regulate in any event. They will have the right to regulate any of the resources, this in the interest of conservation, et cetera, and under the subject, rightful subjects of legislation. I deem it to be unnecessary but, as I say, I'm satisfied to leave it to the Committee on Style.

CHAIRMAN: Do I understand you, then? If Committee on Style feels they can incorporate the sense of this in Section 2, do so, and then we would eliminate Section 4.

PORTEUS: No. That would eliminate -- possibly the Committee on Style might eliminate Section 3 of Part I, and place the sense in Section 4 of Part II.

CHAIRMAN: And we'll pass it with that understanding.

ANTHONY: I suggest we just vote on the section. If there is a style question here which the Style Committee can wrestle with, the speaker will agree to that.

CHAIRMAN: Question. Any more discussion? All those in favor of Section 4 say "aye." All those opposed say "no." Carried.

APOLIONA: I now move tentatively for the approval of Part II of Proposal 27 as adopted as amended.

DELEGATE: I second that motion.

CHAIRMAN: You have heard the question. Is there any debate? All those in favor of approving Committee Proposal No. 27, Part II, say "aye." All those opposed say "no." Carried.

CROSSLEY: I now move that we adopt Proposal 27 as amended.

WOOLAWAY: I second that motion.

CHAIRMAN: All those in favor of adopting the whole of Proposal 27 say "aye." All those opposed.

CROSSLEY: I move that we rise --

C. RICE: He didn't give the announcement.

CROSSLEY: What?

CHAIRMAN: I announced "carried."

CROSSLEY: I move that we now rise and --

CHAIRMAN: Report progress?

CROSSLEY: No, I believe that what we should do now is adopt the -- recommend that we rise and recommend the adoption of this proposal.

WOOLAWAY: Second the motion.

PORTEUS: It has been customary for us not to rise and recommend the adoption until the matter has been submitted to the Convention in an amended form and a report prepared. Therefore, I think the motion, to be correct, should be to rise and report progress and ask leave to sit again. In the meantime, the chairman will write that report and submit it to the Committee of the Whole.

CROSSLEY: That's what I started to say, but I thought we'd save time by --

DELEGATE: I second the motion.

CHAIRMAN: The motion has been made and seconded that we rise and report progress. All those in favor say "aye." Opposed, "no." Carried.

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[The first part of the debate was not recorded.]

RICHARDS: . . . the part that deals with H.R. 49.

HEEN: Point of order.

SILVA: Second the motion we adopt the amendment.

CHAIRMAN: Mr. Castro made the second to that motion.

HEEN: There was a motion to reconsider and that motion was seconded, but no action has been taken upon that motion.

CHAIRMAN: Motion before the house to reconsider seconded by Senator Silva. Are you ready for the question? All those in favor, "aye." Carried.

SILVA: To put the question before the floor, I move we adopt the amendment.

DOWSON: I'll second the motion.

RICHARDS: The amendment is a minor amendment in the last part of that section in which the words to be deleted are, "in all respects as provided in the act or resolution admitting this state to the Union" to read, "in all respects as and to the extent set forth in the act or resolution providing for the admission of this state to the Union."

CHAIRMAN: You have all heard the question? Any discussion?

ASHFORD: Before the vote is called for, I'd like to explain my vote. I shall vote against it, not because I do not think that this is an appropriate amendment, but because I do not recognize the right of the Congress of the United States to dictate to us how we shall dispose of our lands or require us to cede any interest therein.

CHAIRMAN: We will record that sentiment.

HOLROYDE: I'd like to ask Delegate Anthony and Delegate Heen on this. What would happen in case the present bill didn't come up before Congress?

ANTHONY: This amendment is designed to take care of either admission pursuant to H.R. 49 or a joint resolution. As a matter of fact that's one of the reasons for the changes. You will note the language is in "all respects as and to the extent set forth in the act or resolution providing for the admission." Previously the language stated, "admitting this state to the Union." Now that would only be the act. Therefore, this amendment will cure that particular defect. I might state that the members, several members of the bar in the Convention have reviewed this with care and in consultation with the attorney general's office. We are of the view that this is an appropriate amendment.

ROBERTS: I'd like to second Miss Ashford's sentiments.

CHAIRMAN: There are times when you are caught over a barrel where you just have to take it.

ANTHONY: It is also agreed by the lawyers that we are going to draft this Constitution, so far as the land provisions, as we, the delegates, feel they should be drafted, and we'll fight out that subsidiary issue at a later date, if it becomes necessary.

CHAIRMAN: May I call attention to both Ashford and Roberts that in our report, we say to Congress that they have always treated us fairly and we expect them to continue in the same way. So that helps to cover it.

LOPER: Point of information. Is there a redraft of Committee Proposal No. 27?

CHAIRMAN: It's on your desk. It's amendment to Committee Proposal No. 27 and was passed out this morning.

RICHARDS: I don't know whether all the delegates may have the redraft. It was Redraft No. 1 that amended Section 2 that would pass before the committee - - passed by the committee and then later Section 1 was deleted, of the committee proposal, and, therefore, it became Section 1. Now there has not been a complete printing as yet because we were holding it up for the committee report.

CHAIRMAN: Could you read that?

RICHARDS: I could read the full section.

CHAIRMAN: Could you read the full section?

RICHARDS: The section is, "Section 1. The United States shall be vested with or retain title to or an interest in or shall hold the property in the Territory of Hawaii set aside for the use of the United States and remaining so set aside immediately prior to the admission of the State." And then the amendment would read, "in all respects as and to the extent set forth in the act or resolution providing for the admission of this State to the Union."

CHAIRMAN: Any more questions?

MIZUHA: Is there anyone in this Convention here, particularly those delegates that went to Washington advocating statehood for Hawaii, who could explain how subsection 7 of Section 3 was inserted into H.R. 49?

CHAIRMAN: Delegate Heen, could you tell us that? I think it was a request by Congress. Delegate Anthony or Delegate Heen or President King.

KING: Delegate Heen is best versed in this and I'm perfectly willing to yield the floor to him, but let me say that when we left Washington it was with the understanding that H.R. 49 was to be amended to comply almost exactly with what we were asking them to do with regard to the disposition of public lands. We had convinced the Department of Interior that our contention was right and the Senate Committee on Interior and Insular Affairs was very sympathetic. The press reports we got was that several senators in discussing H.R. 49 had made it very clear that they wished to be sure that Hawaii would retain title to practically all of the public domain.

Now the Committee Print C that arrived here the other day, the form of H.R. 49 that was reported out of the committee, had language in it that was quite a surprise to all of us, and did not carry out the understanding that we had at the time we left Washington. It looks as though some legal advisor of the Department of Interior had a change of heart in our absence. However, we're not in a position to contest it at this late date. The bill is on the Senate calendar and may be acted upon within the next two or three weeks. It seems to me that all we can do is make our Constitution comply with it with enough leeway so that we might be able to get a last minute amendment to H.R. 49 and still be in step with the enabling act.

CHAIRMAN: Delegate Heen, do you want to say something?

HEEN: Mr. Chairman, that is correct. At the time we left Washington we thought everything had been cleared. However, upon receipt of the last draft of H.R. 49 we found inserted something new. It's on page 12 of that redraft and it's paragraph seven which reads: "That said State and its people do agree and declare that they forever disclaim all right and title to all lands, title to which is held by the United States or subject to disposition by the United States."

There are some lands which have been set aside by act of Congress—referring particularly to the national park on Hawaii and Maui—set aside by executive order or proclamation of the President of the United States and the governor of the Territory of Hawaii to the United States or to the Territory; and by executive order of President Wilson, he vested title in the Territory of Hawaii in lands such as public highways, public buildings, and so on and also forest areas.

Now those lands which have not been so set aside, the title to those lands are still in the United States, but the United States holds title only in trust, for in the Newlands Resolution, we find language to the effect that these lands are ceded to the United States for the benefit of the inhabitants of the Hawaiian Islands. That is the way they hold title now to these lands which have not yet been set aside.

Later on in this very same H.R. 49, you will find provision to the effect that the United States shall continue to hold title to these lands which have not been set aside for a period of five years after the admission of Hawaii into the Union, and during that period of five years, a Joint Committee of the Senate and the House are to determine the final disposition of these remaining lands. Meantime, the State of Hawaii will have the right under the terms of this H.R. 49

to select 180,000 acres, and those lands are to be vested in the State of Hawaii. What remains over, if they are not disposed of within the period of five years, they'll all become vested in the State of Hawaii.

Now it is our contention, those of us who have made a study of this problem, that we can urge before that Joint Committee of Congress that these remaining lands, those remaining after the 180,000 acres have been set aside, really belong to the people of Hawaii because the title, as I said, in the United States is one only in trust. Meantime, the laws, the land laws will continue under the terms of the H.R. 49 and under the terms of the Constitution as we are writing it today, and may be disposed of, exchanged, leased and all the revenue, proceeds that arise from any disposition of those lands or any leasing of those lands become the property or the revenue and proceeds of the State of Hawaii. Therefore it seems to me that we have a good thing to present to the Joint Committee of the Congress when the question is brought to their -- considered by that Joint Committee.

CHAIRMAN: Delegate Heen, couldn't we incorporate that thought of what you just expressed in our Committee of the Whole report?

HEEN: Could be.

CHAIRMAN: Are you ready for the question?

H. RICE: It seems to me that the point that we could bring out—I'm sure that Delegate Heen would agree with me—is the case of Texas where Texas was a republic and owned all their lands before they became a part of the United States. There's no question, there are no federal lands to speak of in Texas. They are all Texas lands. The same would be true here in Hawaii.

HEEN: That's correct. When the Republic of Texas submitted to the Union, they kept all the lands that the republic owned except those that had been set aside for military purposes and other national purpose, and those lands did not become part of the public domain of the United States. And in that connection, it is our firm belief, firm conviction, that public lands of the Territory of Hawaii or the Republic of Hawaii did not become the public domain of the United States. They became public lands that were turned over to the United States for the benefit of the inhabitants of the Hawaiian Islands.

ASHFORD: Since Texas has been mentioned, I mention also Alabama, the lands of which were given to the United States to be held in trust pending the formation of a state.

CHAIRMAN: Any other addition? Are we ready for the question?

C. RICE: In the hearings at Washington—most of you have this, turn to page 22—where Senator Heen addressed the committee, you note there that the senators there asked Senator Heen quite a few questions. I think it would be advisable for all of us to read this over again so that we would know just where we stand. I don't want to see lands given just to get statehood. I think it's a pretty big price. I want to be sure that this is enough in this proposed amendment so that we could argue it with the Department of Interior. I leave it to those attorneys that drew this. First time I saw it, I read about it in the papers, the first time I've seen this amendment.

ANTHONY: There is no doubt about the attitude of either the Senate of the United States or the House of Representatives. In the recent hearings, as in hearings of 1946, those respective bodies have taken the position that it is not the Interior Department that's going to answer this question. It is the Congress of the United States, and they were very encouraging to the delegates who went forward in 1946 as well as those of us who went on recently. This amendment does have in it an inconsistency. We construe it one way, and it is possible that the Interior Department may construe it another. However, so far as those of us who have examined the proposed amendment, we have no doubt that when it comes down to brass tacks the Senate of the United States and the House of Representatives will recognize this problem for what it is. The title of the United States is a title in trust for the use and benefits of the inhabitants of the Hawaiian Islands. That is our position and we are going to stand by it.

CHAIRMAN: Satisfactory, Delegate Rice?

RICHARDS: This particular section of the proposal still ignores this new amendment that was in H.R. 49. It specifically states it's only lands that are set aside for the use of the United States and remaining there and does not discuss the public domain at all.

KAUHANE: I believe that we should defer action on this amendment so that many of us would be familiarized as to its intent and purposes. I believe back in 1946 when the delegation was sent to Washington to appear before the public lands committee on the question of statehood for Hawaii, the same matter was brought to the attention of the delegation, and Senator Heen at that time strenuously objected to its adoption or inclusion in H.R. 49. I again see the same phrase or provision included in the present bill that is now pending before Congress and I think it is only proper that further time be had so that all of us would be satisfied and would be clear in our minds when we vote for the adoption of this proposed amendment.

CHAIRMAN: Just to avoid any delays, we had our three top men, who know more about this than any of us, consider it carefully over the weekend with Delegate King and this is the mildest they could come from what came from 49.

KAUHANE: I grant that is true; but at the same time, we who are so close to the people and not up on the higher bracket are concerned about this matter, so that when we vote we want to know what we are voting for.

KELLERMAN: I would like to ask a question. Does not this language in words renounce our interest as beneficiaries in the lands held in trust for the people of Hawaii? Is not that what the language says in spite of what we would like to have it say? Isn't that what it says?

CHAIRMAN: Well, that's what Congress is asking us to do.

BRYAN: I'd like that question to be clarified somewhat. Are you speaking of the amendment offered this morning or the amendment -- the last amendment to H.R. 49?

KELLERMAN: I gather that the amendment offered this morning was to conform with the requirement of an amendment in House Bill 49.

BRYAN: That is not correct, as I understand it.

KELLERMAN: Well, what is this? What is this we are renouncing?

BRYAN: This is actually a perfecting amendment. I think that Delegate Richards could probably explain the actual need for this change. As far as the last amendment in H.R. 49 appearing in Committee Redraft C or whatever they call it --

CHAIRMAN: We don't disregard it and yet don't accept it.

BRYAN: That is not concerned with this at all. This concerns the lands that are already set aside for the use of the federal government, this particular amendment that we have before us this morning.

KELLERMAN: I think this question is so serious that we had better postpone it until we have the draft of what we are approving in full before us and where the amendment applies and what it means. I don't think we should pass on it in this form.

ANTHONY: I agree we should not hurry into it, but just in order that the delegates may see a little more clearly what the problem is, the last reprint of H.R. 49—it's entitled Committee Print C dated June 26, 1950— laid down a new condition. Now if the delegates can find that particular reprint, if you'll turn to page 12, and the material that is in the large caps is the new material - -

CHAIRMAN: That was also published in the paper, I think.

ANTHONY: - - and that says that "Said State and its people do agree and declare that they forever disclaim all right and title to all lands, title to which is held by the United States or is subject to the disposition by the United States."

Now reading that section together with the subsequent sections of H.R. 49, setting up a joint committee which will make disposition of the lands after the five year period and the other provisions to the effect that lands set apart by executive order of the governor or the President to the United States shall remain in the United States, we come upon an apparent conflict. Now we are not providing in this amendment precisely the broad proposition that we disclaim title to all lands subject to disposition by the United States. We are not doing that. It is the view of the lawyers that examined it that this is an inconsistency in the draftsmanship, and that we might very well take the position that this particular section has to do with lands that are set apart to the United States by executive order. It does not interfere with the operation of the joint committee and the five year provision, pursuant to which we may get all of these lands back. And, therefore, the proposed amendment has been watered down, so to speak, not to comply with the inconsistency that is found in Committee Print C. In other words, we will ultimately go to the Congress, present our case as to what the disposition of these public lands will be, and I feel sure that we'll get a fair break before the Congress.

This amendment probably was the work of the Interior Department. There has been in the solicitor's office a certain individual who is consistently putting provisions in H.R. 49 which neither House nor the Senate of the United States were ready to accept. This particular provision came in after the delegation had left Washington, after we were assured that everything was agreed upon and nothing but certain minor perfecting amendments, so called, were to be adopted. I think it's the best we can do under the circumstances. I don't think it's going to jeopardize our case with the Congress.

HEEN: What we are really doing here is to disregard this new provision in H.R. 49.

KING: The adoption of this amendment in Committee of the Whole as an amendment to the original proposal will not bind the Convention's final action. The purpose of the chairman of the Committee on Agriculture, Conservation and Land is to request the Committee of the Whole to adopt this and then to rise and report progress and ask permission to sit again. Then completed prints of Committee Proposal No. 27 will be available to every delegate before final approval of the committee report and the proposal is requested.

I think that it is correct to say that the selection of the 180,000 acres out of the public domain, to be vested finally and completely in the State of Hawaii, remains unchanged. Is that not true—may I direct my question to Delegate Heen—that the selection of the 180,000 acres is not changed?

HEEN: That's correct. That provision is still in the H.R. 49.

KING: May I ask another question, just to clarify it? It is also true that the balance of the public domain outside of the area that we select will remain in the name of the United States for this period of five years for a committee to decide whether it shall return to the State of Hawaii or remain in the United States. Is that not correct, Mr. Chairman?

HEEN: That's correct.

KING: So without arguing about too vital a matter, I would go along with Senator Charles Rice's remark that we don't want to pay too high a price for that. In the meantime, I request that Rhoda Lewis, the assistant attorney general, give me a synopsis of this new change in H.R. 49. We'll discuss it with those who are familiar with the subject, especially with Delegate Heen and Delegate Anthony and Delegate Tavares, and then perhaps write to Senator O'Mahoney, Senator Cordon and our counsel in Washington, former Senator Burke, and to Delegate Farrington, and express our point of view with regard to this change in H.R. 49. There is a possibility that it could be amended on the floor of the Senate or even in conference, as after the Senate has passed H.R. 49, it will have to go back to the House for agreement to the amendment. So I feel that we shouldn't delay action at this time on this particular matter.

CHAIRMAN: And if any delegate, such as Kauhane, wants to change this language, there would be opportunity later on.

KAUHANE: That's what I'm afraid of, changing at a later date; we may not be able to do so. This amendment, if accepted, is - - I think merits a serious consideration by the delegation. For instance, the question of our income-bearing property which may be vested with the United States government is the concern of the people of this State of Hawaii If they are going to take away our income-bearing property, then we should be concerned about it. If they are going to give us the pahoehoe land, we also should be concerned about it, too.

CHAIRMAN: I think there have been - -

KING: May I interrupt Delegate Kauhane to show him that the revenue from the domain would retain - - would be retained by the State of Hawaii. Is that not correct?

CHAIRMAN: And I want Delegate Kauhane to realize there was a great deal of thought put on that over the weekend. The attorney general has been working on it for several days and the committee has been concerned about it very much.

KAUHANE: I think we all are concerned. We all are concerned because in 1946, again when this question came up before the delegation that was sent by the legislature to appear before the public lands committee, the question of our income-bearing properties were considered and were thrown into the faces of those who appeared in behalf of Hawaii to request statehood. So much so that Senator Heen in his statement uttered that he would not sacrifice statehood by the giving up of our public lands, the income-bearing properties. And that public lands committee forgot about this particular provision that is now embodied in the redraft of H.R. 49. Certainly they had some gentleman's agreement in 1946, and when we went back there just recently, the same matter should have been brought to the attention of the delegation that appeared in Washington and the same request, immediate statehood for Hawaii. Why did they wait until we left Washington and this matter was brought up? The presentation of facts that was presented by the learned members of the delegation that appeared in Washington certainly were able to answer any question of this type that was brought before their attention.

I'm concerned about the taking of our income property by the United States government, whereby they will leave us pahoehoe lands on the Territory of Hawaii. We certainly would be beggars when we give up our income-bearing properties to the United States government. Rather than continuing in that case, I think we should hang on to all our income-bearing property, and we should take back all of the

properties that we have given them on the executive order, either by the governor or by the President. We should request the taking back of those properties.

CHAIRMAN: I think that's what Committee of the Whole report is going to indicate.

SHIMAMURA: I'm in agreement with the original amended Section 1, also with the proposed amendment to Section 1, Part II, but I see the argument of the last speaker and also of the lady delegate from the fourth district, Mrs. Kellerman. As she put it, she understands that the United States is holding certain property in trust for the people of Hawaii. Now this Section 1 as proposed speaks of interest, not only title. I'm wondering if their objection would not to a large extent be met if we would delete the word in the second line of Section 1 of Proposal No. 27, "or an interest in." If we deleted those words, I think we get around the objection that we are possibly surrendering our beneficial interests in these properties and not only the legal title.

CHAIRMAN: I'll let Senator Heen answer that.

HEEN: Those words are necessary there because the United States does have easement over some of these public lands. That's an interest in land, and does not have the absolute title in the land over which these easements lie. Therefore, those words must be retained.

SHIMAMURA: I see the learned judge's point there, but I see nowhere in H.R. 49 "in any interest" or "interests." They only refer to title. I think by putting in these words "of interest," we are surrendering much more than we expected to.

ANTHONY: On page 14 - - I want to straighten out Delegate Shimamura. On page 14 of Committee Print C, "United States or the State of Hawaii or, subject to the Constitution and laws of said state, such political subdivisions, as the case may be, shall retain or become vested with absolute interest thereto, or an interest therein," that language is perfectly proper and quite necessary because they may have less than a fee simple interest; they may have a leasehold interest; they may have an easement; and so on. The controversy centers about to what lands does this disclaimer apply. We say that it does not apply to the entire domain, and we have not accepted in this particular redraft of the amended proposal the broad construction. We're going to have to fight that out with Congress because if that had been - - if we'd accepted that fully we would have surrendered to the language that I read to the body previously. We have not done that. We'll fight it out with them. We'll tell them we are not going to do that because the title of the United States is a technical title only, held in trust for the people of Hawaii.

SHIMAMURA: May I just point out to Delegate Anthony that that section he refers to, "or interest in," refers specifically to the five year period after which title shall become vested in the State of Hawaii or its own political subdivision or the United States. It doesn't refer to the title of which we say is in the United States. That's an altogether different section.

H. RICE: I think the President made a good suggestion, that we rise and report, recommending the adoption of this amendment and have same printed. That's a good idea, so we have it before us. Is that your idea, Mr. President?

TAVARES: I agree with that suggestion. I think that if members had before them this Section 1 which we are amending and studied it, they would see that the amendment we are making is a form or a perfecting amendment. There's no change in substance except this, that as it now stands, as we have already approved it, it refers to an act or resolution admitting this State to the Union. Now that may be the present H.R. 49 or it may be some other act or resolution. We want to know what we are agreeing to, so instead of saying "the act or resolution admitting this State to the Union," we mention "the act or resolution providing for the admission of this State to the Union." That's the only change.

It means, in other words, that it's H.R. 49 we are talking about and not some new act or resolution that they may pass in the future admitting us to the Union. It's simply a perfecting amendment. As far as "interest" and "title" is concerned, I think if Delegate Shimamura were to study the matter a little further, he would agree with us that we don't want to give United States title to all land that is now being set aside for them because, as Delegate Anthony has said, they may not have full title. They may have only a limited title, which is an interest in the land, and not the full interest. And Delegate Shimamura's amendment will give them more than rather than less interest in the land at the present time.

ANTHONY: There is one further thing I'd like to assure Delegate Shimamura. The section of the amendment to H. R. 49 that has caused the trouble, which is on page 12 of Committee Print C—it's entitled "7 "—is a command that we put this disclaimer in the Constitution. Now, we have not done that. We have not complied with the command of Congress. In other words, we're willing to take our chances. So, not having complied with that disclaimer, I see no reason why we shouldn't vote on this amendment.

SHIMAMURA: I don't quite agree with the learned previous speaker, Delegate Anthony - - Delegate Tavares. Judge Heen made it quite clear that under the Newlands Resolution, the United States government is holding in trust for us. It has the legal title to certain properties, and is holding in trust for the people of Hawaii certain lands. If that's true, they have the legal title, the bare legal title, but beneficial interest is in the people of Hawaii. Therefore, if you put in the word "interest," you will give it more than bare legal title.

CHAIRMAN: Are there any other disturbing thoughts?

TAVARES: I think the delegate is laboring under a misapprehension of what this Section 1 applies to. I think it's already been said, but may I again repeat. Section 1 that we are amending applies only to lands, the legal and beneficial title, both of which have now been transferred to the United States by executive order, and nothing else. It doesn't refer to the land we are going to choose from, and all the other provisions. It relates to land we have given for Pearl Harbor. Do you think the United States government is going to give Pearl Harbor back to us, where they built millions of dollars worth of docks? Of course not. This Section 1 applies only to that kind of land where we have expressly practically quit claimed all our interest in the land either through the presidential order, under act of Congress or our governor's order, and turned it over to the United States in absolute title for the United States' use and purposes, not to other lands.

ASHFORD: I would like to ask the last speaker a question as to whether those lands at Pearl Harbor, such lands as those at Pearl Harbor, are not expressly excepted by the Newlands Resolution from the trust.

CHAIRMAN: Delegate Tavares, can you answer that? While you're looking that up, I'll recognize Delegate Arashiro.

ARASHIRO: Do I understand that the amendment made in H.R. 49 is an amendment made in the Committee on Insular Affairs in the Senate and that it has not been acted upon by the Senate or the House?

CHAIRMAN: That's right.

HEEN: May I read from the Newlands Resolution briefly? The Republic of Hawaii agreed and transferred

> to the United States the absolute fee and ownership of all public, Government or Crown lands, public buildings or edifices, ports, harbors, military equipment, and all other public property of every kind and description belonging to the government of the Hawaiian Islands, together with every right and appurtenance thereunto appertaining ... The existing laws of the United States relative to public lands shall not apply to such lands in the Hawaiian Islands, but the Congress of the United States shall enact special laws for their management and disposition; provided, that all revenue from or proceeds of the same, except as regards such part thereof as may be used or occupied for the civil, military or naval purposes of the United States, or may be assigned for use of the local government, shall be used solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other public purposes.

Not only do we have this document to sustain our position that we are the real owners of these lands, we have also committee reports of the Senate committee and the committee of the House dealing with the provisions of the Hawaiian Organic Act relating to public lands, where they speak of this title as being a technical title, and the real title as being in the people, the inhabitants of the Hawaiian Islands.

ARASHIRO: May I...[part of speech not on tape] and then we have here the amendment submitted by Delegate Richards, which is an amendment to conform with the amendment that was made in H.R. 49 - -

CHAIRMAN: Not to conform.

ARASHIRO: Anticipate such an amendment if there should be one in a resolution or an act passed by Congress.

ANTHONY: The answer to that is no. The real purpose of this amendment was to provide for the disposition of the lands whether we were admitted by joint resolution or by the adoption of H.R. 49.

CHAIRMAN: Delegate Anthony, doesn't it leave it wide open so that the lawyers could contest it if they tried to push the - -

ANTHONY: We have not complied with the mandate of the seventh section of H.R. 49 and we don't propose to.

CHAIRMAN: That answer your question? I also would like to call to your attention that Papa is always lenient to the most recent child and particular if it comes in the old age, and I see no reason why we have to be too suspicious that Congress is going to be too hard on Hawaii.

ARASHIRO: Does that mean that we are ignoring this section of H.R. 49, as far as conforming with H.R. 49 in the Convention? We are not - -

CHAIRMAN: Well, I think Anthony made it clear that we are not conforming.

ANTHONY: We are not. That particular section says that we shall put in the Constitution a provision that we disclaim all title, and we're not doing that.

CHAIRMAN: That's what this amendment is refusing to do.

BRYAN: I think it should be pointed out that that is a separate subject entirely. This amendment is, as I said before, and I think Delegate Tavares pointed out, a perfecting amendment and nothing more nor less. The consideration of the latest revision of H.R. 49 could come at a later time when we have more information and have more time to study it. Therefore, I think that much of this discussion has been more or less out of order.

CHAIRMAN: I think so, too, but I think it's better to let them air it out.

SAKAKIHARA: May I ask the delegate from the fourth district, Delegate Anthony, that if we are to accept his views on the proposed amendment to Proposal No. 27 as offered by Delegate Richards, which will not conform with Section 7 of the Committee Redraft C of the 81st Congress, by not specifically conforming with a disclaimer of the lands owned by the people of this Territory, and in the face of that requirement, namely Section 7 of H.R. 49, and the further fact that the Congress of the United States and the President of the United States, who will later review the Constitution of Hawaii, may reject or disapprove the Constitution which we may adopt here in Convention?

CHAIRMAN: Anthony, the answer is yes, isn't it?

ANTHONY: The answer is no. The answer is no because this seventh section is in conflict with subsequent sections in H.R. 49. We as lawyers can construe that as applicable to those lands which are set apart by executive order to the United States. Of course, as to those lands, we disclaim interest in Pearl Harbor. We have no use for Pearl Harbor, and the post office or any of the other federal army reservations. But the difficulty lies in the language that is used in the amendment. It is susceptible to two interpretations. We are taking the one which is favorable to the people of Hawaii, and we're going to stand by it, and we can convince any Senate or any House of Representatives that we are right about this.

CHAIRMAN: But technically we actually are not conforming to this other construction.

ROBERTS: I haven't spoken on this question. I'd like to make a few observations. I think our job in the Convention here is to draft a Constitution for the sovereign State of Hawaii. We get a Redraft "C" or a Redraft "D" or a Redraft "F." Those are committee proposals. You don't know what's going to happen to them on the floor of the Senate. You don't know what's going to happen after they have been adopted on the floor and when they go back to joint conference of the House. I think we ought to pay no attention to the redrafts and drafts. I think we ought to write our Constitution as we think it ought to be written. We think we're entitled to statehood. We don't have to beg for it. We don't have to go around and ask them to tell us what they want us to put in. Let's put in what we think belongs in there and let's go in and say we are entitled to statehood and let's get it.

It seems to me that we ought to continue with our job and we ought to complete it. We ought not to do anything which would thwart the possibility of getting statehood, but let's do the best we can with what we have before us. Let's not wait until we get all possible redrafts and try to conform our own language with something that may be incomplete and certainly may not be final.

I have, for example, some objection to the present Redraft C. It says specifically that we have to submit our Constitution to the Congress of the United States for their approval. There is no precedent for that. I don't see why we have to go to the Congress of the United States and have them check it over for us. Other procedures have been for the President to look over the Constitution and to adopt it. It seems to me that we ought to stick up for our rights and fight for them if we think we're right, and not to give in on every little point.

CHAIRMAN: You have no objection to the present amendment? Any other questions? Are you ready for the question? Would anybody want to make any other objections? Question. All those in favor of accepting this amendment say "aye." All those opposed. Carried.

Shall we report progress? Will somebody make a motion?

BRYAN: I move that the committee rise and report progress, and ask leave to sit again to consider the printed copy of the amendment.

RICHARDS: I second the motion.

CHAIRMAN: All those in favor say "aye." Opposed. Carried.

JULY 10, 1950 • Morning Session

CHAIRMAN: The Committee of the Whole kindly come to attention. I recognize Delegate Richards.

RICHARDS: I move that the Committee of the Whole Report No. 22 be passed, and that Committee Proposal No. 27 pass second reading.

HAYES: I second that motion.

CHAIRMAN: Motion made and seconded. You have all had opportunity to read over the report. Are there any questions?

ASHFORD: Reluctant as I am to throw a monkey wrench into the works, I do feel obliged to express again my unwillingness to concur in any report or in any action that gives the United States a blank check to impose conditions upon the return of our lands or recognizes the right of the United States to determine how those lands shall be dealt with. Alaska is being given millions of acres by the United States which paid for Alaska and owned every square foot of public land. All the public lands of Hawaii were owned by Hawaii when we went into the Union and have been held by the United States in trust for administration pending our becoming a state. I shall therefore, as usual, vote against the report.

CHAIRMAN: I know we all have the same objections, but is there anybody else who wants to express it? Are you ready for the question? If not, all those - -

NIELSEN: I want to express the same objection. I don't see why we should say "statehood at any price" to Uncle Sam. I think we should say, "This is what we want." When we say it the other way, why, we are going to get whatever they decide to give us.

TAVARES: I think the people that stand up and make that objection owe it to this Convention to stand up and point out wherein we have written that blank check. I think they owe it to this Convention. Where? What are the words that give that blank check to the United States, "statehood at any price"?

ASHFORD: I'll be glad to do so. Section 2 of Part II of this report. "Any trust provisions which Congress shall impose upon the admission of the State with respect of the lands patented to the State by the United States, or the proceeds or income thereof, shall be complied with by appropriate legislation."

TAVARES: That's not the report. Is it Section 2? Page 2 of what?

ASHFORD: The committee - - Here it is. That's the report that I have.

TAVARES: But the delegate said report.

ASHFORD: Well, that is - - I'll point it out in the report.

TAVARES: What page of the report is that, Mr. Chairman, I'd like to ask?

ASHFORD: That's on page 9 of the committee report. And may I say further in regard to the committee report, reading from it, "Although this section seemed to put full trust in the Congress of the United States, this was believed justified since in the past Congress has always been very fair in its dealings with the Territory, and the members believed Congress would continue to deal in this way with the State of Hawaii." In my opinion, if we go to the Congress with a Constitution that expresses our wishes and not a submission to the ideas written in by some of the Department of Interior or perhaps even one or two of the members of Congress, we will be received as favorably as though we put in such a provision as this.

RICHARDS: There was a great deal of discussion regarding this provision in the committee. Also, if you remember, the Committee of the Whole in going into this matter spent a great deal of time. I forget how many pages of transcript.

CHAIRMAN: 139.

RICHARDS: Well, 139 was the total amount of time spent by the Committee of the Whole in going into this thing. I don't think there is a single member of the committee that likes it, but it has been pointed out by the attorneys that it was necessary to include some such statement; otherwise, it would be in complete violation of H.R. 49, and therefore it would be out.

FONG: I want to say as a member who went to Washington, speaking before the Senate Committee on Insular and Interior Affairs, we were more or less assured by the committee that they didn't want to tackle the problem but would await the entrance of the Territory of Hawaii into statehood, and after we have had our two senators in Washington, within that period of time which is allotted to us by the statute, about five years, that they will be able to get together with our senators and then decide on the future of the lands. There was no intention there of taking away our lands, but to leave it until we had our senators over there, and then at that time to decide on disposition of the lands.

AKAU: I wonder if Mr. Tavares would answer a question for me, please. This point has been raised here several times. May I ask, other states before they became states of the Union, did they have the same proposition regarding the land situation, like in Arizona, in Oklahoma, New Mexico?

TAVARES: Most of the states that came into the Union after the original 13 didn't have any public lands. Congress retained them, and made a gift of certain public lands to the states. There wasn't that same problem. They didn't own their land before they came in. Now Texas, however, did retain its public lands and ceded certain lands to the United States, but it kept its own lands. But, except for Texas, I believe that most of the other states, as I say, didn't have that problem, unless you say the original 13 colonies, and there they had some pacts about division of certain other land in certain states in the future. But in this particular case, of course, all of the lands were ours before we came in and they were impressed with the trust with certain exceptions. Some of those exceptions - - one of those exceptions being lands set aside to the use of the United States for purposes such as navy yard and so forth.

I think that this provision isn't as dangerous as it sounds because it applies only to lands patented to the State by the United States; in other words, land that the United States is going to give to the Territory. As several drafts of H.R. 49 have - - previous drafts have shown, those trust provisions are usually of the nature that we shall use the lands for the benefit of the people and so forth. I think previous to that time, this Part II as it originally read set forth the type of provisions that are usually included or contemplated in H.R. 49. The income and so forth shall be held or used for one or more of the following purposes as the legislature may provide, for the support of public schools or other public educational institutions, and so forth. We had such a provision in the Newlands Resolution and in the Organic Act, and I don't think they are going to

be very different from that. I doubt very much, and I don't think there has been any indication that insofar as the lands transferred to us are concerned, Congress is going to put any undue strings on it except that we must use it for public purposes.

CHAIRMAN: I think it's amply clear that none of us are willing to give away the lands, and I think we have to assume the United States and men of good will are not going to cheat us of any land. It's on that basis, I believe, that all of us accept the report. Now, is there any more discussion? Are we ready for the question?

KELLERMAN: I'd like to raise a word of caution. I've worked in Washington in the same building with the Interior Department. I've seen standard government bureaus and I've learned something of their psychology. Anything that they add to their jurisdiction or retain in their jurisdiction builds up their offices. I say this in all sincerity. I think it's a dangerous thing to assume that you can declare away your rights and expect support of a government office to give them back to you.

I'd like to call to the attention of this body a recent Supreme Court decision which I do not put in the same category, but to show how dangerous it is to renounce, a recent Supreme Court decision on the ruling of the Texas marginal land oil properties. Texas was an independent country when it became a part of the United States, with complete sovereignty. It gave up a degree of its sovereignty to become a member of the Union. It did not give up the ownership of its lands. The Supreme Court has recently ruled apparently that the sovereignty carries ownership and that the Federal government owns the submarginal oil lands of Texas.

I think it would do us well to think twice before we renounce in general terms or agree in general terms to anything that might be imposed with respect to our Hawaiian lands.

ANTHONY: There seems to be some misunderstanding as to what is contained in this proposal. We have expressly not done what Delegate Kellerman says we should be careful about. There is a provision in H.R. 49, Committee Print C, which asks us to put into the Constitution this disclaimer, and we have not done it. That's why I'm in favor of the report. We'll take our chances with the committee on a proper construction of H.R. 49.

CHAIRMAN: I think we can, Delegate Kellerman. We can also bank on the ability of our lawyers to make this very clear if a fight comes up.

Are there any other questions? If not, I'm going to put the question. All those in favor say "aye." All those opposed. Very weak no. Passed.

RICHARDS: I move that this committee rise and report progress and recommend to the Convention the passage of Committee Report No. 22 and Committee Proposal No. 27.

HAYES: I second the motion.

CHAIRMAN: Motion made and seconded. All those in favor say "aye." Opposed. Carried.

Debates in Committee of the Whole on

HAWAIIAN HOMES COMMISSION ACT

(Article XI)

Chairman: W. HAROLD LOPER

JUNE 7, 1950 • Morning Session

CHAIRMAN: Committee of the Whole will come to order for consideration of Committee Proposal 6 and Standing Committee Report No. 33. I recognize the chairman of the committee, Delegate Hayes.

HAYES: I hope you have your report with you this morning, Standing Committee Report No. 33 on your desk and Proposal No. 6. Your committee considered a number of proposals, 51, 52, and 156, and also Resolutions 19, 21 and Petitions 4, 8, 9, 10, 11, 12, 13, 20, 21. We also received many miscellaneous communications from individuals and organizations, a number of them opposed to the inclusion of the Hawaiian Homes into the Constitution and a large number for the inclusion of the Hawaiian Homes into the Constitution.

[Reads from Standing Committee Report No. 33]

After careful consideration of all the above proposals, resolutions, petitions and communications, your committee makes the following recommendations:

1. That the committee favors the privisions of Proposal No. 52, with certain amendments and submits herewith a committee proposal for introduction on the subject matter contained in said proposal. The committee recommends that Proposal No. 52 be placed on file.
2. That Proposal No. 156 be placed on file.
3. That Resolution No. 19 and Resolution No. 21 be placed on file.
4. That Petition No. 10 and Petition No. 11 be placed on file.

Your committee -- I've already repeated, I believe on Number 4, 8, 9, 12, and so forth. Second page.

Your committee has held eight meetings on the matters within its jurisdiction. It has had the active assistance of Miss Rhoda Lewis, deputy attorney general, Mr. Dan Ainoa, executive secretary of the Hawaiian Homes Commission, and Mr. Victor Houston, chairman of the Hawaiian Homes Commission. In addition, your committee held public hearings on the proposals and resolutions before it at Keaukaha on May 11th, Honokaa on May 12th, Waimea on May 12th, Hoolehua on May 13th, and Honolulu on May 18th. Your committee believes that it has gone into the question before it thoroughly and with full opportunity for all interested persons to be heard. The public hearings were all well attended and the committee has had the benefit of the views of almost every person in the Territory of Hawaii who is informed on the subject of the Hawaiian Homes project.

The Hawaiian Homes Commission Act, 1920, as amended, is presently part of the basic law of the Territory of Hawaii on the same basis as the Hawaiian Organic Act. It is an act of Congress and can only be amended or repealed by Congress. If Hawaii were to remain a territory, the Hawaiian Homes Commission Act would remain in force. If Hawaii were to become a state without any mention being made of the Hawaiian Homes Commission Act or the Hawaiian Homes lands in the State Constitution, or in any enabling act passed by Congress, there would be an extremely ambiguous legal situation leading to endless confusion. We could no more adopt a Constitution from which all reference to the Hawaiian Homes Commission Act was excluded, than we could adopt a Constitution from which all reference to the public debt of the Territory of Hawaii was excluded. During some 30 years of operations under this act, very extensive rights, duties, privileges, immunities, powers and disabilities have arisen by way of leases, loans, contracts and various other legal relationships.

According to the records of the Hawaiian Homes Commission, as of December 31, 1949 there were 1,337 lessees of Hawaiian Home lands, with leases covering 8,064 acres and a total population on such lands of 6,517 people. 5,480 acres of these lands were planted in pineapples under contract to several corporations, domestic and foreign. In addition, 103,150 acres were under lease through the Commissioner of Public Lands to private individuals. The Hawaiian Homes Commission had out on loans to lessees the sum of $1,000,199.74 as of December 31, 1949. Recalling of land from the Commissioner of Public Lands, subdivision and developing of lands construction of improvements, and promotion of private enterprises by lessees are all activities presently engaged in by the Hawaiian Homes Commission which are in various phases of completion and promotion.

It is therefore nonsense to propose, as some of the petitions referred to this committee have proposed, that this Convention exclude from the proposed State Constitution all reference to the Hawaiian Homes Commission Act, 1920, as amended. Something must be said and done about the Hawaiian Homes program in the transition from a territory to a state.

In recognition of this problem, the Hawaii Statehood Commission recommended, and H.R. 49, now pending in the United States Senate, now contains a provision that any convention formed under the provisions of H.R. 49 to draft a State Constitution shall provide in said constitution.

And the next paragraph relates to the section that is in [H.R.] 49, and I don't believe I shall read that section unless the members of this Convention wish that I should read it. We turn to page 4 -- 5.

H.R. 49 passed the United States House of Representatives with the quoted language included. According to recent news reports from Washington D.C., the Senate Committee on Interior and Insular Affairs has already considered amendments to H.R. 49 and has made certain amendments, none of which change or affect the quoted language. There is every reason to believe, therefore, that H.R. 49 as finally enacted will contain this requirement. If for any reason H.R. 49 should fail to be enacted into law, we have before us nevertheless the clear intent of Congress that any constitution for the proposed State of Hawaii shall provide for the continuation of the Hawaiian Homes program, and even the exact language which would be acceptable to the Congress in accomplishing this purpose.

Proposal No. 52 is a recognition of this anticipated mandate by the Congress. As introduced, it comprised three sections. The first section adopts the Hawaiian Homes Commission Act, 1920, as amended as a law of the State and the language of H. R. 49 with such paraphrases as were necessary to fit it into a state constitution and to provide for the contingency that this language of H. R. 49 might be amended in some detail. The second section accepted the compact with the United States as a compact or as a trust and agreed to carry out the spirit of the Hawaiian Homes project. The third section prohibited any legislation conflicting with the provisions or purposes of the first two sections.

Your committee amended the first two sections of the proposal in certain technical aspects without changing their basic purpose and deleted the third section as unnecessary. The amended form of Proposal No. 52 submitted herewith will comply with any requirement of the Congress as presently discernible and will accomplish the purposes desired under H. R. 49 as that bill now reads.

Proposal No. 156 seeks to accomplish the same purpose by way of an ordinance instead of by way of incorporation directly into the State Constitution as a part thereof. Your committee considered this alternative approach carefully and decided to adopt the method of Proposal No. 52 instead.

Your committee's task, therefore, has been clear-cut from the beginning. It has not even been a legitimate matter for debate whether the Hawaiian Homes Commission Act should be continued in force. Congress required that this be done as a condition of achieving statehood, and has supplied the outline of the language it will accept in the accomplishment of this requirement.

Nevertheless, in view of the offering of Resolutions Nos. 19 and 21 asking the Congress to permit the liquidation of the Hawaiian Homes program, and of the receipt of several petitions obviously intending the same results if somewhat inartistically worded, your committee did go into the history, purpose and philosophy of the Hawaiian Homes project in order to determine the desirability of its continuance on the remote possibility that Congress might accept a State Constitution which provided for the termination of the Hawaiian Homes project.

The Hawaiian Homes program was conceived in Hawaii and officially proposed to the United States Congress by Senate Concurrent Resolution No. 2 of the regular session, 1919, Tenth Legislature, Territory of Hawaii. The resolution petitioned the Congress "to make such amendments to the Organic Act of the Territory of Hawaii, or by other provisions deemed proper in the premises, that from time to time there may be set aside suitable portions of the public lands of the Territory of Hawaii by allotments to or for associations, settlements or individuals of Hawaiian blood in whole or in part, the fee simple title of such lands to remain in the government, but the use thereof to be available under such restrictions as to improvement, size of lot, occupation and otherwise as may be provided for said purposes by a commission duly authorized, or otherwise given preference rights in such homestead leases for the purposes hereof as may be deemed just and suitable by the Congress."

Senator John H. Wise of Hawaii was the principal spokesman and advocate for this program. With him were many other leaders of the community including Prince Kuhio, Delegate to Congress. Their purpose in promoting this program was to rehabilitate the Hawaiian people by encouraging them to go back to the tilling of the soil. The evil sought to be corrected was the departure of the Hawaiian people from the soil and the consequent weakening of their structure of society under the impact of Western civilization. One of the basic causes of this evil was the complete change in the systems of land tenure whereby the Hawaiians were granted fee titles to land which they promptly alienated to a large extent through a lack of knowledge and understanding of the new land laws. An additional cause was the fact that the people did not actually receive one-third of the domain which was supposed to have been set aside for them at the time of the Mahele, so that many persons had no land of their own at all when the change from feudal land tenure to common law land tenure was made.

As a consequence of the agitation for this program, the Congress finally enacted the Hawaiian Homes Commission Act in 1920. The original act provided for an experimental period of five years on certain lands on Molokai.

I'd like you all to pay attention to this paragraph because I believe it will clarify some of the criticisms that have been made.

No further lands were to be colonized unless the Congress and the Secretary of the Interior of the United States were satisfied that the first project was a success. This first project was pronounced a success and the program approved for continued operation. The Hawaiian Homes Commission and the Hawaiian Homes program have been part of the life of Hawaii ever since.

Until very recently, there has never been any suggestion that the Hawaiian Homes program should be discontinued. Then the use of certain Hawaiian Homes lands at Waimea, Hawaii came up for discussion, and in the ensuing argument, some few persons brought into the question the very existence of the Hawaiian Homes Commission Act of 1920. The arguments raised against the act have been as follows: 1. It is unconstitutional. 2. It is discriminatory. 3. The Hawaiian Homes program is a failure. 4. It is time to liquidate the Hawaiian Homes program. 5. A majority of the people of Hawaii are opposed to this act.

The question of the constitutionality of the act was considered at the time of its original introduction. The attorney general of Hawaii, the solicitor of the Department of Interior, and the Congress were satisfied that the act is constitutional. These opinions are as valid today as they were then.

The act is not discriminatory. It is a very progressive piece of legislation designed to aid an aboriginal people to survive the sudden impact of the new and highly complex civilization on their lives. It was passed to meet a very real problem and the fact that this problem is not apparent today is the best evidence that the act is succeeding in its purpose. In some of the Polynesian areas, western government that took control enacted laws that no land could be alienated, as a measure of protecting the native people. In Hawaii, the effect of the Hawaiian Homes Commission Act is to preserve only a very small part (approximately one per cent) of the domain for the Hawaiians, and to permit the ready transfer of other lands. It would be more discriminatory to repeal the act.

Those who claim that the Hawaiian Homes program is a failure are uninformed. The growth of the program from its inception to the present day is a matter of public record and is a sufficient answer to this claim.

So long as there are eligible applicants endeavoring to obtain Hawaiian Homes land, there is every reason for continuing the program. When no lands are left and when no applicants remain unsatisfied, then it will be time to raise the question of whether the Hawaiians have been fully rehabilitated.

The hearings, petitions and communications before this committee have demonstrated beyond any doubt that a majority of the people of Hawaii favor the inclusion

of the Hawaiian Homes Commission Act, 1920, in the proposed State Constitution.

Then you have your copy and it gives you the names of those who supported the inclusion of the Hawaiian Homes and I've been asked to read them: Council of Hawaiian Civic Clubs on Oahu; West Maui Hawaiian Civic Club; Hawaiian Civic Club, Hawaii; Ewa Hawaiian Civic Club; Nanaikapono Hawaiian Civic Club; Hawaiian Civic Club, Hilo, Hawaii; Republican Party Platform; Republican Precinct Club, 13th Precinct, 5th District; Republican Precinct Club, 13th Precinct, 4th District; We the Women of Hawaii; Women's Division, Oahu County Committee Democratic Party of Hawaii; Imua; Honolulu Advertiser; Honolulu Star Bulletin; Maui News; Hilo Tribune Herald; Native Sons; International Longshoremen's and Warehousemen's Union; Daughters and Sons of Hawaiian Warriors; Honolulu Chamber of Commerce; Molokai Community Association; Molokai Homesteaders Association; Nanaikapono Homesteaders Assocation; Halau O Keliiahonui; Hale O Na Alii O Hawaii, Helu 6, Kamuela, Hawaii; Council of Hawaiian Homesteaders; Waimanalo Homesteaders Community Club; Keaukaha Community Association; Kuliouou Lions Club.

Proposal No. 52

and that is [Committee] Proposal No. 6 now

as amended by your committee and as contained in the committee proposal attached preserves the present situation, complies with the apparent will of Congress, and continues the recognition by the people of Hawaii of the justice of the original enactment of the Hawaiian Homes Commission Act, 1920.

Signed by all of the committee.

Shall we go into the proposal? I would like to - -

MIZUHA: I move for the adoption of the committee report.

COCKETT: I second that motion.

CHAIRMAN: It has been moved and seconded that we adopt the report of the committee.

ASHFORD: I would like to ask a few questions of the committee chairman or, if she chooses, some other member of the committee. Is it the attitude of the committee that in the event the Hawaiian Homes Commission Act were not written into the Constitution that it would therefore be repealed?

HAYES: Will you be kind enough to repeat your question, please?

ASHFORD: Is it your position that if this act were not written into the Constitution, the result of it would be its repeal?

HAYES: Mr. Trask.

A. TRASK: The question goes beyond the scope of the committee's job. However personally we may feel about it, we are mandated by Congress under H.R. 49 to write into this Constitution a compact with the United States with the people of Hawaii. And however we may feel individually about the situation, I think the inquiry is immaterial.

ASHFORD: May I call the attention of the gentleman to the fact that that matter was discussed by the chairman of the committee right here when she was reading the report.

A. TRASK: What section is the lady delegate referring to? Of the report?

ASHFORD: Here. "If Hawaii were to become a state without any mention being made of the Hawaiian Homes Commission Act or the Hawaiian Homes land in the State Constitution - - "

A. TRASK: What page is that, please? Of the report.

ASHFORD: Three.

A. TRASK: Three?

ASHFORD: I listened to the report of the chairman, Mr. Chairman.

CHAIRMAN: Delegate Ashford, page three, what paragraph?

ASHFORD: Well, the second long paragraph.

CHAIRMAN: The portion referred to is almost exactly in the center of the page.

A. TRASK: Well, however the committee's thinking may be, is the lady delegate suggesting that we can defy the Congress in not putting in this compact? The committee - - Let me say to the delegate, as I said before when the committee chairlady suggested the public hearings on the other islands, my position was that, what purpose could be subserved by having such hearings which would go into the very question that the lady asks? We are mandated to do a simple legal job and that is to file in legal language a proposal whereby the people of Hawaii - - of the State of Hawaii would enter in a compact with the United States Congress. That is the job. However, the committee has gone beyond that and to put before the Convention and seek to answer many questions in the minds of many delegates here, who were not completely acquainted with all the ramifications of this act.

ASHFORD: Then I assume that the committee does not choose to answer that question.

SILVA: I just beg to differ with the chairman. I'm for the embodying of this part in the Constitution, but I don't think we are mandated by the act because the act hasn't even passed the Senate and the Congress of the United States as yet. They may even delete it up there. I don't know. I don't think we are mandated.

A. TRASK: Well, maybe that's an inartistic word just then, but we are aware that as late as May 22, about - - a little more than two weeks ago, the last amendments that were included did not at all seek to delete from the section the compact that was necessary to be written in.

DELEGATE: Mr. Chairman.

CHAIRMAN: Delegate Ashford still has the floor.

ASHFORD: On that matter, may I call the attention of the delegates to the fact that in the amendments proposed by the committee, the Senate Committee on Insular Affairs, that provision was made that in the event the Constitution adopted by this body did not contain all the requirements of H.R. 49 as the same may pass, if it does pass, that we could then be reconvened to deal with that matter. That's just because - - I say that because the question has arisen.

I have some other questions I'd like to ask. Was the reason that this proposal reported by the committee is divided into two sections in the Constitution rather than composed in one compact a desire to prevent its submission as a separate ordinance to the vote of the people? Was that the reason it was written into the - - proposed to be written into the Constitution?

CHAIRMAN: Do you understand the question?

A. TRASK: The proposal is divided really into two sections. There was sought to have in addition to Proposal 6, which was divided into two sections—and at this time I think that for convenience they be numbered one and two, Committee Proposal No. 6. There was suggested a ordinance to be written by the Committee on Ordinances and Continuity of Laws, as the lady delegate recognizes. That matter was left after discussion as a legislative matter.

The first section was drafted by the attorney general's department to fully conform with the purposes of the act and Section 2 was to conform strictly with the sense of a compact, which is a common draft included in, I think, about 11 other states in their constitutions with respect to the Indian lands, and a compact with the Congress of the United States.

ASHFORD: May I call the attention of the gentleman to the fact that in the present status of H.R. 49, the compact itself requires the adoption of the Hawaiian Homes Commission Act, 1920, as a law and that is separated from the compact by the provisions of this proposal.

I have another question, Mr. Chairman. What does the last sentence mean? Does that mean that the legislature shall not have control over the budget of the Hawaiian Homes Commission? Does that mean that the Hawaiian Homes Commission staff can be expanded to the -- without the instructions of the legislature to an extent of any other department of the State? And what does it mean when it refers to "other departments of the State"? What other departments of the State?

A. TRASK: The lady delegate is referring to apparently Section 1 of Committee Proposal No. 6, the last sentence thereof which reads as follows: "Such appropriations for administration expenses of the Hawaiian Homes Commission shall never be less than, after due consideration of the receipts applicable to such expenses from the Hawaiian Homes Commission lands, will accord said commission equal treatment with other departments of the State in the funds available for its administration expenses." Unquote. That's a good question.

The other lady delegate from the fourth district also asked the question. The purpose of this—and the committee—the attorney general's department has gone over and widely into the matter, the fiscal policies of the Territory and so forth—the question is with equal treatment with other departments. The fear is real and it's tangible, and certainly the delegate is well aware of that and certainly my colleagues are aware of that, that there has been no other department that has come under such scrutiny for having this act destroyed than the Hawaiian Homes Commission Act. There is no agitation to destroy the school department at this time. There is no agitation to destroy the land department at this time. There's certainly no agitation to destroy the records department or the treasurer's office or any other functionary department of the territorial government. But recently there is -- persistently there is of recent date an effort to destroy the Hawaiian Homes Commission Act. So faced with that real and tangible situation, the committee, with its various aids, have considered the various avenues of attack by agile people who are concerned over this destruction of the Hawaiian Homes Commission Act. And one of the most tangible ways in which the act could be destroyed would be for the legislature to pass an appropriation for the Hawaiian Homes Commission Act which would be merely nominal, namely $100 or $10.00 or $1.00. In that case, you could destroy effectively whatever may be necessary in funds to be received from the legislature, as has been done for the past 30 years.

So in other words, to obviate any clever, shrewd move to destroy the Hawaiian Homes Commission Act, this tangible, this loose, flexible language was used. In other words, should there be an effort passed by the legislature to appropriate just $100, whereas the previous years may show an appropriation of 50 -- $100,000, properly, third parties concerned would come into court with the proper remedy and action and seek to demand from the legislature, or any other appropriate means, equality of treatment consistent with the circumstances then existent and at least consistent with past appropriations for its administration funds, where we could show that the need was as great.

In other words, all we are concerned about is within the realm of reason. There should be a sense of equal treatment.

ASHFORD: Well, is that limited to the realm of reason? Is that not so wide that the Hawaiian Homes Commission without consultation with the legislature could immensely multiply its staff and come in and the legislature, without inquiring into the budget or anything else, be obliged to appropriate the sums called for?

HAYES: From my own knowledge, the provision of the Hawaiian Homes office is that, I believe, the receipts from all lands come up to about between $135,000 and $140,000 biennium. Isn't that correct, Charlie? And if and when we needed any more money we went to the legislature and asked the legislature to appropriate extra funds to meet with our other expenses—that is very important—which the legislature has from time to time been very agreeable. We have always been able to -- We have to present our budget to the budget bureau anyway like other department heads and we just wanted to carry out that same protection.

HEEN: Mr. Chairman.

CHAIRMAN: Delegate Ashford has the floor. You yield?

HEEN: Yield just for one question. Just wondering whether or not failure on the part of the legislature to appropriate the necessary funds for the administration expenses of the commission, that the legislature would be subject to mandamus?

CHAIRMAN: Any member of the committee wish to attempt an answer?

ANTHONY: As a matter of law, that couldn't possibly be done. You can't mandamus the legislature and that's why I think the proponents of the bill are pushing the thing too far. A good many of us are in favor of preserving what would otherwise be characterized as a clear discrimination. It's part of our history and I think a good many of us accept it. We certainly don't want to have a provision whereby we are going to treat this department of government differently from other departments of government.

SHIMAMURA: May I be permitted to attempt to clarify a point raised by one of the previous speakers. The speaker inquired as to whether or not the provisions of H.R. 49 as to the provisions for the Hawaiian Homes Commission was mandatory. I don't think there is any question that it is mandatory. In the original bill, H.R. 49, it was imparted in Section 3; in the amended form before the Senate Committee on Interior and Insular Affairs, it is amended and provided in Section 2. And the pertinent portion reads: "And said Convention shall provide in said Constitution... sixth, that, as a compact with the United States relating to the management and disposition of the Hawaiian Home lands, the Hawaiian Homes Commission Act, 1920 as amended, is adopted as a law of this State," and so forth.

C. RICE: I move the committee stand in recess, subject to the call of the Chair.

SMITH: Second the motion.

CHAIRMAN: Moved and seconded that we recess, subject to the call of the Chair. All those in favor say "aye." Opposed. Carried.

(RECESS)

ASHFORD: I thought I yielded for one other speaker, but apparently there are a lot of others. I don't wish to assume too much of this, but I would like to ask some other questions.

KING: I don't know whether the question that the delegate from Molokai had in mind is pertinent to this particular point, but I did want to offer at this time an amendment to the motion to approve the committee report, which I am informed automatically approves Committee Proposal No. 6. Amend that motion to adopt the committee report and committee proposal with the deletion of the last sentence of the first section of the proposal. In other words, cutting out the language, "Such appropriations for administration expenses of the Hawaiian Homes Commission shall never be less than, after due consideration of the receipts applicable to such expenses from the Hawaiian Homes lands, will accord said commission equal treatment with other departments of the State in the funds available for its administration expenses."

Before I ask for a second to the motion that - -

YAMAMOTO: Mr. Chairman, second the motion.

KING: That language was put in there by the attorney general's office, I presume at the request of the Hawaiian Homes Commission itself, and I feel that it has no particular value. It is an indirect order to the legislature which, as Delegate Heen has said, would have to be mandamus to—if it's possible to do so—to make them carry it out; and if they didn't carry it out, there wouldn't be anything we could do about it.

Now in the past the legislature has been very generous to the Hawaiian Homes Commission program. It has not only appropriated additional sums for administrative purposes, but considerable sums for development, and I feel that with the adoption of the program as a part of our Constitution, we can depend upon the legislature to do whatever is fair and just in the future as they have in the past. I do not feel that this particular provision destroyed the integrity of the proposal and the intent of the proposal. Now I say that as one who has been a champion of the Hawaiian Homes program for many, many years. So I would move that the motion to adopt be amended to include the deletion of that last sentence of the first section of the Committee Proposal No. 6.

HEEN: I rise to a point of information.

CHAIRMAN: Delegate Yamamoto, do you second the motion?

YAMAMOTO: Second the motion.

HEEN: I rise to a point of information. I would like to inquire from the chairman of the committee, the Hawaiian Homes Committee, as to whether or not this committee proposal has been scrutinized by Miss Rhoda Lewis of the attorney general's office, whom I regard as one of the best authorities on the Hawaiian [Homes] Commission law, as well as to the relationship of that proposal here to the provisions of H.R. 49.

HAYES: It certainly has, Mr. Heen. The attorney general had drawn this up for the committee, Rhoda Lewis. We've had her assistance at every meeting.

KAUHANE: I'd like to speak against the motion that has been put for the deletion of the last sentence in Proposal No. 6. The Committee on Hawaiian Homes Commission Act went into this question and gave it due and careful thought. The idea as expressed in the language which is now being asked to be deleted from this proposal carries with it the intent, and sincere intent, on the part of Hawaiian Homes Commission to secure sufficient appropriation from the legislature so that they can carry out its work. This sentence means that the Hawaiian Homes Commission will be treated and given the same consideration with respect to appropriations as to other branches of government and that the Hawaiian Homes Commission should not be left out on the limb, and it is to continue its work. Certainly there is great need for needed appropriations to carry out the work of the Hawaiian Homes Commission.

If it is the intent of the legislature to see that the work of the Hawaiian Homes Commission is certain, and to such an extent that they are working, their work is comparable to other branches of government receiving a high appropriation to carry out its functions, then, therefore, the Hawaiian Homes Commission should be accorded the same consideration and thought. That they also should receive the same amount of money to carry out its program.

This is only a fair request on the part of Hawaiian Homes Commission to ask that this sentence be left in the proposal. I see no reason why the members of the committee at this last instance, because of their failure to explain and to clarify the sentence so that the delegates of this Convention can amply grasp the idea of the inclusion of this sentence, now come and ask that it be excluded from its proposal. Certainly, we who sat in consideration of this proposal feel that this sentence is much needed. It's a must as far as the proposal that is to be considered by this Convention. It is a must on the part of the Hawaiian Homes Commission to ask the legislature to give them sufficient funds to carry out this work. Certainly the Hawaiian Homes Commission should not be left in the lurch, if the legislature can only see fit to grant them an appropriation less, or figuratively speaking, an appropriation of $50,000 when they need a $100,000 to carry on its work. That is the reason why this sentence was included so that in consideration of the allocation of the appropriation of funds for other comparable departments, that the Hawaiian Homes Commission should be given the same consideration and the same amount as far as funds are concerned to carry out its work; and I see no reason why the request is made to delete it. I move that that motion be tabled.

CHAIRMAN: Hearing no second - - Delegate Hayes.

HAYES: I was going to say that in our committee we have gone over this section very, very carefully and it was just felt - - they just felt perhaps maybe some legislatures wouldn't be kind enough to us and wouldn't appropriate the amount of money we would need. Mr. King in making that motion felt that we were mandating the legislature to carry out that they must appropriate this money, and many of the members here on the floor felt that it should be deleted. Personally myself, I haven't agreed on that. But, I feel that I explained it enough on the floor to say that we have gone as far as our administration's fund is concerned, that the legislature has always appropriated enough money to carry out our work with our own lease money that we receive from our land. Except once in a great while we do get in an awful jam.

Now for instance, this last legislature. What happened to us in the conference committee of the Senate? The revolving fund passed both houses and in order for us to get our revolving fund, we would have to vote for Waimea, and so we lost our revolving fund, lost the appropriation up here at Kalawahine and defeated the Waimea interests. I feel that your chairman is still worrying about whether it would be proper for me to agree to this or not.

MIZUHA: The last section under consideration, or the last sentence which is under consideration at the present time, is relative to appropriation for administration expenses. As I read the Hawaiian Homes Commission Act, which will be incorporated into the Constitution, a ceiling is placed, or a method by which the appropriation - - money should be appropriated for the Hawaiian Homes Commission is defined in that act and if the legislature does not act, the budget submitted by the Hawaiian Homes Commission will automatically be effective not in excess of $200,000. So it seems as though it is a guarantee to the Hawaiian Homes Commission that they will get up to $200,000 in the event the legislature does not act on their budget, and that is

written into the Hawaiian Homes Commission Act. And hence, it is felt that perhaps a provision like this in the Constitution will be merely surplusage or redundant or whatever you may want to term it; and hence it is not necessary, but the bare fact that we have accepted the Hawaiian Homes Commission Act as a law of the State of Hawaii. And on that basis, perhaps, it is appropriate to delete this last sentence.

TAVARES: I think a slight correction of the implications of that statement might be in order. As I understand it, H.R. 49, if passed in the last form we've heard of, would permit our legislature to amend Section 213 of the Hawaiian Homes Commission Act and change that. Now, if this article as proposed by the Committee on Hawaiian Homes Commission is adopted as a part of our Constitution, it seems to me—and that is my opinion—that one portion of it will eliminate the situation where any of the proceeds or the income from Hawaiian Home lands can be lapsed into the general fund of the Territory, and I am for that. I think the lands are trust lands and as long as we observe the trust, the income from the trust lands should stay with the trust, and that to some extent will be a guarantee that the project won't die because, in my opinion, the income from those lands is bound to increase in the future to some extent. Therefore, even if the legislature neglects the commission somewhat, there will be some mitigating circumstances in the increase of the income to the lands. I think that perhaps will clarify the situation a little bit.

Now, I would like to say very sincerely to the -- I know the very sincere delegate who has moved to table this motion although it's not been seconded. There are a great many of us who are very friendly to this Hawaiian Homes Commission project, but if that motion is seconded and it comes up, many of us who are for the act will be forced to vote against tabling. I really think a great deal more damage would be done to the project by trying to table this and I think the rest of us will unite to support the act with the sentence out which the delegate from the fifth district has moved to delete. I'm very strongly for that.

ASHFORD: Point of information, Mr. Chairman. Who moved to table what?

CHAIRMAN: Mr. President moved to -- Pardon me, Delegate Kauhane moved to table the motion to amend.

HEEN: But there was no second.

CHAIRMAN: That's correct. Delegate Mau has the floor.

MAU: I want to ask the last speaker if he felt that if this last sentence on page 1 of Proposal -- Committee Proposal No. 6 were included, that the act might be declared unconstitutional. Or what was the feeling? How would it jeopadize the act itself?

TAVARES: I was not speaking of constitutionality. I was speaking of the attitude of the members, as I believe, of some members of this Convention who like myself believe that that sentence goes a little too far. It purports to give a guarantee of treatment to one department of the government which we are not going to include for any other department of government; and on the face of it, I believe sincerely that it's an unreasonable requirement, besides being unenforceable in any practicable manner.

MAU: But no question of legality or anything is raised with reference to this last sentence? It would not endanger the act except from a matter of policy?

TAVARES: I haven't given that enough thought to say whether I think it would be invalid or not, but I do think it would be utterly unenforceable in any event. And I think it's wrong in principle to give one department of government a guarantee of treatment that you don't give in the Constitution to every other department. That is implied anyhow. I sincerely believe that after this flurry of feeling the next -- succeeding legislatures are going to be just as fair to this department as any other within their means.

MAU: I'd like to ask another question. As I got the discussion, the full amount, the biggest amount that the commission would get, even if this sentence were left in, would be something like $200,000. Am I correct in that?

TAVARES: No, I don't think that is correct. Under H.R. 49, our legislature can amend that section to change that amount to any amount it sees fit.

CHAIRMAN: Delegate Mau has the floor. Do you wish to yield to an answer here? Delegate Mizuha.

MAU: Yes, I'd like to get an answer from Delegate Mizuha.

MIZUHA: I believe H.R. 49 does not give our Territory -- the State legislature the right to change any amount that the Hawaiian Homes Commission should have as far as appropriations go. It only refers to changes in administration but not in appropriations of money.

TAVARES: I beg to correct the gentleman. The act of H.R. 49 very carefully mentions three funds, I believe, that the legislature cannot affect. It very carefully leaves out any mention of the Hawaiian Homes administration account, which is the account involved in this argument and thereby, by implication, leaves that open to amendment by our legislature.

MIZUHA: I have before me H.R. 49 which says as follows: "Provided that, 1. Sections 202, 213," which is under consideration at the present time, "and other provisions relating to administration only." It does not refer to appropriations.

CHAIRMAN: Delegate Mau, does that answer your question?

MAU: Well, this last sentence does relate to administration expenses.

TAVARES: Yes, and I think somebody ought to get that Section 213 and read it and I will demonstrate to the delegate from Kauai that I am correct in my statement, if someone will produce that last amended section of Section 213.

CHAIRMAN: Delegate Heen has asked for the floor. Delegate Heen, you asked for the floor a moment ago. Pardon me, Delegate Mau, were you through?

MAU: No, I'm not through, Mr. Chairman. While we're waiting, may I ask several other questions?

A. TRASK: Mr. Mau, if Delegate Mau will yield to a question with respect to this inquiry here --

MAU: I yield for that purpose.

A. TRASK: The latest H.R. 49, namely Committee Print, United States Senate, May 23, 1950, is in line with the expression made by Delegate Tavares, namely, that that $200,000 may be amended by the legislature either up or down. It says, in other words, that Section 213 in particular reference with respect to administration expenses, which is the matter in controversy as to the operational cost of the administration of the Hawaiian Homes Commission Act, may be amended by the local legislature and that is why the reference from the Hawaiian Homes Commission Act that an ordinance in addition to Proposal -- Committee Proposal No. 6 be adopted was not adopted, because the legislature may properly amend the act as it now stands under H.R. 49.

MAU: I just want to pose this question then to the Convention. So far as the discussion has gone, there seems to be no particular danger in permitting this last sentence to remain. Also in the discussion there is a feeling that because of the present laws which will be reenacted or remain in force, the funds of the commission would be sustained or

will remain as they are today. Now, if that be so and there's no harm in leaving this last sentence in, I certainly would favor its retention, unless it's otherwise satisfactorily explained to me that it should go out and for a valid reason.

CHAIRMAN: If you are through, Delegate Mau, I'd like to recognize Delegate Heen at this time.

MAU: I have other matters to talk about, but I - -

CHAIRMAN: We'll recognize you again. Delegate Heen.

HEEN: You will note that the language used in the last sentence is mandatory in form and it cannot serve any useful purpose because the legislature is not subject to mandamus.

ASHFORD: I demurred on the ground of uncertainty and that hasn't been answered yet. It is customary in the legislature from time to time to cut the appropriations of one department and to raise the appropriations of another department. With which department should the Hawaiian Homes Commission be linked?

CHAIRMAN: Delegate Anthony, you asked for the floor?

ANTHONY: Thank you. I think the proponents or the opponents of the present motion to delete are carrying this thing too far. In the first place, let's all recognize what we are doing here. This enactment into the Constitution of statutory material is a departure from what this Convention has tentatively accepted as a pattern of this Constitution. It is a departure which a good many of us feel is necessary by virtue of the historical setting that we find ourselves in. This particular act has become a symbol with the Hawaiian people and even though it is discriminatory, in my opinion, it is not so obnoxious that this Constitutional Convention should reject the incorporation of the act. Now when you go beyond that, go beyond what is mandated under H.R. 49 and attempt to insert language in there which must mean something—it either means something or it means nothing—I say that we are going entirely too far, and I think we ought to leave the act just where it stands. Hawaiians have never been injured under the administration of the act; they have been treated fairly and I think that the motion of the President should carry.

HAYES: Mr. Anthony - - Delegate Anthony, rather, I appreciate what you said in some of the things, and some of the things, of course you and I would never believe together. But I just want you to be very kind to us because we are taking the instructions of the attorney who has drawn this for us; and so therefore, the committee is not responsible for coming to this Convention and mandate this Convention to do this and that. Now, who do you think I'm going to look to for help and guidance except - - I mean for any proposals that come to our committee. I certainly respect those who helped us a great deal in the making of these proposals; and so, therefore, I hope you don't feel that the committee deliberately did this on their own feeling on this matter.

ANTHONY: I didn't mean to convey the impression that the committee was trying to mandate anybody. When I use the word "mandate" that is a mandate in the act of Congress. In other words, if we are going to have a Constitution pursuant to H.R. 49, we must put in a safeguard which will keep the Hawaiian Homes Commission Act as it stands unimpaired. Now I think that the proponents of that measure should accept H.R. 49 and take their chances with other departments of the government. They have a minimum guarantee with the trust fund and they have a minimum guarantee in the existing legislation, and there is no thought in anybody's mind, as I've been able to gather, to eliminate those guarantees, and the trust fund will remain unimpaired.

SILVA: I think at this time it would probably be fitting to make a request of the committee itself, that if they would withdraw that last sentence that is in controversy, that perhaps they can receive full accord of this Committee of the Whole. It would be nice if it would come from them themselves, if they would be glad to withdraw that rather than put it through a motion and have it to wrangle all over the place.

MAU: I merely want to correct an impression that was given both by the President of the Convention when he spoke last and the last speaker from the - - delegate from the fourth district when he said that the legislatures in the past have been generous with the Hawaiian Homes Commission. That might be true in the last few years, but since 1920 and up to a few years, I don't believe that the Hawaiian Homes Commission Acts have been carried out for the best interest and welfare of the Hawaiian people by the legislators themselves, because they have sent these people out, as an example, to Nanakuli without money with which to develop irrigation and domestic waters. How do they expect these people to make a fairly good living and a good homestead? I feel that there should be a guarantee that enough money will be made available to develop these lands if you expect these people to stay on their homesteads. I charge at this time that the administrations in the past years have not done their duty either in asking Congress for sufficient money to develop these lands or going before the legislature with a strong enough case and say, "Look, if this act is to be administered fairly and for the benefit and the best interests of the Hawaiian people, money must be made available for the development of these lands."

That's why I want these questions answered, to be sure that there will be certain guarantees that enough money is available for the full development of these lands. Otherwise, it's a useless gesture to say set aside some of these lands and then don't give them money to develop these lands. You can't live on these lands without having them have sufficient funds to build roads, to make water available, and to make irrigation water available so that they can make these lands fertile.

KAUHANE: I rise to a point of information. I believe the last speaker when he was first accorded the opportunity of the floor stated that he agreed that the last sentence should be left in the Constitution. If that statement is correct, then he has seconded the motion that I have made for the tabling of the motion to delete this last sentence.

MAU: Before I did that, I wanted the questions answered so that I would know how to vote on this last sentence.

HEEN: Will the last speaker yield to a question? Supposing those who are in favor of the Hawaiian Homes Commission law approached the legislature, made out a strong case that they should have $200,000 instead of $100,000 and the legislature appropriated $100,000. How are you going to force the legislature to give the other $100,000?

MAU: I'm not saying that we are going to force them either by mandamus or what else, but I want to know what guarantees have we that the commission will have sufficient money with which to operate these lands?

KAUHANE: Will the speaker yield so that I can answer Judge Heen? Mr. Speaker, Mr. Chairman?

CHAIRMAN: Delegate Mau, you have the floor. Do you yield to a question over here?

HEEN: I would like a direct answer to that question, Mr. Chairman. I still have the floor.

MAU: I thought I answered the delegate's question, and that is this. I know of no way in which you can force the legislature to make the appropriations. Then, of course, the answer is no. What is the effect of this last sentence if it remains? Does that guarantee the appropriations - - necessary appropriations?

CHAIRMAN: Do you yield, Delegate Kauhane?

MIZUHA: Mr. Chairman.

CHAIRMAN: Delegate Kauhane has the floor.

MIZUHA: Mr. Chairman.

KAUHANE: I'd like to answer the delegate from the fourth district.

DELEGATE: Mr. Chairman.

CHAIRMAN: Delegate Kauhane has the floor.

KAUHANE: I'd like to answer the question put by the delegate from the fourth district, namely, Senator Heen. Certainly, all we ask as a guarantee from the legislature is a fair consideration as to administration funds for the Hawaiian Homes Commission. If you feel that $200,000 is being requested, you can only give a hundred, but to other departments you will give them the full amount, and we ask you to be fair with the Hawaiian Homes Commission in your consideration to give them the amount in comparable to other departments.

MIZUHA: May I answer the question of the delegate of the fourth district? As the Hawaiian Homes Commission Act is now written, if the Hawaiian Homes Commission in its budget asked for anything over $200,000 and the legislature fails to act, the $200,000 appropriation is automatic under the present Hawaiian Homes Commission Act. That is why I am raising the question at this time. There is a difference between another delegate of the fourth district and myself as to what the provisions of H.R. 49 contain at the present time. It is my contention that H.R. 49 - - the provisions in H.R. 49 does not change Section 213 to give the legislature of the State of Hawaii the authority to reduce the appropriations below $200,000. He contends that it does. If it does and limits the Hawaiian Homes Commission only to the $149,000 of income they receive at the present time, and if his interpretation is correct, then I am not in favor of the deletion of the last sentence in the committee proposal at the present time.

KING: I feel that the argument revolving about the interpretation of H.R. 49 and the proposal is not essential to the point at issue. The Committee Proposal No. 6 was drafted with the assistance of the attorney general's office, Miss Rhoda Lewis, and with the assistance and recommendations of the Hawaiian Homes Commission. And it does include a provision which I do not feel is essential to the spirit of the bill. And then let H.R. 49 provisions fall where they may. If the income is less than $200,000, and it's mandatory that it shall be $200,000, let that be the answer. If it's not mandatory, let the Hawaiian Homes Commission live on the income derived from its own land.

I'd like to point out in that regard that as these old leases expire, the Hawaiian Homes land will be released at higher rent so that the income in the future will be substantially more than it has been in the past. Senator Rice interpolates here that it will be over $200,000. So without trying to cut off debate, I don't feel that we are making any progress and I would like to move the previous question on the amendment, but I will not move it because others are seeking recognition.

CHAIRMAN: Delegate Tavares asked for recognition a moment ago.

TAVARES: Unless the members of this Convention want me to read that section, I won't say any more. I think that if the section is read on the Hawaiian Homes administration account, it might clear up some questions. Does anybody want to have that read?

DELEGATES: No.

FONG: A little while ago, the delegate from the fifth district, Mr. Mau, my very good friend, stated that the legislature has been very derelict in its duty towards the Hawaiian Homes Commission. Now if I were to sit here without answering the charges made by the chairman of the Deomcratic Party, I would be giving his statements the dignity of truth. Now I want to state to Mr. Mau - - but now Mr. Mau says except in recent years the legislature had been taking very good care of the Hawaiian Homes Commission. You mean in the past two years we have been taking care of the Hawaiian Homes Commission?

MAU: Will you yield for a moment? In my original statement, I said "except in recent years." I want to call the attention to the Convention, however, that the Hawaiian Homes Commission has come to the City and County government in the last four years for money with which, first to construct a water line to feed the Hawaiian Homes Commission lands in Waimanalo. We appropriated $35,000 for that purpose. Again when they opened up Papakolea, they asked us to give them money for their roads and they are asking money to put in lights. The City and County government has nothing to do with the Hawaiian Homes Commission Act or the Hawaiian Homes Commission itself. But you can see that when they needed money, they came to the county government, instead of getting that money either from the Congress of the United States or from the legislature of the Territory of Hawaii.

FONG: I just want to answer Mr. Mau to this extent, that as far as the legislature is concerned, the legislature has been very, very lenient and reasonable with the Hawaiian Homes Commission. I want to state, within the past four years there has been a Hawaiian heading the Finance Committee of the House of Representatives, and Mr. Joseph Andrews is one of the strongest backers of the Hawaiian Homes Commission. I want to state that as far as the House of Representatives is concerned—the senators can answer for themselves—the House of Representatives has been very reasonable to the Hawaiian Homes Commission.

ANTHONY: I'd like to get Assistant Attorney General Rhoda Lewis over here, and therefore I move for a five minute recess.

DELEGATE: Mr. Chairman.

FONG: Mr. Chairman, I have the floor.

CHAIRMAN: Delegate Fong has the floor. Proceed.

FONG: I thought that Mr. Anthony was going to ask me a question.

CHAIRMAN: I thought you were, too. Pardon me.

FONG: I just want to state that sitting here as a delegate from the fifth district, I had to answer Mr. Mau's statement that the legislature has not been fair. And I think the legislature will always be fair to the Hawaiian Homes Commission We have in the - - As far as the legislature is concerned, we have requests from various departments. Every department naturally would like to have more money. It is up to your legislature to distribute the money according to the needs and they can only distribute the amount of money that they receive and I know as far as the Hawaiian Homes Commission, the Hawaiian Homes Commission has received its proportionate share of the Territory's revenue. I think there is no reason why we can't expect as good a treatment for the Hawaiian Homes Commission as they have received in the past.

SILVA: The Senate's record speaks for itself. I don't need any political speeches, but I want to say I'd like to move this time for the previous question.

SMITH: I'll second that motion.

CHAIRMAN: We have been discussing the amendment, which has been duly seconded, to delete the last sentence of Section 1 of Committee Proposal No. 6.

DELEGATE: Roll call.

KAUHANE: Point of information. The previous question has been asked. I now raise a point which I raised previously. I believe that my colleague from the fifth district when he was accorded the floor, namely Delegate Mau, that he expressed the retention of the last sentence which - -

SILVA: I'm afraid my motion is out of order.

KAUHANE: It is not out of order. The previous question has been asked. He specifically stated that he favors the inclusion of this thing, which seconds my motion to table the motion put by Delegate King. The previous question, what is the previous question?

CHAIRMAN: The Chair rules that there was no second to that motion to table.

NIELSEN: A point of order. I think that President King's motion was that we approve the committee proposal deleting that last sentence. So I think that we had better refer to the notes on that.

CHAIRMAN: Will the Secretary refer - -

KING: As I recollect my motion, it was an amendment to the previous motion which was to adopt the committee report. I amended it to read to cut out the last sentence of Section 1; which, if the amendment were adopted, then the original motion would still be before the Convention on final action as amended.

CHAIRMAN: Shall we now put the motion to amend?

APOLIONA: May I ask for a short recess for the Hawaiian Homes Commission to get together.

CHAIRMAN: The question has been called for.

DELEGATE: Roll call.

CHAIRMAN: How many are in favor of roll call? Seven. The required ten is not indicated. All those in favor of the amendment please say "aye." Those opposed. Carried.

ASHFORD: The motion was to put the previous question, and the Chair didn't put that motion first. The motion was not - - before the house was not for the amendment. It was whether the previous question should be put.

CHAIRMAN: I stand corrected.

ROBERTS: Point of information. I'd like to know whether the chairman of the Hawaiian Homes Commission Committee favors the deletion of that sentence.

CHAIRMAN: Will the chairman answer the question?

HAYES: Delegate Roberts, I believe I stated my situation, that I was confused because of not being an attorney, in the first place. In the second place we have had faith and trust in Rhoda Lewis, who has been very kind to us, and maybe the committee should get together again with Rhoda before I could make up my mind as chairman of this committee.

LEE: In view of said confusion, I move that we recess for five minutes. I believe Mr. Anthony has called for Miss Rhoda Lewis to be here and perhaps it might resolve our differences.

CHAIRMAN: Is there a second to that?

HEEN: I second the motion for the recess.

KING: A point of information. Has the previous question been ordered?

SAKAKIHARA: The Chair would have to put the motion.

KING: The previous question was put by the Chair.

CHAIRMAN: I think I made a mistake and put the amendment, and as a matter of fact, is it not true that the previous question cannot be put in Committee of the Whole?

KING: Well, then the motion for the previous question is still pending if the Chair did not put it.

HEEN: Point of order. A motion to recess is always in order.

KING: My point of information was whether the motion to order the previous question had been put. Now, the Chair put the wrong motion. I'm asking if the motion to order the previous question is still pending. If it is pending, then the gentleman's request for a recess is in order. But I want the parliamentary situation to be clear that there is pending a motion for the previous question.

LEE: Still pending. That is part of the confusion, and it seems to me, therefore, that the motion for recess should be put. It takes precedence of all - -

SILVA: I move that motion be tabled. That is always in order too, Mr. President.

PHILLIPS: I second the motion.

SAKAKIHARA: Second.

CHAIRMAN: All those in favor of recess, please say "aye." Those opposed. The noes have it.

KING: The motion to table that motion to recess will have to be put first. I request the Chair to put first the motion to table the motion to recess.

PORTEUS: Point of order. Am I correct in assuming that the Chair put the question for a recess and that recess lost?

CHAIRMAN: That is correct.

PORTEUS: Am I not correct in assuming then that the question now before the house is to whether or not the motion to the previous question shall carry?

CHAIRMAN: That is correct.

PORTEUS: Will the Chairman please put that question to the house, please.

CHAIRMAN: The previous question - -

HEEN: I note that Miss Rhoda Lewis is here and I think it's proper and appropriate at this time that we ask her about her views upon this last sentence.

SAKAKIHARA: Point of order.

CHAIRMAN: State your point.

SAKAKIHARA: There is a motion before the Committee of the Whole, motion for previous question which was duly seconded. The Chair has failed to put the motion before the house.

CHAIRMAN: The previous question, as I understand it, is for the adoption of Committee Proposal No. 6.

NIELSEN: The question is, shall we move for the previous question? You put whether the previous question shall be moved for.

CHAIRMAN: All those in favor of the previous question please say "aye." Those opposed. It is carried.

SAKAKIHARA: Now the question is to delete the last sentence of paragraph one.

KING: If those who desire a recess would like to make such a motion now, I would have no objections. The previous question has been ordered now.

LEE: Our feelings have been hurt, but we'll move for a recess just the same.

SAKAKIHARA: I object.

HEEN: I second the motion.

CHAIRMAN: It's been moved and seconded for a recess. All those in favor say "aye." Those opposed. The ayes have it.

(RECESS)

CHAIRMAN: Will the committee please come to order.

KING: As I understand the parliamentary situation, the previous question has been ordered. I voted in favor of the previous question, and I move now to reconsider our action on the previous question. May I state that if we reconsider and cancel the previous question, the committee is about to accept the amendment I proposed as part of their report.

SMITH: Second the motion.

CHAIRMAN: It's been moved and seconded that we reconsider the motion for the previous question. All those in favor say "aye." Those opposed. Carried.

MIZUHA: Inasmuch as the committee will submit another amended report, I wish to withdraw my motion for the adoption of the committee report.

CHAIRMAN: The motion has been withdrawn.

KING: If it's necessary to clear the situation, Mr. Chairman, I withdraw the amendment I made to his motion. The only thing pending before the Convention -- the committee at this time is the committee report with no motion, and, Madam Chairman, may I request an adoption or approval of the committee proposal.

CHAIRMAN: Both the amendment and the motion for adoption have now been withdrawn.

ASHFORD: In the reports of other committees we have not proceeded primarily upon the adoption of the report; we have proceeded upon the separate sections, and I wonder if that wouldn't be a better procedure here.

SILVA: The best method is probably to move for the adoption of the first section of the proposal, of the first proposal, and then discuss that. The latter proposals, we can report progress until it's finished. I move that we approve the first section of the proposal on the Hawaiian Homes Commission Act.

DELEGATE: Deletion.

SILVA: No. No. No.

KING: Well, the committee hasn't deleted that last sentence.

SILVA: No, the first section. The first section has -- does not cover that.

KING: Yes, it does.

CHAIRMAN: Yes, the sentence in question is in the first section.

SILVA: Well, we'll take up the second section then.

CROSSLEY: I would move the adoption of the first section of the committee report with the deletion of the last sentence.

APOLIONA: I second Mr. Crossley's motion.

CHAIRMAN: We have then a motion for the adoption of the first section of Committee Proposal No. 6 with the deletion of the last sentence.

KING: May I speak briefly for the committee—the Madam Chairwoman has asked me to do it—that they approve of that deletion and accept it as an amendment to their committee report.

ASHFORD: I'd like to ask another question concerning this section. In H.R. 49, the requirement is that the compact shall—what is that language?—adopt the Hawaiian Homes Commission as a law of said State subject only to amendment, repeal, so forth. Now the compact contained in Section 2 does not contain that provision and it has been separated into Section 1. What was the purpose of that?

CHAIRMAN: Would some member of the committee answer the question? Delegate Trask.

A. TRASK: That was legal convenience as drafted by Rhoda Lewis of the attorney general's department, to have the adoption of the act in one section and the compact, as the word requires, in the next section and that is the usual form that is used in other constitutions—11 of them—with respect to these other lands. Only this had to be done with respect to what we considered were funds, financial, the fiscal arrangement. In the other constitutional provisions in the other 11 states, they did not have, as we have in Hawaii with respect to the Hawaiian Homes Commission Act, the budgetary affairs, which may be secure from the legislature, and that's why that provision was made. With reference also to the peculiar arrangement whereby in Hawaii Congress can only amend or repeal certain provisions of the act, whereas the legislature may have access to amend some other provision of the act; whereas in the compact with respect to land, and these other states with respect to Indian lands, there shall be no amendments whatsoever by the state legislature.

ASHFORD: Since the question of Indian lands has come up, I would like to address myself very briefly to that subject. The Indian lands referred to in the various constitutions of the newly created states and compacts with the United States are an entirely different basis from the Hawaiian Homes Commission lands. When we became a part of the United States, the United States had no public lands here except those specifically designated for defense and so forth. The public lands were ceded to the United States and accepted under the Newlands Resolution subject to a trust; that trust was recognized when we became an organized Territory. The lands were put under our administration by the Organic Act. They remained our lands in the control of the United States pending the time we were to be admitted as a state.

Now, the Indian lands are upon a different basis entirely. Those were lands not for specific Indians, they were lands set aside either by treaty with the Indians or by an act of Congress out of the public unappropriated lands of the United States—none of which exists in Hawaii or have ever existed in Hawaii—and always under the control of the United States under the terms of the Constitution and under their absolute title. The terms of the Constitution of the United States provide for the regulation of commerce with the Indian tribes. Those lands were set aside from the control of the state, retained in the United States, and subject to the control of the United States; therefore, there was no infringement of the sovereignty of the state. In this case, however, the trustee of our lands, in returning them to us, is attempting to attach to them terms of trust as though it were the full order. That distinguishes these lands from the lands set aside in the various new states for Indian reservations.

There is another reason for the action of the United States in that regard and one which I, for one, could never accept as applying to the Hawaiian people who had a nation of their own and ran it beautifully for some 50 years. And that is, that the Indians are a simple, ignorant and inferior people.

HAYES: I'd like to say at this minute, that, isn't it true that the reason for the Hawaiian Homes Act as a basic law is because to right a wrong that had been done to the Hawaiian people? Therefore, I would like to move the previous question.

TAVARES: I think there is an answer to the argument just made by the delegate from Molokai. I agree with the statement that ordinarily since the lands are trust lands, Congress would not be reasonable in putting a string on it when it gives it back to us. Unfortunately, we, the beneficiaries, have agreed to that change of the Hawaiian Homes Commission Act through our legislature. Not once, but many, many times. And in that respect therefore, we have the situation of the beneficiary having consented to the trustee changing the terms of the trust and I think that the argument, therefore, is not sound.

TRASK: I yield to Mr. Holroyde before any further statement with respect to the statement by the Madam Chairman.

HOLROYDE: I was just going to second her motion for the previous question.

SAKAKIHARA: Point of order. I think the previous question is out of order in Committee of the Whole. I think you pointed out to me this morning under *Cushing*. Both *Roberts* and *Cushing*.

WOOLAWAY: Point of order. I think that under the rules of the Convention, it is in order.

SAKAKIHARA: But this is not a Convention; this is Committee of the Whole.

CHAIRMAN: May the Chair say that having learned some of the rules of putting the previous question, there is still a difference of opinion among the delegates as to whether it's appropriate in the Committee of the Whole.

MAU: I wonder if the committee will consider adding to the list of organizations in support of inclusion of this act, the Democratic Party of Hawaii. Now please don't ask me whether it's the "stand fast" group or the "walk out" group. But two years ago a motion was made before the Central Committee of the Democratic Party, asking that this act be incorporated in the Constitution when it be drafted. I would ask that the report be amended to include the Democratic Party of Hawaii. Is the - - Will the committee agree to that, rather than my making a formal motion?

TAVARES: Point of order. My understanding is that a committee report cannot be amended in this manner.

CHAIRMAN: Does that answer your question, Delegate Mau?

MAU: Well, I understand that there is a motion to adopt the committee report.

A. TRASK: Without identifying myself with any particular group of the Democratic Party, the motion is to the adoption of Section 1 of Proposal No. 6.

CHAIRMAN: That is correct. The other motion may have included the committee report, but this has not.

MAU: If you'll look at the records, the original motion was made to adopt the committee report.

CHAIRMAN: That's correct, but it was withdrawn.

MAU: Oh, it was withdrawn.

CHAIRMAN: Yes, sir.

SAKAKIHARA: The reason I ask - -

MAU: Mr. Chairman.

CHAIRMAN: Delegate Sakakihara has the floor.

MAU: Mr. Chairman, I haven't yielded yet.

CHAIRMAN: Pardon me. Delegate Mau.

MAU: I'd like to ask the committee whether it had before it in its deliberations any members of the land board or the Commission of Public Land to get information as to the possibilities of public lands of the territory being opened up for agriculture uses through leases to the members of the public? Was any information like that obtained by your committee?

HAYES: That's not our kuleana. The public lands - - the commissioner has that right.

MAU: I understand that, Madam Chairman, but you realize that one of the chief criticisms against incorporation of this act by the opponents is that certain lands ought to be set aside in the territory for small farms. They have a point, and I wondered whether or not the committee in protecting itself and in strengthening its case, dwelled on that subject to report to this Convention that certain commitments or suggestions have been made by the members of the board of public lands.

ASHFORD: Point of personal privilege.

CHAIRMAN: Delegate Mau, did you ask a question and waiting for an answer?

MAU: Yes.

HAYES: We have gone into that situation, Delegate Mau.

MAU: And what is the situation?

HAYES: Well, the situation will be referred back to the public lands and it's a program that we have to work out in the few years to come.

MAU: One other question. Has the Hawaiian Homes Commission itself considered this possibility? Where much of its lands may not be developed for several years, whether they would agree to make such lands available so that the income can be used by the Hawaiian Homes Commission to carry out its work. In other words, whether they have taken into consideration the possibility of making short term leases for agricultural purposes, until the time when they are ready to make use of those lands and develop them.

KING: I rise to a point of order. I dislike to raise a point of order against my colleague from the fifth district; but, nevertheless, he is not talking pertinent to the subject matter here, but the administrative jurisdiction of the Hawaiian Homes Commission and the administrative jurisdiction of the Commission of Public Land, and that subject matter is more or less under the - - that latter part is under the jurisdiction of the Committee on Agriculture, Conservation and Land, and the question they are asking is not pertinent to the subject matter or to the motion that is pending before this Convention.

MAU: I might state - -

KING: We could go along and discuss the entire program of the homesteading and settlement and FHA and everything else and delay action on this particular proposal, which is simply a proposal to adopt into the Constitution of Hawaii the substance of the Hawaiian Homes Commission Act of 1920.

MAU: May I be given an opportunity to clear what I'm trying to get at?

CHAIRMAN: Delegate Mau, you still have the floor.

MAU: If an answer is given, there is no question that the committee will strengthen its position and that's the reason for asking these questions.

ASHFORD: A point of personal privilege. The delegate from the fifth district has said the opponents of writing this law into the Constitution do so on the ground that the lands aren't available to all the people. That is not my position at all. My position is twofold. First, that it writes into our Constitution an adoption of the principle that classification by the accident of race is appropriate, which seems to me the most dangerous principle we could possibly accept here. And, second, that the lands granted by the Republic of Hawaii and accepted by the United States, being ceded in trust cannot have trust strings tied to them when they are returned.

CHAIRMAN: Delegate Mau, I, as chairman, rule that this is not germane to the motion which is for the adoption of Section 1 of Committee Proposal No. 6, with the last sentence deleted.

SAKAKIHARA: I would like to ask the delegate from Molokai a question. She has raised a twofold question here giving her reasons why she feels that this should not be written into the basic law. Does the delegate from Molokai feel that on those grounds that this proposal will be unconstitutional? In your opinion?

ASHFORD: Like another attorney I almost said, "May it please the court."

I think that the requirement by H.R. 49 of entering into a compact with the United States is absolutely invalid. This is land and this is a subject matter over which the United States, if we were a state, would have no control, and in requiring us to enter into such a compact, they diminish our sovereign powers. They, therefore, infringe upon that well settled interpretation of the provisions of the Constitution that new states shall be admitted upon equal terms with the old.

Now, I'll just read you some certain language from the Supreme Court of the United States which in its essence has been repeated often.

> When a new state is admitted into the Union, it is so admitted with all the powers of sovereignty and jurisdiction which pertain to the original states, and such powers may not be constitutionally diminished, impaired or shorn away by any conditions, compacts or stipulations embraced in the act under which the new state came into the Union which would not be valid and effectual if the subject of Congressional legislation after submission. (*Coyle vs. Smith,* 221 U.S. 559)

CHAIRMAN: Does that answer your question, Delegate Sakakihara?

SAKAKIHARA: Yes, yes. I have before me, Mr. Chairman, excerpt from Report No. 839, House of Representatives, 66th Congress, Second Session, Rehabilitation of Native Hawaiians, to accompany House Resolution No. 13,500, dated April 15, 1920:

> Constitutionality. In the opinion of your committee there is no constitutional difficulty whatever involved in setting aside and developing lands of the Territory for native Hawaiians only. The privileges and immunities clause of the Constitution, and the due process and equal protection clauses of the 14th amendment thereto, are prohibitions having reference to state action only, but even without this defense the legislation is based upon a reasonable and not an arbitrary classification and is thus not unconstitutional class legislation. Further, there are numerous Congressional precedents for such legislation in previous enactments granting Indians and soldiers and sailors special privileges in obtaining and using the public lands. Your committee's opinion is further substantiated by the brief of the attorney general of Hawaii (see Hearings, pages 162-164) and the written opinion of the solicitor of the Department of Interior (see Hearings, pages 130-131.)

I raised the question because I was in a serious doubt as to whether incorporation of the Hawaiian Homes Commission Act as a compact with the federal government will be class legislation in the opinion of the Madam Delegate from Molokai.

ASHFORD: Mr. Chairman, may I further answer that statement? In the first place, the opinions of a committee or the opinions of a solicitor general or anything else are just opinions. The Supreme Court is the interpreter of the law, and I think the Supreme Court has interpreted the law.

In the second place, to me, there is no -- as I have said, there is no comparison between Hawaiians and Indians. The Hawaiians are just like any other race and the Indians have been subject in tribal communities to the government of the United States because of inferiority, that is the language of the Supreme Court of the United States.

In the second place, the specific grants by general law to soldiers and sailors is a classification that is based upon service.

HAYES: Since a little -- I mean, since they talked about the Constitution, I'd like to make my own statement in regard to that. Certainly we are here to draft a good constitution. It must be good in the eyes of God and men. A constitution which fails to provide rehabilitation provisions for a native people who have lost the use of their land is not a good constitution no matter in what land this constitution may be devised.

HOLROYDE: I'd like to second the motion for the previous question.

SILVA: Point of information. I'd like to ask the delegate from Molokai, the word "native" deriving from the word "nativity," I just wanted to know what the true definition of the word "native" is. Am I a native of the Hawaiian Islands? Am I a native?

HAYES: I think unquestionably you are, but I do not think you are of the race who was present here when Vancouver and Cook arrived.

SILVA: I'm talking about --

CHAIRMAN: The Chair rules that this discussion is out of order. The previous question has been moved and now seconded.

FUKUSHIMA: I rise to a point of information. What is the motion now?

CHAIRMAN: The motion is for the previous question.

FUKUSHIMA: I mean the original motion, the principal motion.

CHAIRMAN: The principal motion is to adopt the first section of Committee Proposal No. 6, deleting the last sentence thereof.

FUKUSHIMA: Is that --

SILVA: The question was out of order.

FUKUSHIMA: Is that a committee motion or is that the motion by one of the delegates?

A. TRASK: It's the motion by --

CHAIRMAN: Delegate Crossley.

A. TRASK: -- Delegate Crossley of Kauai, seconded by Dr. Apoliona from the fourth district.

FUKUSHIMA: Isn't that motion in the form of an amendment?

CHAIRMAN: No, it is not. The other motions were withdrawn and this is a new motion made.

A. TRASK: The motion as made - -

FUKUSHIMA: Yes, but this is a committee proposal, Mr. Chairman, which has passed first reading.

A. TRASK: The committee as the delegates should know, did meet and the motion as made by Delegate Crossley is a committee proposal as amended, deleting the last sentence of Committee Proposal No. 6.

FUKUSHIMA: If that is so, that's not a proper procedure because Committee Proposal No. 6 as drafted and as before us now has passed first reading. And this is upon second reading and it's before the Committee of the Whole. If it's an amendment, it should be an amendment to the committee proposal and not as a committee proposal - - a committee amendment.

CROSSLEY: For the delegate's information, I made that motion because I understood that they wanted to take this entire proposal up section by section, but if it's caused any confusion, I'll withdraw my motion.

CHAIRMAN: Motion then to adopt this has been withdrawn, and the second has withdrawn his second leaving nothing before the committee at the present moment.

A. TRASK: At this time, on behalf of and at the suggestion of Madam Chairman Flora Hayes, the committee desires to amend Committee Proposal No. 6 by deleting the last sentence thereof of this first section reading as follows: "Such appropriations for administration expenses of the Hawaiian Homes Commission shall never be less than, after due consideration of the receipts applicable to such expenses from the Hawaiian Homes lands, will accord said commission equal treatment with other departments of the State in the funds available for its administration expenses."

NIELSEN: Well, I thought the proper procedure was to vote on the amend - - make the motion to adopt the section; then let someone amend it deleting that; then vote on the amendment and then on the section. I think that's the proper procedure.

CHAIRMAN: Will Delegate Trask withdraw his motion in order to - -

A. TRASK: That was my motion, that the last sentence thereof be deleted, and I did name expressly that the - -

CHAIRMAN: Has that motion been seconded?

CROSSLEY: I second the motion.

CHAIRMAN: It has been moved and seconded that we amend Section 1 of Committee Proposal No. 6 by deleting the last sentence thereof - -

A. TRASK: Of Section 1.

CHAIRMAN: - - of Section 1.

NIELSEN: There's nothing before the house right now.

TAVARES: In spite of all of this monkey business about procedure, isn't the question now this? That we move that when this committee rises, if it adopts Section 1, it recommend that the sentence in question be deleted. Wouldn't that be the proper motion?

HAYES: Thank you. That's just what I was going to say.

ANTHONY: I think most of the delegates are in agreement that the last sentence should be deleted. It seems to me that the appropriate procedure would be to move that the section be adopted. When that has been done, then there can be a motion to amend that motion to delete the last sentence; then you can vote on the amendment and the decks will be cleared. In order to make the - - clear the ground, therefore, I move that the section be adopted. Section 1.

DELEGATE: I'll second that.

BRYAN: May I rise to a point of information? Is it not the committee intent that they actually amend their proposal, so that what is before the house now is the adoption of Section 1 as the committee proposes it? And as they propose it, they leave off the last sentence. I think that's the point that - -

CHAIRMAN: In view of the technical points being raised, Delegate Trask, will you withdraw your motion so that we can get this before the committee?

A. TRASK: Expeditiously, yes.

CHAIRMAN: Delegate Anthony has moved that - -

A. TRASK: And I second Delegate Anthony's motion.

ANTHONY: I move that Section 1 of Committee Proposal No. 6 be adopted.

A. TRASK: I second the motion.

CHAIRMAN: It has been moved and seconded that Section 1 of Committee Proposal No. 6 be adopted. All those in favor say "aye."

KAUHANE: Mr. Chairman.

NIELSEN: Wait a minute.

KING: Mr. Chairman.

CROSSLEY: Mr. Chairman, Mr. Chairman.

KING: That was merely to put the section before the Convention.

CROSSLEY: I move an amendment to the previous motion. I move that it be amended to delete the last sentence.

SAKAKIHARA: I second the motion.

CHAIRMAN: We have now a motion to amend the original motion by deleting the last sentence to the first section of Committee Proposal No. 6.

DELEGATES: Question.

CHAIRMAN: Question has been called for. All those in favor of the motion to amend please say "aye." Those opposed. It is carried.

HAYES: I move Section 2.

SAKAKIHARA: Mr. Chairman.

BRYAN: Mr. Chairman.

APOLIONA: Mr. Chairman.

DELEGATE: Second.

CHAIRMAN: Delegate Hayes has the floor, unless you wish to relinquish it.

HAYES: I believe that we go on with Section 2.

NIELSEN: Point of order.

SAKAKIHARA: Point of order, Mr. Chairman. Point of order.

APOLIONA: Mr. Chairman.

SAKAKIHARA: Point of order.

CHAIRMAN: I believe we've already acted on the motion to take them one at a time.

SAKAKIHARA: Now, therefore - -

DELEGATE: Mr. Chairman.

SAKAKIHARA: Point of order, Mr. Chairman.

CHAIRMAN: Delegate Sakakihara. State your point.

SAKAKIHARA: Since the motion to amend carried, the proposal as amended must be adopted.

APOLIONA: At this time I move the adoption of Section 1 as amended.

DOWSON: I second the motion.

CHAIRMAN: It has been moved and seconded for the adoption of Section 1 of this proposal as amended.

KELLERMAN: Am I correct in my interpretation of these two sections, that Section 1 writes into the Constitution the Hawaiian Homes Commission Act as a law and that Section 2 makes a compact with the United States to write it into the Constitution as a law? Is that correct?

CHAIRMAN: Will some member of the committee answer? Delegate Trask.

HAYES: It's my understanding that that is correct, compact with United States. Otherwise, we are making a treaty with the United States. The word "compact" would be a treaty.

KELLERMAN: May I ask a second question then? Why is it necessary to adopt one section writing into the Constitution the Hawaiian Homes Commission Act as a law and making a -- then adopting a second section agreeing with the United States government under compact to write it in as a law? It seems to me that we're doing the same thing twice and it would have the following consequences. Should there eventually be a change in the compact agreement, you still have the Constitution to deal with and certain provisions which are written into the Constitution which are not subject to amendment. You therefore have to amend the Constitution in addition to altering your compact agreement. Now is that the understanding and desire of this Convention to adopt -- Is it the understanding of the Convention that we are adopting the act as a law in the Constitution, which then would require an amendment of the Constitution to change it? Certainly this sentence just preceding the sentence that has just been deleted is an outright provision. It does not refer to amendment by the legislature or the Congress. In the second place, we are agreeing with the Congress to enter into a compact to adopt it as a law, and that compact could be changed with the consent of the United States. Now it seems to me we're getting unnecessarily involved in having it in the Constitution in one section and subject to the compact in the second section. I'd like to have that explained, any reason why that complicated procedure must be followed. It seems to be totally unnecessary and restricting any possible action that may be made, in some instances, even to amend the compact, because it's in the Constitution.

CHAIRMAN: A question has been put to the Chair.

HAYES: Delegate King will answer that, Mr. Chairman.

ANTHONY: The purpose of the proposal is twofold. One, the first section will embody the act in the Constitution. Standing alone, if that were just in the Constitution and nothing more, then by a subsequent action of subsequent conventions that section could be repealed. As I understand the draftsman, in order to remove that difficulty they have gone one step further and said, not only shall it be written into the Constitution, but there shall be a compact with the United States. Now, what Delegate Kellerman is concerned about is the necessity of the two sections. I as a lawyer don't think that two sections are necessary; the compact would be sufficient. But the purpose in having it in two sections, as I understand it, is, one, to put it in the Constitution, and that is not sufficient because a subsequent convention might change it. So they have added a second section which would require the entry of a compact between the United States and the State providing that it could not be changed without the consent of the Congress.

TAVARES: I think one further explanation will clear this up. If you will read Section 1 carefully, it has this proviso: "Provided further that if the United States shall have provided or shall provide that particular provisions or types of provisions of said act may be amended in the manner required for ordinary state legislation, such provisions or types of provisions may be so amended." That takes all the pilikia out of the situation, because if Congress in the future consents to have us amend that act, then we can amend it and we don't need to amend our Constitution.

HAYES: I was just going to say that that section complies with the apparent will of Congress and continues the recognition by the people of Hawaii of the justice of the original enactment of the Hawaiian Homes Commission Act as of 1920. That is my interpretation from the attorney general's office.

KELLERMAN: It seems to me that this first section is unnecessary and it may get us in trouble. It looks to me like an open-end agreement that even after we have become a state and have entered into a compact as a condition precedent to becoming as a state, that we are agreeing that we may still abide by and consent to, in advance, provisions that subsequent legislation of Congress may request us to abide by under the terms of that compact. As I see it, that would be clearly unconstitutional and not what we intend to do. As far as I can see we are getting in trouble in the first section and this matter would be entirely cleared up if the provisions of the first section insofar as are required by Act 49, were incorporated in the second section, which is the compact section. For that reason when the vote is taken, I shall vote against Section 1, although I am not opposed to the compact on the subject matter involved.

PHILLIPS: I might point out here that during one of the committee meetings in Public Lands it was pointed out that there is constitutional interpretation on this business of bringing -- of letting a state into the Union under terms that were unequal with other states as they entered the Union. I refer specifically to *Coyle vs. Smith* in which a compact was made with the Congress whereby, I believe it was, the capital was at Guthrie, and it was agreed that for the next ten years the capital would not be moved from Guthrie, either ten or 20 years. Immediately after Oklahoma got its statehood, they proceeded to move the capital from Guthrie to Oklahoma City, where it is situated today. The decision on that in court was that there was no other state had been permitted to enter the Union under such conditions, and thereby they rendered it void. The same thing I believe applies here.

I believe it's an answer to Delegate Kellerman's question, and that is that Section 2 is at best just redundant. It wouldn't assure anybody of anything. There is no way we could insure a compact with the Congress to do something on the condition that we let -- that on the one hand we let Hawaii into the Union; and then, secondly, the Congress, because of the reserved powers, would not have any way of enforcing that after we did get into it. So it would be useless to have this redundant section even attached here. Section 1 covers everything.

MIZUHA: I move the previous question.

CHAIRMAN: The motion has been made for the previous question and seconded. All those in favor say "aye." Those opposed. Carried.

The question then before the committee is, as I understand it, for the adoption of Section I of Committee Proposal 6 as amended. All those in favor say "aye." Those opposed. Carried.

HAYES: I'd like to move for the adoption of Section 2.

HOLROYDE: I'll second that.

CHAIRMAN: Moved and seconded for the adoption of Section 2 of Committee Proposal 6. Question has been called for.

TAVARES: I assume that since the committee members have agreed to numbering this section as Section 2, that the blank space in there should be filled in with a number one, and I so move.

CHAIRMAN: Moved and seconded to insert the number one in the fifth line of the second section.

CROSSLEY: It was my understanding that these sections were numbered one and two only for the convenience of speaking on them today. Is that correct?

TAVARES: Then, for purposes of the record, let it be understood that that blank space refers to the preceding section.

CHAIRMAN: Do you then withdraw your motion and leave it to the Committee on Style?

TAVARES: I withdraw my motion.

CHAIRMAN: And the second?
We have then before us the adoption of the second section of Committee Proposal 6. All those in favor say "aye." Those opposed. It is carried.

HAYES: I move that the Committee of Whole report progress on Proposal No. 6 and the committee report - -

CHAIRMAN: We have the committee report.

HAYES: I move for the adoption of the committee report and the Proposal No. 6 as amended.

APOLIONA: I second Madam Chairman's motion.

TAVARES: In speaking against that motion, I should like to point out that it will be irregular. What we did with respect to the first health amendment was this. We prepared a Committee of the Whole report and we asked that the original report be filed and the Committee of the Whole report be adopted. This way, you are amending the report and I don't think that would be regular. I think that procedure should be followed and that the motion should be that this committee rise, report progress, ask leave to sit again; and in the meantime prepare a written report.

HAYES: I accept that. Thank you very much.

CHAIRMAN: I understand you have withdrawn your motion and the second and that we have Delegate Tavares' motion.

SAKAKIHARA: I'll second Delegate Tavares' motion.

CHAIRMAN: That the Committee of the whole rise, report progress, and beg leave to sit again. Question. All those in favor of that motion please say "aye." Those opposed. It's carried.

CHAIRMAN: Committee of the Whole please come to order. You will find a copy of the report of the Committee of the Whole, No. 3, attached to the agenda for the day.

HAYES: Many of the members don't seem to have their copies of the committee report and they are going over it now to try and locate it.

MAU: I move we take a recess, subject to the call of the Chair.

CHAIRMAN: Is there a second to that motion?

DELEGATE: I second the motion.

CHAIRMAN: Moved and seconded that we take a recess subject to the call of the Chair. All those in favor say "aye." Opposed. It is carried.

(RECESS)

CHAIRMAN: The Chair would like to call your attention to the need for a correction in the Committee of the Whole Report No. 3. Under numbered paragraph No. 1, which reads, "Begs leave to report that it has had the same under consideration and recommends: (1) that Standing Committee Report No. 33 be filed and its recommendations adopted," we should insert there, "with the exception of the recommendation as to Committee Proposal No. 6."

PORTEUS: I think the announcement by the chairman, since this is his report of that amendment, that no action is necessary by the Committee of the Whole as to the particular amendment and I think it's now in order for the chairman of the Committee on Hawaiian Homes Commission Act to move the adoption or the approval of your report.

HAYES: I so move, that we adopt the report of the chairman.

J. TRASK: Second the motion.

CHAIRMAN: It has been moved and seconded that the Committee of the Whole Report No. 3 on the Hawaiian Homes Commission Act be adopted in accordance - - as amended by the Chair. Are you ready for the question? All those in favor of the motion say "aye." Those opposed. It's carried.

PORTEUS: I think under these circumstances that was equivalent to a motion that this committee now rise and the chairman then report to the Convention that the committee recommends the adoption of the committee report as presented by the chairman. I think it's now time for the committee to rise, if there's no objection.

CHAIRMAN: Moved and seconded that the committee now rise, having finished its work. All those in favor say "aye." Those opposed. Carried.

Debates in Committee of the Whole on

INDUSTRY AND LABOR

(Article XII)

Chairman: HAROLD W. RICE

JUNE 23, 1950 • Morning Session

CHAIRMAN: The committee sit at ease. What is the pleasure of the committee?

SAKAKIHARA: Will the chairman remove his coat so we could feel at ease.

CHAIRMAN: A little cold this morning.

PORTEUS: May I suggest to the delegates that the proposal number is 28, for their convenience, and that the standing committee report is 79.

CHAIRMAN: 79 and - -

PORTEUS: And 81.

CHAIRMAN: That's right. What is the pleasure of the committee?

MAU: Are we ready to proceed?

CHAIRMAN: We're ready.

MAU: I have the rather doubtful distinction of presenting the committee report. I think this committee report is unique in this Convention. The Committee on Industry and Labor is composed of 11 members. The majority report is signed by nine of the 11; there is a minority report signed by one of the members; and one member has signed neither majority nor minority report. Of the nine signing the majority report, four have filed an appendix stating their reasons why the right to organize and to bargain collectively should be placed in the Constitution—four out of nine. Five out of the nine, however, have also filed an appendix giving the reasons why this right should not be placed in the Constitution. I think in order to proceed as rapidly as possible, I would like to read the language of Committee Proposal No. 28 as supported by the nine members of the committee.

> Industry and Labor. Persons in private employment shall have the right to organize for the purpose of collective bargaining, as prescribed by law. Persons in public employment shall have the right to organize, to present to and make known to the State, or any of its political subdivisions or agencies, their grievances and proposals.

To get along, I move at this time that Committee Proposal No. 28 be tentatively agreed to.

CROSSLEY: I second that motion.

CHAIRMAN: You've heard the motion. Discussion?

MAU: We'd like to have the wolves get after this proposal right now.

ARASHIRO: I wish to offer an amendment at this time to - - at this time offer an amendment to delete the last four words of the proposal which read as follows, "as prescribed by law."

DELEGATE: I second that motion.

CHAIRMAN: That also would include a period after the word "bargaining" I think. The motion has been made and seconded to take out the words "as prescribed by law" in the third line and put a period after the word "bargaining."

LARSEN: I'd like to speak against the amendment. The committee went into great deal of discussion - -

HEEN: I rise to a point of information.

CHAIRMAN: Point of information.

HEEN: I'd like to find out whether the comma still remains after "bargaining."

CHAIRMAN: No, they took it out and put a period after the word "bargaining."

HEEN: I didn't hear that.

CHAIRMAN: Yes, it was amended that way.

LARSEN: Most of the members recognized that this was merely a principle of government under which we are now serving, that labor does have a right to organize and labor has been given the right to bargain collectively. There were two groups of labor, one who accepted the principle as indicated here because they recognized that those neutral citizens who spoke before us wanted to show the community by this, "as prescribed by law," that neither industry nor labor should have full rights to go ahead on this principle without recognizing they were controlled by law in such a way that the neutral should not be abused. The neutrals were willing to accept that. Industry members, who felt strongly that this did not belong in the Constitution, finally were also agreed because they wanted to go with the majority or with the other two groups. They were willing to leave it in the Constitution if this little restrictive clause was left there.

Because these various groups were willing to sign if the clause were left in, I believe it should be left in, in recognizing the will of a large number of citizens who are concerned. This one small group, who have been an aggressive group, seemed to indicate during all their discussions that they weren't so concerned with majority opinion as they were of their own rights. And, therefore, they insisted and were not willing to reach this point of compromise. Doctor Roberts very well defined compromise as that small area where two groups who are definitely opposed can find some area of common agreement. The common agreement was reached by this clause.

However, this small aggressive group, who did not want to work with the majority, they insisted on their way or not at all. Since this is a compromise and since it isn't necessary actually, but since it was put in because it was a bow to a large group of citizens of the community who have worked hard and - - I think all the committee members felt, that labor - - we are hoping that all elements of labor will some day feel they are one and part of this same team, that they are playing on the same team, that they are working together, that we don't have chips on our shoulders. But we must recognize that unless labor and industry work together in harmony, even with disagreement, but willing to compromise because they can find areas of agreement, that unless we find this spirit of harmony between labor and industry, the community cannot progress well. And certain groups of labor accepted this principle. Industry accepted the principle, and we are hoping some day that this small group will also accept the principle, that they will play on

the same team and not behave like the spoiled child who is not willing to give and forgive and forget. And, therefore, since this was a compromise, I urge strongly that we leave the clause in, and the reasons for it have been given. Thank you.

ARASHIRO: May I explain the reasons for my deletion of that word, "as prescribed by law," as has been submitted in Proposal 20. It says, "Persons in private employment shall have the right to organize for the purpose of collective bargaining, as prescribed by law." When we say that, the right to organize and bargain collectively is recognized and yet it is not recognized, or it is not given until it is prescribed by law. It is like saying that you have the right to cross the street, but the right does not exist there until we have written a law stating that or describing that you now have the right to cross the street. But, if some other term can be used besides "prescribed by law," I may agree that it is a compromise and the intention of trying to regulate the right of collective bargaining; if it was written in such manner that the wording would be written that you have the right to cross the street but that the regulation we may initiate may be that you have to look on both sides of the street before crossing for your safety. But "as prescribed by law," to me does not mean that, and that that right does not exist until it is written in the law.

If you will look into Appendix No. 2, Minority Report, and on page 2, the report reads that "We oppose the inclusion of any such provision because we believe that it is apt to be construed by the courts to place limitations upon the regulatory power of the legislature to a degree adverse to the best interests of the public," and . . . [part of statement not recorded.]

. . . it was proposed to write into the Constitution a provision that persons in private employment shall not have the right to organize and bargain collectively. If it was the intent of the now -- as it has been written in this report, it says the minority but as it now stands, it is a majority report and I will refer to it as the majority report—that this majority first was opposed to the insertion of the right to organize and bargain collectively, but they have finally agreed that "as prescribed by law," is a compromise and under that condition they were willing to have this section written into the Constitution.

It goes on further and it says that "as prescribed by law" is meaningless. If it's meaningless, then I do not think there should be any objection as to the deletion of "as prescribed by law." But, I'm quite definite and positively sure that there is a meaning to "as prescribed by law." To me, that is not just mere language to regulate but language to restrict. And not only to restrict, but there might be a danger in the future if and when the legislature may be composed of a majority of labor representatives; then, if and when the labor representatives should write into our statute that you have the right to strike, but strike shall be limited to 30 days, and after 30 days the parties in dispute shall be forced to go into compulsory arbitration, then what would happen? Or other legislation that might hurt industry. In that case, the constitutionality, I feel, cannot be challenged because the law in itself is part of the Constitution because of the language "as prescribed by law" will mean that it is part of the Constitution.

Now, the part that says that the right to organize is a recognized issue and there need not be anything written into the Constitution to show that recognition; but, when our Constitution of the United States was written, I do think that the freedom of speech, the freedom of the press, the freedom of religion were recognized then, and that did not mean that because they recognized those freedoms, that those freedoms did not have to be written into the Constitution.

Furthermore, in our committee meeting they said that this collective bargaining should be regulated to some extent because there might be some danger. But I don't think there is any danger if we should insert a period after "organize," because that will leave a broad statement and when we leave a broad statement that does not restrict our legislature from trying to regulate that right. In fact, Amendment One of our Federal Constitution reads, "The Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petitition the government for the redress of grievances." It says that the Congress will not abridge. Over here it only says that "persons in private employment shall have the right to organize for the purpose of collective bargaining." It doesn't say -- there is no such word as abridgment or abridging. We still are only giving them that right to organize and bargain collectively as long as they bargain within the laws. I think there must be some sort of a law that will regulate these rights and I do not see any danger at this time.

Now in the committee it was pointed out that it might discriminate the minority in the group. I do not see how it can discriminate. You discriminate people when you do not share with them, and you penalize them, but whatever things that labor organizations gain in any negotiation goes for all the employees, and they are not discriminated. None of these non-union members who refuse to become union members have refused to accept any gains made by labor organizations, and I do not think they are being discriminated against in any way. In reference to the discrimination, in freedom of religion, I do not think that the people who do not go to church are being discriminated because the right of freedom of religion has been given to the people.

And another thing, freedom of the press. It says in this report that this should not be in the Constitution because "'persons in private employment' constitute only a segregated group of the people for whom the Constitution is being written. Why should they be singled out for special treatment?" As far as collective bargaining goes, who are we going to refer to? We cannot refer to lawyers' associations or doctors' associations or any other group because collective bargaining only exists in this segregated group. When you say employees and employers, it only refers to employees, and that is -- in reference to that, when we say freedom of the press it only refers to people who operate the press and the people who want to use the press. But how about those people who do not use the press or are not part of the press?

So I do not think that when we write in such a clause in the Constitition, [it] is segregating any particular group, because when we refer to collective bargaining we are referring to a specific group.

Now the right to organize and bargain collectively is in the new constitutions of the states and those constitutions do not say that the right is to organize and bargain collectively "as prescribed by law." So I feel there is no need for the words, "as prescribed by law," but I probably might compromise on some other word whose language will clarify the issue to me that the right will exist and that right can be regulated in some manner, but not that the right is not there until it is written in the law.

LUIZ: I would like a definition from the "supreme court" of the Convention here as to the definition of "as prescribed by law," referring to this Committee [Proposal] No. 28 here, Industry and Labor. Just what does it mean? What does it mean in this section?

LARSEN: While they are thinking that out, may I make one correction of the previous speaker and that is those labor groups who were not unionized accepted certain gains but they also recognized certain losses. They recognized the loss of freedom to choose a job wherever they wanted

it; they recognized that they also lost their right to live without fear; they also recognized that the minority no longer had a right to speak up for themselves. These are certain losses that certain people want. However, we still feel it should be included as a bow to that group of labor who feels we should recognize they do play on this team of general community betterment.

CHAIRMAN: Delegate Frank Silva has asked a question -- Frank Luiz, excuse me, I didn't mean that. Dr. Roberts is recognized.

ROBERTS: I do not belong to the "supreme court," but I'd like to venture an answer in part to that question. As we discussed this problem in the Industry and Labor Committee, it certainly was not the intent of the committee, and it should not be construed by this Convention nor should the records show, that "as prescribed by law" means that the right to organize and bargain collectively does not exist until the legislature prescribes and recognizes that right. That was not the intent of the committee. The language as put in the constitutional section proposed by the committee to the Convention means that there may be reasonable regulation by the legislature, reasonable regulation by the legislature and no more. It recognizes the right to organize for the purpose of collective bargaining as a matter of policy. It does not mean that the legislature can take that right away, to remove that right. It means that when a problem arises and when the term "collective bargaining" is defined, that the legislature has certain responsibilities and "by law" means that it must be reasonable legislation by law.

LUIZ: Here again we run into the same trouble where the word "reasonable" is mentioned. The Supreme Court today has not ruled on the word "reasonable." Then we are up the same tree, "as prescribed by law" and then the word "reasonable."

BRYAN: One of the previous speakers asked if the words "as prescribed by law" meant anything; and if it did not, why should it be in there. Those words mean something to me. I agreed with some of the delegates in the committee that it would be impossible in a constitutional provision to adequately define those words, "collective bargaining." The meaning that I attach to the words "prescribed by law" means that bargaining collectively or collective bargaining will be defined by the statutes, because it's very unreasonable to expect a constitutional provision to define collective bargaining. The definition is not static; it has changed many times in the last few years; it may change in the future; and those words are in there for that reason, and I think it is not unreasonable to leave them there for that purpose.

ASHFORD: I'd like to call the attention of the delegates to the fact that I think there is a real point being made here. That is, "as prescribed by law" is a very much more intense and mandatory expression than the clause we have used frequently before in other articles, "in accordance with law."

CROSSLEY: I would like to speak against the amendment to delete the last four words of the committee proposal. When this committee first began its deliberations some weeks back, a number of us felt that there should be no inclusion spelled out of such a right in the Constitution. Now we felt this way because there already exists in the Constitution the right to make a contract. The freedom of contract is a right to all the people. Bargaining is not now and never has been illegal. Therefore, collective bargaining is not now and never has been illegal. If it was not illegal, then why write it in. The proponents of writing such a clause in said that if it already exists, then what is the reason for not restating it. The debate went on that subject for a considerable time, and the fears that were expressed were that while the right existed there also existed the right of regulation, and, therefore, if we wrote into the Constitution such a clause, such a section, without spelling it out even further, it might be as though we were saying just that and that it was an absolute right. Now, no rights are absolute, not even the right of free speech. Therefore, we felt that inasmuch as a very narrow majority, a six to five majority had said that there should be a provision included in the Constitution, that we would go along with the majority providing our fears were also protected.

Now on the one hand, these people had said that the only way that they thought they can get the right to organize and bargain collectively without going to the Supreme Court for a test was to write into the Constitution those words. If they already existed, then we would save them a lot of time in proving their point. By the same token, we said to them that if the right is subject to regulation and that is understood, then we want the same consideration that we will give you and that will be that the right is subject to regulation and that regulation is "as prescribed by law."

The next step was a definition of those two terms, "regulation in the public interest," or "as prescribed by law." It was the feeling, I believe, of a majority that "as prescribed by law" was a more simple mandate, a more simple term; that in defining in the courts "as prescribed by law" any regulation, it would first be determined as to whether or not -- or it would be determined rather, in making that determination, whether it was reasonable and in the public interest.

On the other hand, if the section read "regulated in the public interest," that would possibly be two definitions. One, was the law itself constitutional; two, was it in the public interest and reasonable regulation? Therefore, in making a determination of only one thing, the law itself, "as prescribed by law," all of the other things would be accomplished at the same time.

Mr. Chairman, this morning we had read to us a letter from the Central Labor Council asking that this be included in the Committee of the Whole discussions and, to comply with their request, I would like at this time to introduce the letter which they have offered to be made part of the record.

Now one of the previous speakers said the Constitution might say you have the right to cross the street, but if they add "as prescribed by law," you might be prohibited from crossing the street. I can't agree with that. The law could only say, as it does today, that you can't jaywalk, that you can't endanger your own life as well as jeopardize the rights and lives of others. To me, that's what "as prescribed by law" means. It means simply that you have the right to organize and bargain collectively, but you must do it in the interests of all people. Not a small group, a minority group, a class group, or any selected group. It must be done in the interest of a majority of the people.

I believe that I have answered most of the questions raised by one of the previous speakers. I have stated our own position; and, therefore, I would ask that this Convention vote against the amendment to delete the four words, so that the proposal as submitted by nine of the 11 members of this committee be adopted.

NIELSEN: I'd just like to have Delegate Crossley read the part of the letter he submitted in evidence and quote from it where they say that "as provided by law," they requested that that be included.

SILVA: I don't remember Mr. Crossley saying that. I don't remember Mr. Crossley saying anything to that effect. But I would like to say this -- I still have the floor, Mr. Nielsen, I have been recognized.

NIELSEN: Well, you were answering my question when I --

SILVA: I have the floor, if you don't mind.

NIELSEN: I'll let the Chairman rule.

CHAIRMAN: Delegate Silva, Charles Silva, has the floor.

SILVA: Thank you, Mr. Chairman. I want Mr. Nielsen to take note.

I would like to state at this moment that it would seem to me that, as pointed out by Miss Ashford, that the words "as prescribed by law" would give the impression that this Convention inserted those words with the idea of showing a little prejudice against any organization organizing for collective bargaining. It would seem to me that, even without those words, the legislature has the right to regulate. It does not in any way prevent the legislature from creating laws to regulate labor, as long as they do not infringe on the right of collective bargaining. How they are to enter into collective bargaining can be prescribed by law.

Personally the arguments for leaving the words "as prescribed by law" within the Constitution in a section on labor, in my opinion would give the impression that we entered into these halls with the idea of deliberately pointing our finger at organized labor, which I believe is not the intent. I think the legislature will have the power.

I opposed this amendment -- this proposal in the Bill of Rights. I thought that was not the place for it, and I at that time stated that it should be placed in another part of our Constitution. I see no reason why those words should be inserted unless it can be pointed out to me more clearly that it does not show that it is the intent of the committee to specifically point to any organization that enters into collective bargaining that the Constitution shows that it must be or almost "as prescribed by law." I think the legislature has that right as is, as pointed out by Central Labor Council's letter this morning.

DOI: I would like to speak in favor of the motion. The proponents of the committee proposals have stated that they recognize the principle of collective bargaining. Another proponent has also stated that there is no right in the Constitution which is absolute. Yet the same speaker has gone on to say that should we put in a clause for collective bargaining without limiting it, he is afraid that the courts -- the legislature might construe it as being an absolute right. I cannot see the reasoning, that type of reasoning. The right of free speech, press, they all are subject to reasonable regulation. They are rights, I believe some of us would say, are more fundamental than this right of collective bargaining, and much older and yet they are all subject to reasonable regulation. In our Bill of Rights article, we made no limitation as to these rights; we assume that they are subject to reasonable regulation. I see no reason for the limitation placed by the committee. In fact, the limitation as placed, I agree with the delegate from Molokai, is too restrictive.

MIZUHA: I am in favor of the deletion of the four words, "as prescribed by law." In the statement, or in the article on the Bill of Rights as noted by the previous speaker, we have listed some of the fundamental inherent rights of the citizenry of our country, and nowhere in the Bill of Rights, as far as I can recall, have we limited those rights by the phraseology, "as prescribed by law." If the Convention delegates here assembled believe that the right to organize and bargain collectively has in the history of our country developed to such an extent as being part and parcel of the philosophy of our industrial organizations and their relationships with the working classes, now is the time for us to recognize that right.

Hence, I am in favor of the deletion of those words, "as prescribed by law" because by the very insertion of those four words, the right will be limited by legislative action to any extent, and it will take years and years of litigation to determine how far the legislature could go in regulating collective bargaining.

OKINO: I should like to ask the chairman of the Committee on Labor and Industry two questions. I recognize in your committee report on page 7 the following statement: "The right to organize and to bargain collectively is recognized in national policy, both under the Wagner Act and under the Taft-Hartley Act. The right has been recognized by the decisions of the Supreme Court of the United States." My first question is, is there any similar provision in the constitutions of any other of the 48 states?

MAU: The answer is no, insofar as those four little words are concerned. The constitutions of the states of New York, New Jersey and Missouri, on the right to organize merely read, "All persons in private employment shall have the right to organize and to bargain collectively."

OKINO: Mr. Chairman of the Labor and Industry Committee, if the clause "as prescribed by law" is deleted from this proposed section, would it, as a matter of law, deprive the legislature from enacting any regulatory legislation covering this?

MAU: May I ask the speaker to restate his question? I couldn't get the question.

OKINO: My second question is this, Delegate Mau. If the clause "as prescribed by law" is deleted from this section, would it, as a matter of law, deprive the legislature from enacting any reasonable regulatory legislation?

MAU: The answer is obviously no, as has been covered by the debate and by the Supreme Court decision of the United States. Even the right to the press and free speech can be reasonably regulated. There's no question about that.

CROSSLEY: Mr. Chairman.

MAU: Mr. Chairman, I rise to --

CHAIRMAN: The chairman has the floor. Mr. Mau.

MAU: I'll let Delegate Crossley -- I yield to Delegate Crossley.

CROSSLEY: As I understood the first question of the delegate from Hawaii, it was whether or not the right to organize and bargain collectively was in any state constitution. Is that right, Delegate Okino?

OKINO: Yes, I merely wanted to know if there were --

CROSSLEY: Now, the answer from the Chair was not a "yes" or "no" on that question, but the answer of the Chair was, "not with those four little words." Now it seems to me that either we can play fair ball on this thing and answer the questions as they are put, or we can do our own interpolation, in which case, why then I would have to get up on a point of order and say that the question was not answered as it was asked.

MAU: I'd like to ask Delegate Okino to restate again his first question.

OKINO: My first question was if there are any similar provisions as your committee has proposed in the constitution of any one of the 48.

MAU: As proposed?

OKINO: As proposed.

MAU: I want to speak on a point of personal privilege. The gentleman from Kauai came up here in private to talk to me and in rather bitter tones and a cross face saying that I had misinterpreted that question and put in an answer -- words in my answer --

CROSSLEY: Point of order.

MAU: This is a matter of personal privilege, Mr. Chairman.

CROSSLEY: I am raising a point of order.

CHAIRMAN: Mr. Mau is still recognized. He's not through.

MAU: And I assume that he came up here with that attitude because I'm chairman of this committee. It is for that reason I have not as yet entered into any debate. I am supporting the proposal of the committee, but if anybody attempts to dictate to me they have a long ways to go. That means both sides of the fence. I don't take any kind of threats, whether they be from the extreme left or the extreme right. I am going to conduct myself in what I consider the best, in my best judgment, for the interest of the community and it will be that way always.

CROSSLEY: Point of personal privilege.

CHAIRMAN: State it.

CROSSLEY: I did not threaten the chairman or even try to intimidate him, and the statement he has just made is absolutely wrong. I went up to him and I stated that the question was asked and I didn't think he had answered it fairly. There was no bitterness; there was no heat; I wanted to find out how this was going to be conducted. I would like the Clerk to read the original question because I got the words "collective bargaining" in the original question of Delegate Okino. If he stated his original question, as he restated it to the chairman, I'll apologize most humbly because then I misunderstood the question; but as I understood the first question, it was, "Do they have the right to organize and bargain collectively?"

HEEN: According to the debate so far, all sides seem to concede that there is a right to bargain collectively. Just wondering whether or not this language might take care of this situation.

CHAIRMAN: Take this down separately, Clerk.

HEEN: After the word "bargaining," insert "such right to be exercised in accordance with law," that phrase to be substituted for the phrase, "as prescribed by law."

CHAIRMAN: The Chair is keeping a roster of the speakers, and he expects to have all the members who want to be heard on this subject be heard before we enter into any debate.

HEEN: That sentence was not - -

CHAIRMAN: That's an amendment? Did you suggest - -

HEEN: I haven't offered it as an amendment yet, but I don't know whether or not it might clear up the situation. If that clause suggested by me is substituted for the clause reading, "as prescribed by law," then that sentence would read:

> Persons in private employment shall have the right to organize for the purpose of collective bargaining, such right to be exercised in accordance with law.

I move that as an amendment.

CHAIRMAN: Delegate Heen has offered an amendment. Any second? Delegate Hayes has seconded the amendment. Do you want to talk on the original proposal or amendment?

KELLERMAN: I should like to speak against both the amendments because I think what I have to say goes to both; first, the amendment to delete the phrase as "prescribed by law"; second, the proposed amendment, to insert the words "such right to be exercised in accordance with law." I think it essential to retain the original four words because I think the crux of the matter is in the definition rather than regulatory power. What do you mean by the language "the right to organize and bargain collectively"? We have accepted the fact that all people have a basic right to organize for purposes not unlawful as being a right we were born with, an inherent right, but to bargain collectively is a right that has been - - is to be exercised by statute definition. The big Wagner Act, our own little Wagner Act, the Taft-Hartley Act go into great detail to explain the method of collective bargaining. Collective bargaining is not a right; it's a tool, and the tool has been defined by statute.

Now if you don't have a definition of the tool, how can you say that you will grant the "right to be exercised in accordance with law," when the law, as I see it, must define what the right actually is. For instance, the Supreme Court of the State - - the Court of Appeals of the State of New York and the Supreme Court of the State of Missouri, in both of which constitutions have the right to organize and bargain collectively without the four additional words, those courts have both held that it was assumed there was no intention to render unconstitutional existing statutes and therefore, they would construe the meaning of the language in the meaning of the existing statutes of those states' own labor regulation.

That seems to me to point up a very pertinent question. Suppose circumstances arise whereby it becomes definitely a matter necessary to the public interest to alter materially the meaning of the language, "right to bargain collectively." Suppose labor in a certain group attains such a monopoly over a full industry that it becomes as harmful to the public as the public has decreed such monopolies to be harmful when held entirely by industry, by management. We have restricted managements power to monopolize an industry against the public interests. To date there is no labor legislation in the United States which forbids monopolistic control by a union over a full industry. However, we have been faced repeatedly in the last few years with the ill effects of such a monopoly in the hands of the coal union, being exercised by Mr. Lewis, John L. Lewis. There is now before the Congress a restudy of the Taft-Hartley Act with the possibility and the direction of writing possibly into that act, certainly altering the provisions to amend that act, to rule out the right of any labor organization to bargain collectively, where that means bargain collectively for an entire industry which would be a monopoly over that industry.

I submit that such a change in the concept of the language of collective bargaining would be a material change, a concept which is not now in existence in any labor legislation in the United States, and I think it goes to the definition of the term "collective bargaining." It does not go to the regulation of the method of exercising a pre-defined term, "collective bargaining." It actually changes its scope or its concept materially. It is my opinion that if the Taft-Hartley Act were amended to declare illegal monopolistic control by collective bargaining of a full industry, if we adopted this language in our Constitution without the four words added, and our Constitution were adopted before that change is made in the Taft-Hartley Act, it would be very likely, and I think a court would be entirely consistent in ruling that such a change could not be made in our little Wagner Act to conform with that material change of concept that would then be incorporated in the Taft-Hartley law.

I don't think we want to preclude our legislature from redefining the language of collective bargaining as the ever changing relationships of industry and labor present themselves. After all, we are here to write a Constitution, not for industry, not for labor, but for the people of this territory and it has been proved time and time again that monopoly is harmful to a free people. It was on that basis that Teddy Roosevelt got through his greatest, one of his greatest contributions to the peace and security and economy of the United States in the anti-trust laws which controlled industry. We now have no such limitation on labor and we know we are faced with the potentiality of labor monopoly that can be

just as harmful as any industrial monopoly ever was, as far as the people of the state or country are concerned. Yet to date we do not have that concept incorporated in any labor legislation.

I submit that it is a matter of definition and the definition should be subject to growth, to change to fit the needs of the people. I don't think that it can be included entirely under the term "regulatory" or the method in which it, a predetermined right by definition, shall be exercised. I think we need, to assure the safeguarding of the public and the changes which our legislature may find essential in the public interest, to include the words "as prescribed by law."

CHAIRMAN: The Chair will declare a five minute recess as we have been working an hour on this problem already. We think we ought to have five minutes—that means five minutes, too.

(RECESS)

CHAIRMAN: Ladies and gentlemen, take your seats.

TAVARES: I have four questions that seem to me need to be answered before I vote on the proposed amendment -- on the first proposed amendment, to delete the four words, "as prescribed by law." I'd like to explain that since this territory exports most of its products, we are therefore engaged in businesses which the federal courts have held are interstate commerce in character. If, therefore, Congress should extend the Taft-Hartley law or some other labor law to cover agricultural labor, which it can do and may do someday, would not most of our labor be covered by the federal law? And if so, would it be wise to give our legislature less power to regulate business in local commerce than Congress has to regulate interstate commerce labor, especially when the labor organizations do not make a distinction in recruiting members between people engaged in interstate commerce work and people engaged in local commerce work. I wonder if the proponents of that amendment would care to answer that question. I have three others.

MAU: That first part of the question—it's such a long question, I didn't follow the second. The first part of the question, if Congress should extend the Taft-Hartley law to the State of Hawaii it would, of course, cover interstate commerce. In that event, what is left to the state would merely be intrastate.

TAVARES: That is correct. But then my next question was, under such circumstances, would it not be true that our industries are of such character that most of our labor would be considered sufficiently interstate commerce in character so as to be subject to regulation by Congress?

MAU: Not being a member of industry, I don't know; that would be a factual question.

TAVARES: Well, we export most of our sugar and pineapples. Would that not be the situation?

MAU: Of course, as soon as it starts into the flow of interstate commerce, no question that the Taft-Hartley Act would govern.

TAVARES: So then the next question is, would it be wise to give our legislature less power to regulate labor engaged in local commerce than Congress has to regulate labor in interstate commerce?

CHAIRMAN: Will Mr. Mizuha answer that question?

MIZUHA: The delegate from the fourth district has raised a good question. Undoubtedly if Congress sees fit to extend the provisions of the Taft-Hartley law, and prior to that from whatever it saved from the Wagner Act, to agricultural workers, the great bulk of our sugar and pineapple workers in the territory will fall under the provisions of the law, as passed by Congress.

However, we have many industries in Hawaii which are purely intrastate and that question was raised when the Bill of Rights Committee considered this section. We had representatives from industry here and it was agreed that the bulk of our utilities like the Honolulu Gas Company, Hawaiian Electric and some of the other utilities engaged in local transportation would be under the jurisdiction of any kind of labor-management relations act that would be passed by the territorial or state legislature.

TAVARES: In such a case, would there not be the situation where in the same union you would have members that could be regulated by Congress to a greater extent, if their powers are different, than we could regulate our own local commerce?

MIZUHA: Well, for the -- question was raised with reference to the Honolulu Gas Company who imported up to, and still does, I think, a large amount of crude oil for the manufacture of gas, cooking gas. It was said that those people associated with the handling of crude oil from the ship to the wharf and so forth would be considered interstate commerce. There is that likelihood that employees in certain industries or in certain organizations will come under the scope of the federal law, others will be covered by the territorial or state law. It all depends.

In other words, the idea back of the section as a whole was not to interfere at all with those aspects of the federal law which covered collective bargaining. The right to organize and bargain collectively was the protection for these people who are working here in the future -- who will be working here in the future State of Hawaii, who would not come under the scope of the federal law.

TAVARES: Then, I have the next question. Is it the opinion of the proponents of this amendment to delete these words that the section then, with the deletion, will give our legislature the same powers over regulating local -- labor engaged in local commerce as the Congress has over labor in interstate commerce?

MIZUHA: I cannot speak for the rest of the members of the committee who believed in this section, but I can speak for myself. I would believe that any legislative policy adopted by the future state legislature of Hawaii should be closely fitted to the pattern of the federal law with reference to collective bargaining.

TAVARES: But my question has not been answered. I am asking if it is the opinion of the proponents that the powers of our legislature will be substantially equal in their fields with the powers of Congress over the interstate field?

MIZUHA: If it is the desire of our state legislature—as I said, this is my own personal opinion—our future legislation with reference to workers in intrastate commerce should be the same type of labor legislation that the federal government sees fit to cover the employees who are engaged in interstate commerce.

TAVARES: Then, I assume I can interpret the speaker's answer as "yes." They would be substantially the same in their respective fields.

MIZUHA: That's my own personal opinion.

TAVARES: If any of the other proponents have a different idea, I think in fairness to this Convention they should so state, so that we will know what meaning they place on this amendment.

CHAIRMAN: Mr. Arashiro, you introduced the amendment. Would you like to reply?

ARASHIRO: I think I feel the same as the opinion as expressed by Delegate Mizuha.

CHAIRMAN: He feels the same way as Delegate Mizuha.

TAVARES: Well, then let me point out that under the Taft-Hartley law today the closed shop is prohibited. I take it then that answer means that if this amendment goes through, our legislature would have the power—although it may not be wise to exercise it, I'm not saying that it would be—the same power that Congress has over that particular subject.

MIZUHA: Speaking for myself again, I'm not going to speak on the merits of the closed shop or open shop or union shop, but whatever the legislature sees fit to do, I believe the legislature will legislate in the interest of the people, and if it sees fit to legislate out the closed shop, I believe the legislature has full right to do it.

TAVARES: That answers my question on that.

Now, one more question. I think it's already been answered in effect, and that is, there is talk now that Congress might extend the anti-trust laws to certain types of, let's say alleged excessive organization of labor, or excessive groupings of labor, let's say. If that is the case, undoubtedly Congress has that power. Would under this amendment our legislature, if labor organizations got so large that in the public interest it felt that the extent of organization should be regulated under some sort of an anti-trust provision, would our legislature under this amendment with the deletion of the words have the corresponding power that Congress has? In the opinion of the proponent?

MIZUHA: As I previously expressed, there is no doubt with reference to all the rights that are granted to the people under any constitution, the police power of the state will cross those lines and will authorize legislation in the interest of the welfare of the state. Congress at the present time is considering S. 2912, a bill to write into the Taft-Hartley law the anti-trust provisions with reference to labor monopoly. But it is well, and this is just a personal observation, the Secretary of Commerce [sic] Tobin testified before the committee and said, "I am opposed to any bill which will attempt to turn the clock back to the dark days when the anti-trust laws were regularly used to harass and destroy labor unions." That is the attitude of the Secretary of Labor.

If the state legislature desires to write into Hawaii's labor relations act for the people engaged in intrastate commerce, such provisions as the national Congress is endeavoring to write into the federal law, I believe the legislature has the power.

TAVARES: That answers my question. Thank you very much, Mr. Chairman. As I say, if the other proponents have any different ideas, I think they should state, in fairness to this Convention, whether they have such a different idea.

SHIMAMURA: The queries posed by the last speaker get us into the difficult realm of the priority of federal legislation and local state legislation, in the first place. In the second place, in case the federal government has acted by legislation regulating certain matters of legislation, whether this state will have the right at all. But may I state in addition that - -

MIZUHA: I rise to a point of information. Was the speaker asking a question or making a flat statement?

CHAIRMAN: No, he was making a statement.

SHIMAMURA: I made a statement there.

MIZUHA: I would like to have that further explained in fairness to all the delegates here on the question of this, whether or not when federal legislation enters the field of interstate commerce with reference to the affairs within state, that the federal law is supreme.

CHAIRMAN: I wish to - -

SHIMAMURA: I did not wish to take too much time.

CHAIRMAN: Delegate Shimamura, you have the floor. I hope you will not be interrupted again.

SHIMAMURA: That's all right, Mr. Chairman, but I did not wish to get into a prolonged discussion as to the sphere of federal and state legislation. But I wanted to point out that some of queries posed by the last speaker raised difficult questions as to the spheres respectively of national legislation or of state legislation, and the difficult question as to where interstate commerce begins and where it ends, et cetera, which is a very wide field.

But may I state that I am in favor of the right of collective bargaining on principle. However, I see some difficulty in the deletion of the words "as prescribed by law" from the legal standpoint. Some persons have spoken and said that this right is analagous to the right of free speech guaranteed in the Federal Constitution and in all state constitutions, and which will be guaranteed in our State Constitution under the Bill of Rights. Now the right of free speech has certain common law antecedents before our Federal Constitution was adopted and before our state constitutions were adopted. But collective bargaining does not have such a common law concept. It is not a common law concept to begin with; it's purely legislative. Now, if being purely legislative, we leave out the words "as prescribed by law," what would we have? We have a very fluid right here. That's the difficulty I see, and I should like to have that answered, if I may, by any member of the committee or anyone else.

FONG: As of this moment, I have not yet decided how I would vote. I had expected that we would get some discussion on the background of the labor movement, the background of what the Taft-Hartley Act is, the Wagner Act, and how it will pertain to this territory as far as the principle of collective bargaining is concerned. Now there has been no discussion here, and I'm quite sure that quite a few of the number of delegates here are quite confused as to what we are talking about. The word "collective bargaining" means a lot of things, and I'm quite sure a few of us do not yet have our finger right on the point.

Now, in conjuction with that, I'd like to ask a few questions. As I understand - - I'd like to ask the chairman of the committee a few questions and if he could explain to me and explain it to the delegates here, I think maybe we'll have a better idea as to what we're doing here. As I understand the Taft-Hartley Act, it deals with interstate commerce. Is that right, Mr. Mau? Only?

CHAIRMAN: Would you restate your question?

MAU: I think the answer is, I believe that's correct.

FONG: That's correct. The Wagner Act originally dealt with interstate commerce. Is that right?

MAU: That's correct.

FONG: And the Wagner Act exempted from its provisions the right of collective bargaining by agriculture workers, which means that the great majority of our plantation workers in the fields were unable to bargain collectively. Is that right?

MAU: That's correct, and that's why you passed the little Wagner Act.

ROBERTS: That's not a correct statement, in answer to that question.

MAU: In excluding certain agricultural workers? I stand corrected.

ROBERTS: No. The act did exclude certain agricultural workers from the protection of the statute; it did not limit the right of workers to organize and bargain collectively with the employers. The only question there was the question of the protection of the law in terms of the unfair labor practices. The employees have had the right to bargain collectively prior to the passage of the Wagner Act and the Taft-Hartley.

FONG: Probably I just didn't state it adequately.

Now as I understand, under the Taft-Hartley Act that group is given the power to organize and to bargain collectively which they have had; but on top of that, if they organized as a group and went to their employer through representatives of their own choosing, then the employer has to bargain with them. Is that correct?

ROBERTS: May I answer that question? Under the statute, under the Wagner Act and under the amended provisions of the Wagner Act, the Taft-Hartley law, the employer was required as a matter of law to bargain with the duly recognized collective bargaining agent of the employees in the appropriate unit.

FONG: Yes. Now, following that, if he did not bargain with the duly representatives of the employees, representing the majority, what were the penalties?

ROBERTS: Under the statutes, under both statutes, the employees through their representatives would file an unfair labor practice with the board. The board then would have a hearing and further adjudication, subject to the review by the courts, would then determine whether or not the employer did or did not violate the law. If he violated the law, an order would be issued by the court to require him to bargain. If he did not bargain, then he was subject to action by the court and contempt of the court.

FONG: I see. Now, following that thought, if we give the right to labor of collective bargaining, actually what we are doing here is to state what is already inherently theirs. Is that right, Mr. Roberts?

ROBERTS: The statements and the provisions of the section proposed, with the exception of the qualifying language, are now in both the Taft-Hartley law and our own little Wagner Act. That's correct.

FONG: If the legislature did not do anything, and labor having this right of collective bargaining, would it be able to impose upon the employer who refuses to bargain with labor, after the ratification of 'his Constitution with the provision in there that labor has the right of collective bargaining, will labor be able to impose upon the employer the pressure which it now has over the employer under the Wagner Act or Taft-Hartley Act, in respect to intrastate commerce?

ROBERTS: The purpose of the Wagner Act was to avoid industrial strife by providing machinery whereby the employer through an election would be required to recognize the employees and bargain with them. Prior to the passage of the Wagner Act, there were many disputes on the question of recognition, and the employees had to resort to force, had to resort to the strike. The Congress said that the purpose of the law—and that same language is in both the Taft-Hartley and Wagner law—it makes it very specific that this right is to be protected in order to do away with industrial strife, and that right is protected and recognized. You will find that the legislature—under the Federal Congress, of course, in the passage of the law—the legislature could regulate reasonably with regard to the concept of collective bargaining and its scope.

FONG: At the present time, dealing entirely with intrastate commerce, excluding interstate commerce, if a group of employees through their representatives by a majority vote went to the employer and tried to bargain with him, and he refuses to bargain with them, will the employer be subject to the unfair labor practice law?

ROBERTS: Yes, he would be if they represented the majority of the employees and if you had provision by law, as you do now, for certification. They would be a certified bargaining agent. Now the method of certification varies, but if they represent the majority of employees and they request the employer to recognize them for the purpose of bargaining and the employer refuses, then they have the right to file a charge under the provisions of the little Wagner Act in the territory.

FONG: That is under the intrastate - -

ROBERTS: Under your own little Wagner Act which the legislature passed in 1945, Act 215, S.B.72, Hawaii Employment Relations Act. The employees have a right to file a charge under that section, under that statute.

FONG: Well, if that little Wagner Act was not in existence in the Territory of Hawaii, would they still have that right?

ROBERTS: Well, that would be a question in terms of whether or not the Taft-Hartley law or the Wagner Act covered. If we had no Hawaii Employment Relations Act covering intrastate, I still believe that all activities which would provide for employee-employer relations in the territory, except those specifically excluded by the Wagner or Taft-Hartley law, would be subject to regulation by that act, if we are a territory. Now, the reason I say that, under the Wagner Act and the Taft-Hartley law, the jurisdiction, the scope of the act covers interstate commerce, and interstate commerce is defined as all commerce among and between the states and the territories; so, by definition the territories are included in interstate commerce. As a matter of administrative procedures, they did not take all of the specific little industries and actually prosecute cases. But there are certain specific groups excluded from the protection of the law, such as the agricultural employees originally, and those employees did not get the protection of the law, although they had the right to bargain with the employer.

FONG: Now, if we become a state, then we are excluded from the question of being a territory, and if this provision stays in the Constitution that labor has the right to bargain collectively, must the legislature enact laws setting forth what is unfair labor practice, probably what is the penalty for an employer to - - the penalty on the employer if he refuses to bargain collectively? Must that necessarily go into effect before this right of collective bargaining will be effective?

ROBERTS: I don't think so. You already have a law on the books; that law, it would seem to me, takes care of the problem if you become a state.

FONG: You mean the little Wagner Act?

ROBERTS: That's right.

FONG: Now, if the little Wagner Act was not in existence, then the legislature must act. Is that right?

ROBERTS: Well, I would assume that some statute would be enacted dealing with that problem. Yes.

FONG: Thank you, Mr. Roberts.

HEEN: It seems to me that the question before us is whether or not this right is to be a constitutional right or a statutory right. After listening to the debate and the discussion upon this proposal, I believe that it was the intent of the majority of the Committee on Industry and Labor that this provision was to be effective only by statute. In

other words, it was to be made a right by statute. Is that correct? It's not a constitutional right, as I read it now, but would be a right only granted by statute.

MAU: If I get the question correctly, you are asking whether the committee, the majority of the committee, believes it should be in the Constitution or out. The answer is in the Constitution.

HEEN: You mean it's a constitutional right? If it's a constitutional right, then you can cut out the words, "prescribed by statute" -- "as prescribed by law."

CHAIRMAN: There's another member of the committee would like to reply to you.

BRYAN: I think the fair answer to that question would be—and I stand corrected by any of the members of the committee who would like to argue—it's a constitutional right, or an exercise of other rights which has formed a new right which is recognized in the Constitution to be exercised under statutory provision. Is that correct, Chairman Mau?

HEEN: If that is so, what I had proposed would be correct then. That is, it is a right to be exercised in accordance with law. Listening to Delegate Kellerman, I got from her remarks that it is not a constitutional right, but it is a right to be prescribed by law.

LARSEN: Could I just answer that? As I saw it, and again stand to be corrected, that why it was worded that way was it was a right, but it was so fluid that at the present time there was no definite definition; but it should be recognized that it was there to be changed as defined by law. Therefore, it couldn't be put down as something rigid and specific at the present time because there was no actual definition of "collective bargaining" at the present time.

MIZUHA: The reason I'm speaking on this section is because it was taken up in the Committee of Bill of Rights also. In the Committee of the Bill of Rights it was made clear that although the right to organize and bargain collectively had been recognized for a long time prior to the passage of the Wagner Act in 1935, no appropriate measures were taken by the Congress of the United States to enforce that right; and in the declaration and findings of the committees of the Congress of the United States with reference to the support of the passage of the Wagner Act in 1935, they did state that in order to correct certain abuses, labor abuses, the Wagner Act should be passed. And the Congress of the United States passed the Wagner Act and found constitutional basis for the passage of the Wagner Act on the basis of the interstate commerce clause of the Federal Constitution. Nowhere in the Constitution did they go to -- nowhere else in the Constitution did they go to when the government supported the fight in the case of the N. L. R. B. versus the Jones and Laughlin Steel Corporation. That famous case gave constitutional basis and validity to the Wagner Act, because the Supreme Court ruled that on the basis of the interstate commerce clause that law was constitutional.

In the philosophy of those states that have written into their constitutions in the recent revisions like New York and New Jersey and another state—I don't recall in particular now, Missouri I believe—this section was written into their state constitutions to protect any legislation that the state legislature saw fit for and on behalf of workers in intrastate commerce only, because it was felt that the federal government had already passed legislation with reference to those workers who were engaged in interstate commerce. In order to serve as a constitutional basis for the validity of legislation with reference to the type of legislation that Congress has passed for goods entering interstate commerce, these states passed these various sections in their constitutions on the right to organize and bargain collectively.

I believe there shouldn't be any fear at all on the part of those people who feel that there is in this section the creation -- there will be in this section the creation of a labor monopoly. Certainly, and it is my conviction at this time, the legislative power of this state, the future State of Hawaii, under its police power, following the pattern of the powers of the Congress will exercise and continue to exercise under the police power of the federal government, to so regulate collective bargaining in the interest and the welfare of all the people.

KELLERMAN: May I answer the judge -- the question put by Delegate Heen, having referred to my explanation of my position on these amendments. I was a member of the Bill of Rights Committee and sat in several times on meetings of Labor and Industry to hear this matter discussed. I asked the question several times, "What do you mean by the right to collective bargaining? What does the term 'collective bargaining' mean?" The answer given me by those who were in favor of the provision without the addition of the four words that we are discussing or those of Mr. Heen's amendment, the answer given was it must be defined in the light of present statutes. It seems to me that points up the very question. If you have a constitutional right to collective bargaining, and you don't know what collective bargaining means except by the statutes that have been enacted to define collective bargaining, then it seems to me the constitutional grant of a right is the granting of an absolutely indefinite and undefined right.

Now admittedly there may be no harm in writing in an undefined right if you add that it can be exercised only in accordance with law. There may be no harm done because if you have a right which cannot be exercised or can be exercised in only one way, it's immaterial if someone argues that the right means something other than someone else thinks it means. The right in itself is simply the declaration of an idea. The exercise in accordance with law is the meat of the matter.

But I do feel that the using of the term, "the right to collective bargaining" -- We all have the idea we think we know what it means. Yes, we see it, we have it exercised in the 48 states, it's been adjudicated in the courts, and the very fact of its indefiniteness that the courts didn't know how far it should go, that the Congress was impelled to enact a statute to define collective bargaining and that statute has been amended and undoubtedly will be amended again, it goes to the very definition of the language. It is an undefined and indefinite language.

It's for that reason that I feel we must have the additional language, either "as prescribed by law" because that includes the concept of the power of the legislature to define the very language we are writing into the Constitution. If we can put in Judge Heen's amendment, I don't think it will do harm. I don't think it frankly is as good as the original language of the committee; but since it says "such right to be exercised in accordance with law," if the right is not completely defined before then, by the time you prescribe how its going to be exercised, you can achieve exactly the same result of a limitation if necessary in the general interest. But I think that is the point that Judge Heen rose. Are you conceding a preconceived right to collective bargaining? I would say in a general undefined, indefinite sense, yes; but there is no definition except by statute and we must leave it open for the statutes to redefine as the change in labor relationships with industry change and progress.

HEEN: May I ask the last speaker a question? Supposing those four words were deleted, would it not then become a constitutional right?

KELLERMAN: I think it would become a constitutional undefined and indefinite right unless it would be construed by the courts to mean only that which we have now under

existing statutes, and that is the construction that has been placed upon it by the Court of Appeal of New York and the Supreme Court of Missouri. I submit that type of definition which is the only definition that our courts will have to go by would be restrictive upon any subsequent change in the definition of that language which may become necessary in the public interest.

HEEN: That answer, as I understand it then, is this; that that right, no matter how indefinite, would be a constitutional right. As I understand it then, according to this language here, with the four words included, it was to become only a statutory right. And is that pointed question correct?

KELLERMAN: May I answer that? I would say this much, it does not become only a statutory right, only in the sense that it is the definition of what your language means. If you use something completely undefined as a right, you don't know what you are giving or how you can limit it. It's an indefinable thing.

If you ask John Doe on the street, "Do you know what collective bargaining means?" He'll say, "Sure, it means that the boys can get together with a union, hold an election by majority vote, then choose a bargaining agent and they can go in and bargain with management. Of course, I know what it means, everybody knows what it means."

But that's the point. What does it mean in law? What does it mean in the sense of the scope of its definition? Does it mean that only in one business can you organize and bargain collectively, or can you organize every business in the territory and one union involved collectively? What are the limitations? What is the scope? What are the methods that can be used?

HEEN: I want the Chair to get a yes or no answer, whether or not under this language here complete, whether or not it would be a statutory right or is intended to be a statutory right. Someone ought to be able to answer that question yes or no.

ARASHIRO: In answer to the last speaker, my objection to the deletion - - my motion for the deletion of the four words is because it changes that right from constitutional right to statutory right, and if we recognize that right as a constitutional right, then as we are changing and as we are progressing ahead, and we do not go backwards. We recognize that right and it should be a constitutional right.

Answering the lady delegate from the fourth district who said that word "collective bargaining" is not clear, well, when we wrote our Constitution, our Federal Constitution, I don't think the freedom of speech and freedom of religion and all those things were clear then, but it has been regulated and it's still not clear as to its interpretation. It has been always brought to court for a clear definition. And in fact, many of our English words are subject to clarification. In fact, a simple word like R-U-N, run, used to be limited as to its use. Today when you look into Webster, it has more than 90 definitions and uses. So those things can be interpreted and be regulated in some manner. That is the reason if collective bargaining is not clear it can be clarified through statute and it can be clarified through the courts. So as I have stated, a word like R-U-N, simple word like run, has been used in 90 different ways. So I feel that if this is a right that we recognize, it should be a constitutional right, and at this time, I move for the previous question.

GILLILAND: The Constitution of the United States provides for the right to organize, in the words and language, the people shall have the right to freedom of assembly. But the word "collective bargaining" is a creature of statute. It's up to this Convention whether they want to define the methods, so we can proceed with collective bargaining. If you want that in the Constitution, it's up to the delegates.

CHAIRMAN: Mr. White. I'm trying to give everybody a chance.

WHITE: I'd like to reply to the question which - - my answer is directly opposite to the delegate from Kauai. In my opinion, the right to organize for the purpose of collective bargaining is not a constitutional right, it's a statutory right.

NIELSEN: I'm not going to take much time. The reason I would like to see these three little words eliminated, or four words, is that what we want to do is write in this Constitution something for labor, and we want peaceful labor relations here in the islands. Nationally they have been shooting at the same target, and we have it in the N. L. R. B. and the Taft-Hartley. Now let's shoot at that same target by eliminating these words because without them, the State can still regulate abuse of collective bargaining. There is no question in anyone's mind but what abuses, the same as abuses of the press or speech or anything else, can be regulated by the State legislature. So I think that we should be about ready to take a vote on this on the principle that it is in the modern constitutions, that it is in our federal laws and that without these four little words in there we still have the power to regulate abuses of it, and it will be a good healthy thing for good industrial-management-labor relations.

YAMAMOTO: Under the Bill of Rights, the Bill of Rights is the declaration of the dignity of the individual as a member of the state. So, therefore, I feel collective bargaining is a constitutional right and is an economic right, so, therefore, I believe the phrase "as prescribed by law" should be out.

ROBERTS: I'd like to dispel some notions as to the purpose of this language in part and its import. We didn't write into this proposal a proposal dealing with statutory matter. This proposal is for the purpose of protecting the right to organize for the purpose of collective bargaining as a matter of constitutional right. We did recognize, however, that they are subject to reasonable regulation by the legislature, and the language that came out was "as prescribed by law." The suggestion made by Senator Heen is that that be changed to read "such right to be exercised in accordance with law." But that right is a constitutional right; that's the basis upon which I voted on the question.

I'd like to suggest, too, in answer to some previous questions, that that right has always existed. The right of collective bargaining is a right of collective action. There is nothing strange or confusing about the word. It has been defined by the courts; it has been defined in part by statute. But so have other things. The term "collective bargaining" is a changing term, that's true; but it changes as the courts change, and I've read a lot of constitutional decisions by the courts where for over a period 120 years they couldn't make up their minds. That doesn't mean that we cannot put down the language, "collective bargaining."

I might suggest from the point of view of American labor history, to reply to Mr. Fong's suggestion that we get a little labor history here, that we have certain basic rights in our Constitution, the right of assembly and certain rights which are now construed to protect the right to strike for specific purposes. Yet you find no longer ago than the middle of the last century that there was very definite action taken by the courts in construing what those rights of assembly were, what right of organization there was. And the courts said that collective action for the purpose of raising wages, for example, was a conspiracy in restraint of trade. It took us a long time to move from that area to the present time when, both under the Wagner Act and the Taft-Hartley law,

it is recognized as a matter of federal policy that collective bargaining should be assisted and aided.

I might like to read, or suggest the reading of just one paragraph of the Taft-Hartley law—that language was identical with language in the Wagner Act and it wasn't changed. That section reads, "It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining"—the right of workers to get together for specific purposes, provided those purposes are not unreasonable; that's why we say that the legislature may prescribe and regulate, but it has to be reasonable regulations and must not go contrary to the protection of that right—"collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

Now there isn't anything nasty about collective bargaining. It doesn't take away the rights of individuals. Those individual rights are combined in an organization for the purpose of collective action. That's recognized by the Taft-Hartley law. I would venture to suggest to the delegation that we recognize the right, that we place it in our Constitution as was placed in the constitutions of the State of New York, the State of Missouri and the State of New Jersey, which have most recently reviewed and reorganized their constitutions.

Now the language, "as prescribed by law," or "such rights to be exercised in accordance with law," merely recognizes that the legislature has the right of reasonable regulation. I believe that right they have whether the words are there or not. That's been clearly shown in the State of New York when the courts acted and it was shown very clearly in the State of Missouri. But in order to get the agreement of the delegation, if those words would make some individuals feel that these are not to be unreasonable, then I say there ought to be no objection to the inclusion of those words, but we must recognize this to be recognized as a right, and whatever regulation there is must be regulation which is reasonable.

LEE: Will the speaker yield to a couple of questions? Apparently the nine member majority of the committee are in dispute as to whether or not this right is a constitutional right or a statutory right as it is now written, because as I understand it, Delegate White was a member of the committee who signed the majority report. Is that right, Mr. White?

WHITE: That's correct.

ROBERTS: We did not discuss whether it was a constitutional or statutory right. We wrote this section in for the Constitution, which makes it a constitutional provision.

LEE: It apparently is borne out from this discussion, and I am of the opinion at this moment, that as written it is a statutory right and not a constitutional right, so that the members of the majority who agreed with that report thinking it to be a constitutional right, actually were supporting it as a statutory right. Therefore, it would seem to me that this committee at any rate, and this is very important, that if we recognize this to be a constitutional right, we should say that it is a constitutional right, and the step suggested by Delegate Heen is in that direction, believing that the right is a constitutional right and not a statutory right. I also would like to ask the delegates -- I wonder if the chairman of the committee might care to remark on this position.

CHAIRMAN: Chairman yield?

MAU: Yes, Mr. Chairman. I believe that Delegate Heen was not quite satisfied with all the answers that he got. I couldn't get up here as chairman and make a categorical answer to his question because my committee is so divided. But speaking for myself, there is no question that what is stated here today is statutory right. We do want to make these statutory rights constitutional rights, otherwise we wouldn't vote to put it in the Constitution.

Now, insofar as the words "collective bargaining" are concerned, if we had a majority on this committee we would have defined what collective bargaining meant in the Consttution, but we preferred not to do that. Personally I did not want to do that, but to leave the method, the procedure of collective bargaining, to the legislature because the legislature will have to go into all of the situations that they may meet in this community and determine whether or not they want to follow federal procedures or whether they want to set up their own procedures and methods of collective bargaining. But the right to organize for the purpose of collective bargaining should be a constitutional right. That is the position of the majority of the committee.

Has the gentleman another question?

LEE: You haven't answered my question yet, Delegate Mau. As written, if we were to vote for the adoption of the proposal submitted by your committee, as written, wouldn't we be voting saying that that right is not a constitutional right but a statutory right?

MAU: The answer is absolutely no. Take your right to free speech, if you wanted to add, "as provided by law," "in accordance with law," "as prescribed by law," what would it be? Statutory, if it's in the Constitution? I don't see it at all.

LEE: Well, it seems to me that from the discussion brought out -- well, we'll leave that point.

MAU: No, let's answer that point. From the discussion brought out, there are two philosophies of thought, one, it should not go into the Constitution at all; the other, it should. That's all, it's as simple as that.

LEE: What have you to say to this point that was brought out, I believe by Delegate Kellerman, that the right of collective bargaining, collective action on the part of individuals, is a statutory right and therefore has no basis in the Constitution. I have -- My own feeling is that rights of man or groups of men can be born, not only from customs, mores of any society, but out of statutory action which can develop certain meanings to certain terms. For instance, in the section relating to due process clause, "No person shall be . . . deprived of life, liberty or property, without due process of law." The term "due process of law," Mr. Mau, do you not agree has changed from the time of its adoption in the Federal Constitution up to the present time as to its meaning?

MAU: Certainly, and so will the words "collective bargaining."

LEE: Is that your opinion? In other words, you disagree with the statement made on the floor of this committee that the right of collective bargaining being of statutory origin cannot be a constitutional right.

MAU: I don't agree with that, that it cannot be. In further answer to that, I might say this --

PORTEUS: On a point of convenience --

CHAIRMAN: This is not a debating society.

PORTEUS: -- to all the other members, since we have a limitation on this matter till 11:30, I wonder if the chairman would ascertain who wishes to speak from now until 11:30 and allocate the time. There are some of us I know

who wish to speak who have not wanted to jump up and compete for the floor. We now have 25 minutes. I wish the chairman of the committee would ascertain those who haven't spoken, how many there are, and allocate the time to them so that - -

CHAIRMAN: There are 19 members of this committee that have spoken. There are some more that wish to be recognized.

FUKUSHIMA: I believe all of us here are talking sometimes about things that are not tangible. We talk about rights. Delegate Roberts has stated that the right to bargain collectively exists whether we have a statute or not. We cannot categorically state, as Delegate White said, that it is a statutory right. Simply because a few states supply the right of collective bargaining, that doesn't make it a statutory right. It's a right existing under that statute.

I think the question is a little deeper than that. If that inherent right, the right that exists before it is incorporated in a statute, is incorporated then, and you call that a statutory right, that's not proper. It's not a statutory right; it's merely a right existing under the statute. The question should be this, has that right, which has always been in existence and later incorporated into a statute, gained that dignity so that it should be more than a right just simply under the statute. If it's an inherent right, it should be a constitutional right if we place it in our Constitution.

I beg to differ with the chairman of the committee. Simply because we have it in our Constitution doesn't make it a constitutional right, if you provide restrictions by the legislature. I think we are talking about things which we can't even define. If we say that the right is inherent, whether we have it in our statute or not is immaterial. You have that right, it's not a statutory right.

Now we also heard that if we do have it in our Constitution, leaving out any thought about a statutory right, it will become an undefined right. I beg to differ there. It may be undefined, but so are a lot of the other rights which we have written into our Constitution. Certainly the word "collective bargaining" is not a word of art; certainly the words "due process of law" are not words of art. It's subject to interpretation, and simply because we cannot define it categorically and state collective bargaining is this, does not mean that it is an undefined right.

A. TRASK: I would like to simplify the thing as much as possible in my own mind. We have immediately the Central Labor Council's inquiry; it says, the last paragraph, "We urge your adoption of Committee Proposal No. 28," which is apparently the sentence under discussion. The inquiry from this letter is, they want to know, unequivocably, whether or not the legislature can, upon its convening when the Constitution is adopted, say to labor that you cannot organize to bargain collectively. That is the question that this letter poses. Now, whether it's a right given under the statute or by virtue of statute, whether you're going to call it a statutory right; whether or not it is printed in the Constitution, you are going to call it a constitutional right.

We have written such words as "public welfare" in the Constitution. Who's going to define "public welfare"? It's a word of equal magic or illusiveness. What's going to decide the situation? The courts. Under what cases? Precise concrete cases, as they come up. Controversies will decide the definition of words through the hot fire of the judiciary.

Now, is it constitutional or is it regulatory? As far as I see, the question would be more definitely pointed if we said here that we would suggest that the right given by congressional legislation, the right to collective bargaining to people in interstate commerce, that such right does not exist. If we put that in the Constitution, that would be a constitutional denial of a right.

Now what is the benefit, if any, in this particular sentence? The significance, if any, is something being conferred upon certain parties. Certain parties. Is it all the people? No. It doesn't apply to lawyers. It applies to people in private employment, and lawyers are usually in partnership, so they're not in employment as such. It refers only to a category of people. As I see the situation, since it is the consensus apparently here that we shall adopt and approve of this right, it seems to me, therefore, apparent that we say you have this right. It is now a right that we've enjoyed since Roosevelt's time in 1933, since Franklin Roosevelt, only 17 years ago. We have now come to appreciate and say and graduated to that sense that it is an inherent right. At this junction in our history, we're going to further dignify that right in putting it into our Constitution. It, therefore, as far as I can see, simplifying the thing in my own mind, it is a constitutional right.

Now in this community, in this dynamic society, is this right to be an unbridled right? Is this right going to a little group to be a right not to be regulated? It's as simple as that to me. And the words, "as prescribed by law," or the contribution by Delegate Heen, "such right to be exercised in accordance with law," the pertinent part about that situation is the reiteration of the word "such right." And that's the point at issue. Such right, such constitutional right shall be prescribed by law. I am voting either for that or the other, not for the deletion, because, and I say to labor, why shouldn't the community be assured that the power of labor shall not outgrow itself and become so powerful that the other people will suffer. The words are to put a brake, to put a safeguard, to make clear and assure the other people of the community who are not in private employment that, by jove, in this society we are against bigness and unregulation. We are for law, and we are - - we want to assure the legislature and assure the other people, not so much labor, but assure the other people of the community, who make and provide for labor's wages, to assure them and they are entitled to know precisely where they stand. It seems to me that the Central Labor Council should be assured and when they go along with this situation I think they are being fair-minded.

BRYAN: What I wanted to suggest was that the Committee on Industry and Labor have a short five or ten minute caucus to see if we can come together on a more proper solution. Is that agreeable with the chairman?

PORTEUS: If they are going to caucus, then the rest of us might as well. No use of us talking in the absence of the committee. We all might just as well take a recess.

CHAIRMAN: Ten minute recess is declared subject to the call of the Chair.

(RECESS)

CHAIRMAN: Delegate Heen is recognized. There are so many standing that I couldn't see him for the trees.

HEEN: In order that we may vote on the question of deleting the four words, I will now withdraw my amendment.

PORTEUS: I now move, in accordance with the amendment placed on the desks, to delete the words "as prescribed by law" in the third line of Section 1 of Committee Proposal No. 28; and substitute therefore the words, "such right to be exercised in accordance with law," as distributed on the desks.

DELEGATE: Point of order.

CHAIRMAN: Mr. Heen's motion was the first. Is there any second to Senator Heen's motion?

HEEN: Mine was not a motion. I withdrew my amendment.

DELEGATE: I'll second Delegate Porteus' motion.

ARASHIRO: Point of order. The motion on the floor now is to delete the four words and the amendment is contrary to that motion. Is that right?

CHAIRMAN: The Chair will rule that your motion should be considered first.

LUIZ: Point of special privilege. The committee was not in unanimous agreement on that.

CHAIRMAN: The question is - -

PORTEUS: Can't we have a vote on the amendment as proposed? If you delete some words, it's fair enough to substitute some others in lieu thereof; if people don't want that, they can vote it down. We can get at this in some reasonable order.

CHAIRMAN: The Chair would take it that was an amendment to the amendment, and I think you have to first put the amendment.

PORTEUS: No, Mr. Chairman, as you know from legislative experience, you don't put the amendment and then put the amendments that are pending to it. First, you put the amendments to the amendment and then it builds right on back to the original section.

J. TRASK: A point of order. I do not believe that Mr. Porteus' amendment was an amendment to the amendment.

PORTEUS: Yes it is.

CHAIRMAN: Would you state your amendment over again?

PORTEUS: I move to amend the amendment that has been presented by the delegate from Kauai, to read as follows: delete the words "as prescribed by law" in the third line of Section 1, Committee Proposal No. 28, and substitute therefor the words, "such right to be exercised in accordance with law," heretofore known as the Heen amendment.

J. TRASK: That is the exact motion that Mr. Arashiro made with the exception of the including of other words other than "as prescribed by law." So the motion as put by the chairman stating that Mr. Arashiro's motion was in order, that his motion should take precedent over the motion - - over the amendment made by Delegate Porteus, and I believe the Chair so moved.

CHAIRMAN: The question is whether we vote on Delegate Arashiro's motion to delete the four words.

BRYAN: Point of information.

CHAIRMAN: Delegate Mau, chairman of the committee.

MAU: In that event, if that is the procedure, I serve notice that after that amendment, if it passes, as chairman of the committee, I will introduce a motion to insert the words, "such right to be exercised in accordance with law."

CHAIRMAN: That's your privilege.

PORTEUS: Mr. Chairman, do I understand your ruling to be that the amendment offered by me is out of order.

CHAIRMAN: That's right.

PORTEUS: While I don't agree with the Chair at all, however, if that's to be the rule, we could appeal it but I see no point in that. In view of the statement by the chairman of the committee that he would offer this if it is deleted, I am satisfied to withdraw the motion at this time.

MIZUHA: As proponents of the motion, with the other fellow delegate from Kauai, I would like to have a few more remarks in closing before the question is put. We have been arguing on the floor all morning as to whether this was a statutory right or a constitutional right. I believe there were some misstatements made because the Supreme Court in the Jones and Laughlin decision, Chief Justice Hughes recognized that labor had the right to organize for collective action long before the Wagner Act was passed. The Wagner Act was passed in order to put teeth in and to enable the federal government to enforce that right. I believe that in the event that we have words in the Constitution - - on a constitutional right in the Constitution, "as prescribed by law," I will be mere folly to write it into the Constitution.

CHAIRMAN: All in favor - -

DELEGATE: I call for a roll call vote.

CHAIRMAN: Roll call has been asked for. All in favor of roll call, please show their hands. There's enough. All in favor of the amendment of Mr. Arashiro to delete the four words, "as prescribed by law," please vote "aye." Those opposed vote "no." Clerk, call the roll.

Ayes, 47. Noes, 11 (Apoliona, Bryan, Cockett, Gilliland, Hayes, Holroyde, Kellerman, Tavares, A. Trask, White, Wirtz). Not voting, 5 (Anthony, Castro, C. Rice, Sakai, Silva).

CHAIRMAN: The motion to delete these four words has carried.

MAU: I'd like to offer an amendment to the first sentence of Proposal No. 28 by adding after the word "bargaining" a comma, and in place of the words after the comma, "such right to be exercised in accordance with law."

CROSSLEY: I'd like to second that motion.

CHAIRMAN: Ready for roll call. Clerk, call the roll. Motion has been made - - Have you the words?

CLERK: To amend the Proposal 28 by adding after the word "bargaining" a comma and inserting after the comma, "such right to be exercised in accordance with law."

CHAIRMAN: You have heard the question. All in favor of this amendment say "aye." Opposed, "no." Clerk, call the roll.

Ayes, 29. Noes, 29 (Akau, Arashiro, Ashford, Corbett, Doi, Fong, Fukushima, Ihara, Kage, Kam, Kauhane, Kawahara, Kawakami, Kometani, Lee, Loper, Luiz, Lyman, Mizuha, Noda, Ohrt, Okino, Phillips, H. Rice, Sakakihara, Serizawa, St. Sure, Yamamoto, Yamauchi). Not voting, 5 (Anthony, Castro, C. Rice, Sakai, Silva).

CHAIRMAN: The motion fails.

LEE: I move that the proposal before the committee pass as amended.

ARASHIRO: Second the motion.

TAVARES: Mr. Chairman, I should like to change my vote from aye to no.

CHAIRMAN: Too late.

PORTEUS: I move that this committee now rise, report progress and ask leave to sit again.

WOOLAWAY: I second that motion.

J. TRASK: Have we got a motion before the floor?

CHAIRMAN: Yes, the motion is that the committee rise, report progress and ask leave to sit again.

J. TRASK: There was a motion to adopt the section as amended and seconded.

CHAIRMAN: That's correct.

LEE: It seems to me we could decide the question right here and then proceed with other matters. The matter of time is very important; we have a lot of other matters to consider.

PORTEUS: Mr. Chairman, it happens to be noon. We were to rise at 11:30.

CROSSLEY: Point of order.

CHAIRMAN: State your point.

CROSSLEY: When this committee resolved itself into Committee of the Whole, it did so until 11:30. That time has now passed.

DELEGATE: Point of order.

CROSSLEY: It's incumbent upon us to follow the mandate that was made to this committee when we were seated.

CHAIRMAN: As the Chair has stated before there was no mandate; it was just a suggestion.

SILVA: I was going to answer that. There's no motion to that effect. I would suggest that the Chair put the question.

MIZUHA: Put the question as to the adoption of the article.

CHAIRMAN: Are you ready for the question?

DELEGATES: Question. Question.

DELEGATE: Point of information. What is the question?

CHAIRMAN: The question is on the article as amended with those four words out.

DELEGATES: Roll call.

CHAIRMAN: Are you ready for the roll call? The question is on the amended article without the -- as you know it was amended and the four words, "as prescribed by law," were taken out and a period was put after the word "bargaining." The question is now on the article as amended. All in favor will answer "aye"; opposed, "no." Clerk, call the roll.

Ayes, 51. Noes, 7 (Bryan, Cockett, Hayes, Holroyde, Kellerman, Tavares, White). Not voting, 5 (Anthony, Castro, C. Rice, Sakai, Silva).

SAKAKIHARA: I at this time move that any motion for reconsideration be indefinitely postponed.

DELEGATE: Second that motion.

CHAIRMAN: The Chair will rule that out of order. We haven't done it heretofore, unless the Convention feels different.

J. TRASK: I move that the committee rise and report progress and beg leave to sit again.

MIZUHA: Second the motion.

CHAIRMAN: You have heard the motion. All in favor of the motion to rise, report progress and ask leave to sit again, please say "aye." The ayes have it.

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CHAIRMAN: Committee come to order.

DELEGATE: Mr. Chairman, has the report been printed? Is it here somewhere?

CHAIRMAN: The reports are not on the desks. This is simply to take it up so as to give it a number and then it will be printed, and then take it up later. Do you make that a motion that the --

KING: I understood that Delegate Crossley wanted to be recognized to incorporate in the Committee of the Whole report, perhaps, a statement with reference to the report.

CROSSLEY: I hope that I can have the full attention of the delegates because I would like to speak on this subject, on industry and labor. I'd like to do it without prejudice to any of the actions which we have taken. I'd simply like to make a statement, not representing big business because I don't represent big business; not small business because I'm not small business; I'm the man that's caught in between. I'd like to address my remarks to those who are not directly involved in industry or those who are not directly involved in labor as such or industry as such; school teachers, the man on the street, the person who does not understand the position, the strong positions taken by either side on this.

After we had taken action the other day and had defeated the majority committee proposal, after we had defeated Delegate Heen's amendment, I became quite concerned again as to what industry's position was because labor's position was pretty well spelled out. I wanted to know if we had written in a section which was to be titled "Industry and Labor," simply a statement for labor. I talked with a number of judges. I wanted to find out for myself what this could mean to me as a member of industry. The first question I asked was, does this give labor any rights they do not now have. The answer was an unqualified no. I said, does this in any way jeopardize industry in the rights that they now have. The answer was a qualified no. I asked further what the qualification would be. They said that on a permanent basis, the answer could be an unqualified no, but that the answer couldn't be given in that way, and this is what I would like to bring before the attention of the delegates here.

The answer was simply this. That if "as prescribed by law," "authorized by law," "in the public interest," "regulation in the public interest," or any such phrase as that [is left out] that if the legislature at some future date enacted a law, that probably a union could go in and enjoin the attorney general, whoever it might be, from putting that law into effect until it had been determined whether or not the legislature had that power. I asked then what would be the case if the words "as prescribed by law," "authorized by law" were in there, and I was told that probably the court would rule that it was, unqualifiedly, the right of the legislature to do those things because it set it forth.

Now then, they also said, that right will exist whether those words are there or not, but there could be an injunction issued; not necessarily, but there could be. That would be a question the courts would have to rule on at the time the business was put to them, and I'm thinking now of what that could mean in terms of my own industry, in terms of pineapple. At this time of the year pineapple ripens at the rate of about three to four per cent of your total crop a day. Almost any delay would be disastrous to an individual company as far as their pack was concerned for that season. In the case of a company the size of ours, smallest in the industry, a delay of ten days -- As I understand it, they have 48 hours to file their first injunction, there's 48. If an injunction is filed, there's 48 hours to answer. It easily could go into a minimum of five days and into a maximum of ten days, and I multiplied ten days times our crop and I could see ruin for a small company like mine.

Therefore, my appeal to the delegates is simply this, that if in their judgment there is no difference between putting some words in there that spell out a right that everyone says exists, if by doing that we could prevent a disastrous delay in getting a ruling that in the final analysis is going to be the same ruling, it's simply going to be delayed, that shouldn't we give further consideration to it? I am not going to move for reconsideration; I'm not going to speak

again on the subject. I, however, wanted to put into the record my own search into what this would mean and what it might do to industry in the islands if it is left the way it is.

Now, maybe I'm being overly pessimistic, maybe the injunctions wouldn't be granted, or maybe they could be adjudicated in the course of 48 hours, which would certainly not be too disastrous. I'm not trying to throw a fear complex into anyone. I'm not saying that the words of the men that I talked to are final in themselves, and that others couldn't have different opinions. I did tell them that in a discussion of this it was generally agreed, and I don't think it was ever disagreed, that the section in itself was assumed to mean that the legislature would have, under all circumstances, the right to regulate, to reasonable regulation in the public interest.

Thank you all very much for giving me this opportunity to speak.

ARASHIRO: Can I say a few words in line with a statement made by my colleague from Kauai?

I, who stood up and backed up for the insertion of this clause, did not stand up because I felt that it was a Magna Carta for labor or a protection for labor or anything particularly for labor, but because I felt that it was something for the future State of Hawaii, and that is the reason why I backed it up. And my reason for the deletion of "as prescribed by law," as I previously stated, as it is in the record now, was that that meant statutory rights. So I felt that if we are going to have anything in the Constitution, it should be constitutional rights and as the word stands today, it is a constitutional right and it does not restrict the legislature. Again, for the record, I wish to reemphasize my stand by saying that these do not restrict the legislature from reasonably regulating any future labor and industry legislation for the good of the State of Hawaii or the public.

CHAIRMAN: Anybody else got anything to say? Otherwise - -

FONG: I move that we adopt the committee report.

CHAIRMAN: Well, I think that you would want the committee report printed and be on your desks first, wouldn't you? Tentatively approve the committee report, is that right?

KING: The committee report is fairly short. I don't know whether the Convention wants to wait until it's printed and distributed. It's not really necessary. The Clerk could read it and if we adopt it today and pass the article on second reading it would then go to Style for any further changes in phraseology and be ready for third reading. I second the motion made by Mr. Fong.

HEEN: I would like to read that written report. I think it's very important that every delegate should inform himself or herself as to what the contents are.

J. TRASK: I move for a short recess subject to the call of the Chair.

HEEN: I move that this committee rise and report progress and ask leave to sit again.

CHAIRMAN: In the meantime we'd have the report printed. I think that's better.

PORTEUS: On that understanding, I'll second the motion.

CHAIRMAN: You've heard the motion. All in favor please say "aye." Opposed, "no." The ayes have it.

JUNE 30, 1950 • Morning Session

CHAIRMAN: The committee will come to order. The Committee of the Whole Report No. 12, on the last page of this report the Chair has made an amendment so that after the words, "For the reference hereinabove set forth your Committee recommends," and "(a)," I have amended it to read "that Standing Committee Report No. 79 be adopted, with the exception of the recommendation as to the adoption of Proposal 28 as submitted by the standing committee." The Clerk is getting this mimeographed and I think that is all in order now. You have read the report and a motion is in order to adopt the committee report.

ASHFORD: I move the adoption of the committee report and that the article be recommended for second reading.

LAI: Seconded.

CHAIRMAN: You have heard the motion. All in favor please say "aye." Opposed. Carried.

Debates in Committee of the Whole on

MISCELLANEOUS MATTERS

(Articles XIII and XIV)

Chairman: ALEXANDER H. F. CASTRO

JUNE 26, 1950 • Afternoon Session

CHAIRMAN: Will the Committee please come to order. Mr. Porteus.

PORTEUS: Delegate Porteus to you, Mr. Chairman. Mr. Chairman, I would like to thank the chairman for his courtesy in loaning to this Convention the bell of the Junior Chamber of Commerce in order to signal when people have exceeded their time and have spoken too many times on the same subject. Yet I've had very little opportunity to utilize the bell. Our only hope is that when the bell is returned to the Junior Chamber of Commerce, it does not effect the Junior Chamber with the air of debate that has been so extensive around here.

CROSSLEY: Mr. Chairman, may I say that whatever the Chair wishes to call the honorable delegate from the fourth district, you will be sustained, Mr. Chairman.

PORTEUS: A point of order.

CHAIRMAN: Pardon me, Mr. Crossley.

PORTEUS: If the ex-chairman will remember his own request that no one speak until recognized, I think the progress of the deliberation for this Committee of the Whole will be facilitated. Thank you.

CHAIRMAN: That is correct. Thank you very much, Mr. Porteus. I hope you don't have to use that bell too often.

C. RICE: I'd like to know if the Secretary has a stop watch or is he running by that clock?

CHAIRMAN: The Secretary has a watch which I've observed is keeping perfect time.

C. RICE: Stop watch?

CHAIRMAN: Now we have before us, you will notice in the general orders of the day, several standing committee reports with their accordant committee proposal. The chairman of the Committee on Miscellaneous Matters, Mr. Yamauchi, has asked that we consider these in the order that they are on the general orders of the day for Monday, June 26, and the first Standing Committee Report is No. 62 with Committee Proposal 18.

YAMAUCHI: The Standing Committee Report No. 62 and Committee Proposal No. 18 pertain to the distribution of powers. The committee has agreed to the final article which reads as follows:

> The powers of government shall be divided into three separate and distinct departments, legislative, executive and judicial; and no person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others, except as otherwise expressly directed or permitted in the Constitution.

This article was agreed upon after - -

J. TRASK: So that we might have something on the floor, I so move that we tentatively adopt Section 1 of Committee Proposal No. 18.

APOLIONA: I second the motion.

YAMAUCHI: In writing this article, we have referred to the Model Constitution, Article IV, and to Article III of the New Jersey Constitution and found that this article of the distribution of powers is found in 41 state constitutions. We feel that it is traditional and basic that these three powers of - - three branches of government have separate powers, and that there be no over-concentration of powers in any one branch; that the separation of these powers would provide for independence of each branch of the government; and also that in the event that the powers be granted to one particular branch which in principle is not their own, such powers should be expressed in the Constitution.

However, before going further, the committee would like to make an amendment to the original article by changing- - by deleting the word "departments" on sentence two and four and insert the word "branches." This is in - - this change was made by the New Jersey Constitution when the new Constitution was drafted.

CHAIRMAN: There is a motion to amend. Is there a second?

SMITH: I'll second that motion.

CHAIRMAN: The motion is to amend the section so that the word "departments," appearing on the second and the fourth line will be deleted, and inserted in lieu thereof the word "branches." Any questions?

HOLROYDE: The "departments" appears also on the - - three places in that section. Shouldn't it be replaced in every instance?

CHAIRMAN: Where is the third place, Mr. Holroyde?

HOLROYDE: I stand corrected. I'm reading the wrong section.

SAKAKIHARA: On the fourth line.

RICHARDS: I believe the punctuation is wrong; in the second line after the word "branches," there should be a colon and not a comma.

CHAIRMAN: Do you move to insert a colon in lieu of a comma?

RICHARDS: I so do.

CHAIRMAN: Is there a second? It's been seconded. That a colon on the second - -

ROBERTS: Couldn't we leave that to Style, instead of putting commas and semicolons in, if it's the sense of the committee?

CHAIRMAN: Well, the motion has been made and seconded now.

BRYAN: Point of order. I don't think that has anything to do with the motion before the house to amend by putting the word "branches" in and I think it should be held if it's to be made. I believe it's out of order now.

CHAIRMAN: Chair stands corrected. The motion before the house - - Will you withdraw that motion for a moment,

Mr. Richards. The question before the house is the insertion of the word "branches" in lieu of the word "departments" on the second and the fourth line. Any questions as to that motion? All those in favor? Opposed. Carried.

TAVARES: I would like to ask the members of the committee whether the Federal Constitution has any such specific provision about separation of powers?

CHAIRMAN: You ask that question of whom?

TAVARES: Of any member of the Committee on Miscellaneous Matters.

CHAIRMAN: Is there any member of the committee that would like to answer that question? Mr. Yamauchi.

YAMAUCHI: I'd like to ask the sub-committee chairman on distribution of powers to answer that. Mr. Smith.

SMITH: Just a moment; I'll get that.

CHAIRMAN: Mr. Lai, do you want to answer the question?

LAI: Is this article right now approved? Did we vote on this?

CHAIRMAN: No, no. The vote, Mr. Lai, was to substitute the word "branches" for the word "departments" where it appears on the second and fourth line. We are now considering a question that has been asked by Mr. Tavares.

LAI: Well, may I ask another question?

CHAIRMAN: There is a question that we are waiting on right now, Mr. Lai. While we're waiting for that, Mr. Lai, do you have another question? Mr. Tavares, if you will wait a moment.

LAI: I don't see any necessity of having this article in the Constitution. I don't know what is the purpose behind this, the intent of the committee in having something like this.

SMITH: I am not able to find that, but it calls for three distinct branches of government. All we are actually intending to do here is reiterating that there should be three branches of government having separate powers, "and that there be no over-concentration of powers in any one branch. This is to preserve the principle of check and balance which is the very essence of our representative form of government; that these powers so delegated be distinct and not overlapping insofar as practicable."

CHAIRMAN: Mr. Yamamoto, do you wish to add to that answer?

YAMAMOTO: I just want to clear one item. This article, I see it in the State of New Jersey, page 6, "Distribution of powers of government." It's in there.

TAVARES: It is my recollection that there is nothing in the Federal Constitution specifically requiring separation of powers, yet the courts have within reasonable limits protected the separation of powers because of the theory implicit in the document. Now, it is not true that three departments can operate as though each is in a vacuum of its own. They overlap over large fields. The governor has a veto; therefore, he exercises legislative power to some extent; and so on down the line. Each department has to do a little overlapping.

Now, when you have a general document that gives legislative power to one department, executive power to another department or branch, and judicial power to a third branch, you have implicit in the document the separation of powers. But when you put a specific provision in there, I think you are heading for trouble. The Federal Government has had no trouble over a hundred and fifty years without such a provision. The Model Constitution, as I recall it, doesn't have such a provision. At least, I can't find it. Just because New Jersey put it in I don't see the necessity for it, and I think we are borrowing trouble by putting it in.

CHAIRMAN: Do you wish to move for the deletion of the article, Delegate Tavares?

TAVARES: I think that we should vote not to adopt this. I shall therefore vote against adoption of the article.

WIRTZ: I'd just like to state that I had some hand in this inasmuch as this originated in Proposal No. 100. I examined many of the constitutions of the various states, and I would say offhand without subject to check that it appears in three-fourths of the state constitutions, this very statement. As far as the objection raised by the delegate from the fourth district, we have this exception, "except as otherwise expressly directed or permitted in the Constitution." That covers the veto power.

FONG: May I ask Delegate Wirtz this question. The Board of Health sets forth rules and regulations; that is the power of the executive. In setting forth rules and regulations, they legislate. How are we going to attack that by this provision?

WIRTZ: I think that the delegate from the fifth district knows how I feel about rules and regulations of the various boards, but I think that that is permitted in the - - would be permitted in the Constitution.

FONG: Well, it says here, "except as otherwise expressly directed or permitted in the Constitution." Nothing in our Constitution permits it, expresses it.

WIRTZ: Doesn't the executive article - -

CHAIRMAN: If you will please confine your remarks to the Chair so that we can get this on the tape recorder.

FONG: There is nothing in our Constitution which expressly permits the Board of Health to make rules and regulations. That is a statutory function, and the power is given by law. Now if we pass this proposal, then I can feel we're going to be up against a lot of difficulty.

WIRTZ: I agree with the delegate from the fifth district, unless we have something in either the executive or the legislative article. Unfortunately, I missed the debate on the executive article, and I haven't brought myself up to date yet. But it was my impression that that subject would be covered.

FONG: I move that we delete the words from "and no person or persons belonging to" and so forth right down to the end, leaving, "The powers - -

CHAIRMAN: The Chair didn't get the deletion. Where does it start?

FONG: Leaving only the first two and a half lines, "The powers of government shall be divided into three separate and distinct branches, legislative, executive and judicial," and delete the rest of the sentence.

CHAIRMAN: That is your motion?

FONG: My motion.

CHAIRMAN: Is there a second?

SAKAKIHARA: Second it.

CHAIRMAN: Delegate Sakakihara seconds. Any discussion on the motion to delete? Place a period on the third line after the word "judicial," and delete the balance of the paragraph. Any discussion? Call for the question. All those in favor please say "aye." Opposed. The ayes have it.

HOLROYDE: I move that Committee Proposal No. 18 be adopted as amended.

SAKAKIHARA: I second it.

CHAIRMAN: Moved and seconded to adopt the article as amended.

ROBERTS: I'd like to call the attention of the delegates to the fact that there are some things in our Constitution which don't quite conform. I would suggest, therefore, that some proviso be put in there as was in the second sentence, "except as expressly provided in this Constitution." So that the first sentence would read, "The powers of the government shall be divided among three distinct branches, the legislative, the executive, and judicial, except as expressly provided in this Constitution."

Now there may be some overlapping of powers. Usually the overlapping of powers is in terms of assignment of individuals, but it also may deal with the assignment of functions. And I have some concern, similar to that expressed by Mr. Tavares, to the effect that there may be situations where you have some overlapping of functions, and you don't want it to be declared unconstitutional where that is done. We do want, however, to keep the basic premise and basic content that we ought to have three distinct branches from the point of view of separation of powers and balance of power. But we have to be careful that we don't tie our hands on that.

CHAIRMAN: Do I understand that to be a motion, Delegate Roberts? Do I understand that to be a motion to amend?

ROBERTS: I'd like to suggest that to the delegates as an amendment.

KAWAHARA: I second that motion.

ASHFORD: The more I read this, the more I'm concerned. I do think when you say "distinct," "separate and distinct branches," you are really running contrary to present day facts. We know that the executive branch of government is more and more empowered with legislative functions by the legislature itself; and we know since the New Deal that there has been a great deal of judicial legislation; so that we do have a merging of functions in many instances. I think the use of the words "separate and distinct branches" will lead to confusion and litigation.

CHAIRMAN: Do you propose to delete them, Delegate Ashford?

ASHFORD: Yes.

A. TRASK: I second that motion.

CHAIRMAN: There is an amendment by Delegate Ashford to delete the words "separate and distinct" in the second line, which has been seconded. So that the first part of that sentence would read, "The powers of government shall be divided into three branches, legislative, executive and judicial." Now, if I may suggest - - if the Chair may suggest, we have a previous amendment which has not yet been voted on, and so I believe that I must ask you to withdraw the amendment for the time being, Delegate Ashford, and we'll discuss the amendment which is an addition to the amended article, adding a comma after the word "judicial," and adding the words "except as expressly provided in the Constitution." Any further discussion on that amendment? The Chair will put the question.

TAVARES: Before we vote on that, it seems to me that with or without Delegate Ashford's amendment and without Delegate Roberts' amendment, if our Committee of the Whole report very strongly states that this is simply declaratory of the general rule of division of powers set forth as the scheme is embodied in the Federal Constitution, and is intended to be merely declaratory of that, we could probably take care of it without these other amendments.

CHAIRMAN: The question before the house now is whether to add the words "except as expressly provided in this Constitution." All those in favor please say "aye." Opposed. The Chair is in doubt. All those in favor please raise their right hand. Pardon me, would you get them up again please? Opposed? The ayes have it.

PORTEUS: Having voted with the majority, I move to reconsider the action. I think this should be debated a little further.

CHAIRMAN: Your motion is to reconsider for the reason of wanting to debate further?

TAVARES: Yes. I don't think it's been adequately considered.

CHAIRMAN: Is there a second to it?

TAVARES: I second the motion.

CHAIRMAN: Thank you, Delegate Tavares. It has been moved and seconded to reconsider our action as to this amendment. All those in favor. Opposed. The question is open.

PORTEUS: I think that the delegate from the fourth district, Delegate Roberts, had in mind that unless you added these additional words, that it would be more restrictive than our intent had been. But I think that if those words are not put in, and if then we turn to the amendment offered by the delegate from Molokai with respect to the deletion of "separate and distinct," we will then have this proposal in such form that it will not be too restrictive, and it will not cause us trouble in the future. It will be a clear declaration by the Convention that it subscribes to the theory that there are three branches of government, legislative, executive and judicial.

It is true that there has been a great overlap between the various ones. Many people in the executive departments are actually performing legislative functions with the rule-making power. At the same time, many of those in the executive department are exercising judicial or, as people like to say, quasi-judicial powers. They are making regulations and they are sitting in on the interpretation of their own regulations to see whether people have observed them or have not observed them. Board of Agriculture and Forestry, the Board of Health, many of the other departments of government have been clear examples.

So I think that we would do better not to adopt the amendment offered by the delegate from the fourth district; then proceed to the addition - - the deletion of these other words. Since there is only one amendment before this Convention and since this argument seems to presuppose that we will then move on to Delegate Ashford's amendment, I think it'd be quite in order to move that the words as suggested by Delegate Roberts be deleted and that the words "separate and distinct" also be deleted. I so move.

CHAIRMAN: If I may call your attention to the fact that the amendment is by way of an addition. Your amendment - -

PORTEUS: I move that it be further amended so as to provide that the only things that will be - -

CHAIRMAN: I believe, Delegate Porteus, that you must confine yourself to speaking against the amendment. A move to delete is equivalent to a move to table.

PORTEUS: I think you're quite correct.

CHAIRMAN: You are speaking then in opposition to the amendment?

PORTEUS: I am speaking in opposition to the amendment and I must admit that my opposition to the amendment also presupposes the support for the elimination to the words "separate and distinct," as proposed by the delegate from Molokai. But I think that if we do take that out, do not adopt the phraseology suggested by Delegate Roberts, that we will

then have this in such form that we agree that we really want it.

KAWAHARA: In speaking for the inclusion of that amendment, I'd like to point out to the Convention here the words, "powers of government." As I see it, if we leave out the proposed amendment, it would mean that powers of government be divided only to the three departments. As I see it, our Constitution is going to be drawn up so that there will be one section, for example, on the Bill of Rights. If I look at that section, I see that there is a statement to this effect, that all government is founded on this authority, that is, "All political power of this State and the responsibility for the exercise thereof is inherent in the people." I'm wondering then if by deleting or not including this amendment, does it mean then that the power in government is restricted only to three departments in government? Does it mean then that the sections on suffrage and election, the sections on Bill of Rights, does it mean then that those sections do not apply, that the power of government is not inherent in those sections?

CHAIRMAN: You ask that question of whom? Mr. Tavares, do you wish to answer it?

TAVARES: The more I think about this, the more I fear adopting any part of this article. I realize that work has been done by a committee on it. However, without criticizing the committee at all, I would like to say that the report does not clear up in my mind a number of questions which are beginning to bother me quite a bit. For instance, today we have a separate tax appeal procedure and a tax appeal court. Will that be invalidated by this provision? They are not made a part necessarily of our courts, but there is a final appeal. But there might be such a thing as making the tax appeal court final on valuations which is desirable because then you can put experts on it and not have ordinary judges who just do all kinds of legal work passing on real estate valuations. We have boards today exercising quasi-judicial functions, revoking licenses after hearing, granting licenses after hearings, and doing a lot of things after hearings; acting in a quasi-judicial capacity. What effect is that going to have, this provision on those boards?

I do not have the answer in the report and I suppose that for the time available, the members of the committee probably won't have it either. We've got to remember we've got a lot of eggs here in our basket that might be broken if we put the wrong kind of gadget down inside of them that doesn't quite fit, and I am not sure that it fits.

For that reason, I feel it's very, very dangerous to put this kind of a provision in without again a very intense study as to the effect it will have on the existing setup of our governmental machinery. For that reason, with all due -- with apologies to the hard working committee, I hope they won't feel offended at my saying, I think we should not adopt this.

CHAIRMAN: You are speaking, Delegate Tavares, against the adoption of the entire article?

TAVARES: Yes. I have changed my mind after thinking the matter over.

CHAIRMAN: I'd like to ask the delegates to confine their remarks to the amendment, so that the faster we can dispose of the question on the amendment, the sooner we can get to the question on the entire article.

HAYES: Point of information. I would like to know from the chairman of the committee whether the office of the attorney general has been at their meetings and advised them on these proposals.

CHAIRMAN: Delegate Yamauchi, do you wish to answer that question?

YAMAUCHI: I have appointed a sub-committee chairman who has looked into the matters and he will make a report in regard to this article. I'll turn it over to Mr. Smith.

CHAIRMAN: Delegate Smith will answer that question.

SMITH: We did not have Miss Lewis in on the committee meeting. But I'd like to state the object of this separation was not simply to block action, it was to promote more wholesome action by segregation of incompatible functions and placing responsibility for each function on the organ best capable of discharging it.

CHAIRMAN: Is there any further discussion on the amendment?

HOLROYDE: Is a motion in order to delete the whole section?

CHAIRMAN: Not at the moment. The amendment was by way of an addition. I believe we have to dispose of the question as to the amendment before we can vote to delete the entire section. The Chair so rules.

ASHFORD: The discussion here seeming to favor the amendment which I offered and which was withdrawn for this, has convinced me that the entire section ought to be written into the Constitution.

CHAIRMAN: The entire section should be written in? Now, there is an amendment before the house.

CROSSLEY: Point of order. I believe that a motion to delete would always be in order. If anyone wanted to make that motion, it would be in order.

CHAIRMAN: The motion to delete the entire article?

CROSSLEY: That's correct.

CHAIRMAN: Despite the fact that there is an amendment pending?

CROSSLEY: If the motion to delete the entire article carries, then the other would be academic. Therefore, that motion is in order, if the Chair wants to accept it.

CHAIRMAN: Well, the Chair feels that while you may possibly be correct, that would be at the present moment unfair to those who have debated the amendment.

KING: I would speak in favor of the pending amendment. However, there is some difference of opinion and it might be better to defer action on this particular proposal. The committee followed, I think, the precedence established by the constitutions of New Jersey and Missouri, both of which state --

PHILLIPS: I second that motion.

KING: -- both of which states and many other states have similar articles. The phraseology might be amended to more clearly reflect the desire of this Convention. I therefore move that we defer action on Committee Proposal No. 18 and proceed to consider the next proposal that the committee wishes to offer.

PORTEUS: I second that motion.

CHAIRMAN: It's been moved and seconded that we defer action on Committee Proposal No. 18 for a later date and move on to the next committee proposal under Miscellaneous. All those in favor please say "aye." Opposed. Carried.

We will now take up Committee Proposal 19, which is covered under Standing Committee Report No. 63.

YAMAUCHI: I move that the Committee Report 19 -- Committee Proposal 19 and Standing Committee Report No. 63 be tentatively adopted.

YAMAMOTO: I second the motion.

CHAIRMAN: It's been moved and seconded to adopt Committee Proposal No. 19.

ASHFORD: I'd like to move an amendment to that. Change the period following the word "ability" within quotes, to a comma, and add the following, "and that I do not advocate or belong to any party, organization or association which advocates the overthrow by violence of the government of the State of Hawaii or of the United States."

YAMAMOTO: Second the motion.

CHAIRMAN: It's been moved and seconded that an amendment by way of an addition be placed. Would you read it once more, Delegate Ashford, slower.

ASHFORD: May I say, incidentally, that that is the language used in that amended H.R. 49 that came to us some weeks ago.

CHAIRMAN: I see. Now would you read that again, please? Thank you.

ASHFORD: "And that I do not advocate or belong to any party, organization or association which advocates the overthrow by violence of the government of the State of Hawaii or of the United States."

CHAIRMAN: Is there any discussion on the amendment?

YAMAUCHI: The committee concurs and is willing to accept such amendment.

CHAIRMAN: The committee accepts the amendment.

KING: Before the question is put, I should like to ask the chairman of the Committee on Ordinances and Continuity of Law if such an oath has been handled by his committee. May I restate the question? I just wish to ask the chairman of the Committee on Ordinances and Continuity of Law if he has covered the same subject, or is it agreeable to him to have it covered in this particular proposal?

CHAIRMAN: Delegate Shimamura, you wish to answer that question?

SHIMAMURA: May I state that there is no section in ordinances and continuity of law that provides for an oath. It does provide that no person who belongs to a party -- who advocates or belongs to a party, organization or association which advocates the overthrow by violence or force of the government of the State of Hawaii or of the United States shall hold any public office of profit or public employment.

CHAIRMAN: Does that answer your question, Delegate King?

KING: Yes. There's no conflict; it covers two phases of the same problem.

HEEN: May I ask whether any action was taken on that particular provision? It seems to me I've seen it somewhere, perhaps in a proposal submitted by your committee, Delegate Shimamura.

SHIMAMURA: There is no provision on an oath, but there is a similar provision preventing any person who advocates or belongs to any party, organization or association which advocates the overthrow by violence of the government of Hawaii or of the United States from holding public office or public employment.

CHAIRMAN: Correct.

HEEN: Where can we find that? Under what proposal?

SHIMAMURA: There is no action taken on such an oath. It never was presented. The committee proposal is --

KING: While Delegate Shimamura is looking up the exact committee proposal, the proposal was originally introduced, I believe, by Delegate Trask and referred to the Committee on Ordinances and Continuity of Law. They have adopted and reported out a proposal that covers employment. This covers the oath, so it really will cover the subject on two sides.

TAVARES: That ordinance is, rather, proposal is Committee Proposal No. 24, Section 1.

CHAIRMAN: Committee Proposal No. 24?

TAVARES: Section 1. That provides for the disqualification to hold office or employment. It doesn't provide for the oath.

A. TRASK: Delegate Ashford says that she will accept an amendment to -- as follows: after the word -- the third word, "officers," insert "and employees"; so that the commencement of the section would read "All public officers and employees." And further, that after the word "respective offices" --

CHAIRMAN: Will you speak into the mike, please?

A. TRASK: And the further amendment, after the words "respective offices" in the second line, under the word "public officers," insert "and employment."

CHAIRMAN: After the word "respective offices" --

A. TRASK: Insert the words "and employment."

CHAIRMAN: "And employment"?

A. TRASK: Yes.

CHAIRMAN: I understand this is part of the amendment of Delegate Ashford?

ASHFORD: I will accept the amendment.

CHAIRMAN: As I understand the amendment, just to clarify it in everyone's mind, on the first line after the word "public officers," there is to be added the words "and employees."

A. TRASK: Correct.

CHAIRMAN: And on the second line, after the word "respective offices," to be added the words "and employment."

A. TRASK: Correct.

KAWAHARA: The word "Constitution" there, "the constitution of the United States and the constitution of the State of Hawaii"—this is just a matter of style—I wonder if the word "constitution" shouldn't be spelled with a capital C?

CHAIRMAN: I think we can leave it to the Style Committee.

TAVARES: Again I'm wondering if we aren't going a little too far here. I want to point out a situation where it may be necessary and desirable for the State to employ even aliens or non-citizens to do certain things for the State, perhaps outside of the State; or to get experts in some field, in a particular epidemic or some kind of a very intricate scientific situation, who would not be citizens of the United States or citizens of the State. And, therefore, we might have trouble. I am thinking now of commissioners of deeds. In foreign countries, we may not be able to get a citizen. There are many people who employ a citizen of the United States as a local consul for a foreign government. If they make them take that oath, they are likely to make them eliminate their citizenship. If you are going to hold it for officers, I think at least I wouldn't put it in for employees because of that situation. You may, for instance, appoint a fiscal agent in New York who isn't a citizen of Hawaii. Should he be sworn to uphold the Constitution of the State? I don't know. Or a Constitution of the United States? In case you have a fiscal

agent in some foreign country, is he going to be asked to uphold the Constitution of the United States? It may be we should make some exceptions here.

KAGE: In reference to the amendment to - - I'm opposed to the amendment to include the word "and employees." If Delegate Trask would read the report of the committee, he will notice that it includes all public employees also, and I am not of the legal profession but I think the legal interpretation of all public officers takes in all those things.

A. TRASK: In response to that inquiry - - statement, I'd like to say that in the consideration of the section with respect to the employment of people who are in parties, associations or other subversive organizations who are being excluded from the—that's the amendment of Senator O'Mahoney—we expanded the expression "officers" and adopted additionally the word "and employees" so that there will be no person in the government of the State of Hawaii who would be either an officer or an employee of the government who would belong to any subversive organization.

LOPER: I'd like to call to the attention of the previous speaker that if you put "and employees" in the first line and in the second, he has also to put it in line 6.

CHAIRMAN: Perhaps it would be well for the Chair to read the entire article as proposed to be amended.

> All public officers and employees shall, before entering upon the duties of their respective offices and employment, take and subscribe to the following oath or affirmation: "I do solemnly swear or affirm that I will support and defend the constitution of the United States and the constitution of the State of Hawaii, and I will faithfully discharge the duties of the office of ____ to the best of my ability; and that I do not advocate or belong to any party organization or association which advocates the overthrow by violence of the government of the State of Hawaii or the government of the United States." The Legislature may prescribe further oaths or affirmations.

Now at the moment, the question before the house is whether or not we will adopt the article as just read.

BRYAN: I think as you read that, there should be a comma after the word "party" and before "organization," so it would be "party, organization or association."

CHAIRMAN: That is correct. "Belong to any party," comma, "organization or association."

A. TRASK: In response to the observation made by Delegate Loper, he is in order. It would therefore, be necessary, to be consistent with the amendment at the commencement of the first sentence, on the sixth line, which reads as follows, "I will faithfully discharge the duties of," should be inserted "my employment or"; then it would read on "the office of ____." That would be in order. Would Delegate Ashford accept that?

ASHFORD: I would, but I think you need in brackets, "as the case may be."

A. TRASK: "As the case may be," that's correct, or a slant.

CHAIRMAN: Let me get this straight. Have you accepted a form of amendment, Delegate Ashford, to your proposal?

KING: The chairman of the committee accepted Delegate Ashford's original amendment, but now Delegate Ashford is being asked to accept amendments to her amendment, and the chairman of the committee hasn't had an opportunity to express his opinion. I suggest the Chair recognize the chairman of the committee to see whether those amendments are going to be accepted; otherwise, we are going to be voting on amendments to her amendment, and her amendment has already been accepted by the sponsors of the original article.

CHAIRMAN: Thank you. The Chair stands corrected and I do feel that we should vote on the amended section up to the present time, to clear the way for further discussions. However, the Chair will recognize the chairman of the committee, Delegate Yamauchi.

YAMAUCHI: The reason for accepting the amendment by Delegate Ashford is, originally the committee considered the sentence, "The legislature may prescribe further oaths or affirmations," would cover the loyalty oath that has been mentioned this afternoon. However, we accepted the amendment. That's all.

CHAIRMAN: The Chair feels that there has been sufficient discussion on the proposed amendment so far, and would like to put the question.

LUIZ: Point of information. I would like to understand this thing here. You have two parts, "All public officers and employees." Are you breaking that down into two different parts with the amended section from Delegate Trask?

CHAIRMAN: Your question is whether or not that is included in the amendment that is about to be put in the question?

LUIZ: Yes.

CHAIRMAN: It is included at the present time. The Chair has recognized the amendment.

KAGE: I don't think the word "and employees" is included in this amendment we are voting on now. The committee did not accept "and employees." We only accepted the addition after "my ability"; so we are not voting on "and employees."

J. TRASK: I'd like to speak in favor of this amendment.

CHAIRMAN: Just a moment, Delegate Trask. On the point brought up by Delegate King, that is correct. So the latter amendment, the addition of the words "and employees" in the first line and the addition of the words "and employment" in the second line has not been accepted by the committee. Is that correct?

KAGE: That's correct.

CHAIRMAN: In other words, the present amendment—and the Chair would like to ask the cooperation of the delegates at the moment to get the first amendment out of the way so that we may more intelligently discuss the others—the only question before the house at the present time is the addition to the oath in quotations, and that addition reads, "and that I do not advocate or belong to any party, organization or association which advocates the overthrow by violence of the government of the State of Hawaii or the government of the United States." The question is whether or not to add that to the section.

SHIMAMURA: Under the requirements of H.R. 49, and under the proposal in line with H.R. 49, in the section on ordinances, the words "force or" appeared before "violence." I wonder if the delegate lady from Molokai will accept that amendment and also the chairman of the committee.

CHAIRMAN: You are quoting from the requirements of H.R. 49?

SHIMAMURA: Requirements of H.R. 49. Include the words "force or" before "violence." I think that should be so amended.

ASHFORD: I think that's a paraphrase of "vi et armis" and I accept it.

CHAIRMAN: You have accepted. How about the committee?

YAMAUCHI: We also accept it.

CHAIRMAN: Accepted. Any further question on this proposed amendment?

DELEGATE: Question.

CHAIRMAN: All those in favor please say "aye." Opposed. Carried.

Now, are there any further amendments to be offered?

A. TRASK: I move for the amendment, as indicated heretofore, that after the third word in the section, insert the word, after the word "officers," "and employees." Then on the second line toward the end, after the word "offices," insert "and employment." And then in the sixth line, after the word "duties of," insert "my employment (or)."

FUKUSHIMA: I'll second that motion.

CHAIRMAN: It's been moved and seconded to amend the article as stated.

A. TRASK: The reason for this, I feel certainly that all of us would certainly want Dr. Reinecke to take this oath if he becomes an employee. He won't be an officer of the Territory, but he certainly would be an employee, and I think he should be confronted with this oath, so that there would be no doubt in the minds of anyone here. Under no circumstances would Dr. Reinecke as an employee of the Territory of Hawaii be considered an officer. Officer of what?

I want to say to the committee, it doesn't appear from your record—and, Delegate Kage, I have looked at your report—I want to say that there are decisions in our court, particularly with reference to election laws, that officers are given a certain category as distinguished from employees, and certain laws apply to officers which do not apply to employees. So, out of caution and so forth, as we say, to the amendment of Senator O'Mahoney, to H.R. 49, with respect to subversive people not being in the employment of the State, I believe it is altogether pertinent that we include these expressions, "employees." That's why I'm for the amendment.

CHAIRMAN: Any further discussion on the amendment?

KAGE: My source of the information is the attorney general's office. When the question "all public officers" was brought up, I went to the attorney general's office and I asked them for the clarification of the words "all public officers." And this is what he gave me. "All public officers" applies to political, as well as executive or judicial officers of the State, and so forth. I think that is an over-all, general phrase that catches everything. And I would say that quite a number of these things that we are talking about, employees and things of that sort, they would be statutory.

TAVARES: I am very sorry to differ with the gentleman who has just spoken, but I am very certain that the word "office" is very definitely not held by the courts to include employment. It is a very, very -- one of the very strong rules of construction of the courts. The interpretation given the gentleman meant officers of a county, officers of a municipal subdivision, officers of any lesser agency of the State, but they still are officers. They didn't say employees and from the citation read by the gentleman, employees isn't mentioned. And there are thousands and thousands of decisions, I think, that distinguish between office and employment, and many in our own Territory have distinguished between the two. There is a very clear distinction between office and employment.

CHAIRMAN: You are speaking then in favor of the amendment?

TAVARES: Yes, with the qualification I made that -- We have one little matter that I don't know just how to take care of, but I'd just call it to the attention of the delegation.

YAMAUCHI: If you would read the report there in the last sentence, it says,

> As relating to this proposal, the phrase "all public officers" applies to political, as well as executive or judicial officers of this State, to officers of the political subdivisions, i.e., counties, cities and counties, municipalities or other subdivisions of this State and to all employees therein.

HEEN: When we speak of officers, we mean officers. In the Organic Act there is a provision that no person holding public office shall be eligible for election to the legislature. That has been interpretated by the courts here. For instance, the notary public is an officer, and he cannot run for election to the legislature unless he resigns that particular office. There have been employees who have run for election to the legislature and they have served in the legislature. For instance, employees, take of the County of Hawaii, have been elected to the legislature without resigning from their positions of employment, as distinguished from officers. So there is no question that there is a marked distinction between the term "offices" and "positions of employment."

CHAIRMAN: Any further discussion on the proposed amendment? The Chair will now put the question.

YAMAUCHI: The committee accepts the amendment.

CHAIRMAN: The committee accepts the amendment. All those in favor please say "aye." Opposed. Carried.

Now we come to the original motion which is to accept the article. I think that motion should be amended to accept the article as amended.

ASHFORD: I confess myself very much concerned over the remarks of Mr. Tavares on the commissioners of deeds and so forth. I think that some consideration should be given to that before we adopt the section irrevocably.

CHAIRMAN: I think, Delegate Ashford, in the absence of any discussion, that if you feel that way the thing would be to move to defer.

KING: I so move.

CHAIRMAN: Is there a second?

KING: I think it's pretty clear that we are in favor of the article as amended, but we do want to cover the point raised by Delegate Tavares, so I move that we defer action on Committee Proposal No. 19 till a later time.

YAMAMOTO: Second it.

CHAIRMAN: It's been moved and seconded that we defer action on Committee Proposal No. 19. All those in favor please say "aye." Opposed. Carried.

Next committee proposal before the committee is Committee Proposal No. 15, covered by Standing Committee Report No. 56.

YAMAUCHI: I move that Committee Proposal No. 15 and Standing Committee Report No. 56 be tentatively adopted.

APOLIONA: Second the motion.

CHAIRMAN: It's been moved and seconded to adopt Committee Proposal No. 15.

APOLIONA: Speaking for adoption of the proposal, your subcommittee on boundaries of the Miscellaneous Committee went into this boundary subject in all detail. The services of the legislative bureau, the services of Mr. T. Awana and

James Dunn, of the survey office, and the services of Miss Lewis of the attorney general's office were had.

The committee followed as much as possible the language of the Organic Act. In Section 2 of the Organic Act, it says

> That the islands acquired by the United States of America under an Act of Congress entitled "Joint resolution to provide for annexing the Hawaiian Islands to the United States," approved July 7, 1898, shall be known as the Territory of Hawaii.

But your committee has improved on the language so that it could leave no doubt in the interpretation of the boundaries of our future State of Hawaii. The language as proposed in the article,

> The islands and territorial waters heretofore constituting the Territory of Hawaii shall be known as the State of Hawaii

is the language that has been adopted by the subcommittee on boundaries. We have before us - - I think each delegate was presented with three maps prepared by our Territory of Hawaii [Survey] office showing the islands, and the islands were to include islets, reefs, rocks and whatever you have.

So at this time, I ask that the chairman put the question.

CHAIRMAN: Any further discussion?

TAVARES: The report is splendid and the article is just about the best that you could have.

CHAIRMAN: Glad it has your blessings, Delegate Tavares. If there is no further discussion, the Chair will put the question.

NIELSEN: It says nothing here about any additional land contributed by Mauna Kea or Mauna Loa.

CHAIRMAN: That is correct.

All those in favor please say "aye." Opposed. Carried, unanimously.

Now move on to Committee Proposal No. 21, covered by Committee Report No. 65.

YAMAUCHI: I move that Committee Proposal No. 21 and Standing Committee Report No. 65, be tentatively adopted.

DOWSON: Second the motion.

CHAIRMAN: It's been moved and seconded that Committee Proposal No. 21 be adopted. Is there any discussion? Delegate Tavares.

TAVARES: Just a minute. I haven't found my copy yet.

CHAIRMAN: We are now discussing Committee Proposal No. 21, covered by Standing Committee Report No. 65. The proposal reads as follows:

> Whenever in this Constitution the term "person," "persons," "people," or any personal pronoun is used, the same shall be interpreted to include persons of both sexes.

It's been moved and seconded to adopt this section. Is there any discussion? Delegate Tavares, have you found the proposal?

HEEN: I think this is one place where we can take care of the use of the term "state." That has been used several times with reference to those qualified to vote, with reference to being eligible for appointments to the bench, with reference to being eligible for election to the legislature. In various articles, you find the term that no person shall be eligible for appointment to the supreme court or to the circuit court unless he shall have lived in the state for three years or more. Now, when the Constitution is adopted, there will be no one here living in the state for three years prior to election or prior to appointment to these various offices. So, therefore, there should be some saving clause here under this provision that perhaps, "The word 'state' whereever used in this Constitution shall apply to the Territory, unless obviously repugnant."

I've just been handed a provision perhaps which would take care of this situation.

> When a term of service or of residence under or in the state is required, the time of service or residence under or in the territory shall be construed as under or in the state, and continuity of operation of the territorial and county retirement, civil service and classification systems under the state and the counties shall be preserved until otherwise provided by law.

Now the latter part of that I had nothing to do with it. I don't know whether that will create more confusion or not. But I was just talking about residence in the state.

CHAIRMAN: Do you offer this as an amendment?

HEEN: Somebody handed this to me, I'd like to have that party be responsible for it.

PORTEUS: I agree with the chairman of the Legislative Committee. I think when the committee drafted that article, as well as when the Committee on the Judiciary drafted that article, I think there they required that attorneys be admitted to practice before the supreme court of the State for about ten years, if I'm not mistaken. Now, somewhere along the line, we have to agree that when we refer to the state, when we talk about qualifications - -

CHAIRMAN: Delegate Porteus, if I may interrupt you, the amendment has not yet been offered.

PORTEUS: That's what I'm trying to forestall, Mr. Chairman. The thing is that I think that this should properly be handled in one of the ordinances of the Constitution rather than in the Constitution. It's certainly not something that is necessary for the continuing framework of our government. After a certain number of years, it really ought to drop out of sight; and as an ordinance, I think it could be more easily be dropped out of sight than by writing it into the Constitution and having to specifically amend the Constitution later in order to get such terminology out of the way.

CHAIRMAN: Yes.

HEEN: If I may suggest, it might be included in the schedule where that schedule contains a lot of provisions which sooner or later will become functus. That's where it properly belongs, but somebody will have to remember it when we get to schedules.

CHAIRMAN: I take it, therefore, that the amendment is not going to be presented? Is there any further discussion on the article as it stands?

TAVARES: A matter of clarification. Naturally I am not in a position to examine every article, every provision as to whether this fits, but I take it that it is understood that this definition isn't intended to force the legislature or the State to treat women and men absolutely the same in all situations.

CHAIRMAN: Heaven forbid, Delegate Tavares.

TAVARES: That there is going to be a power of classification.

CHAIRMAN: Yes, I am sure there will be.

TAVARES: I say this because, while I think the provision is unnecessary, I am not going to oppose it.

CHAIRMAN: Any further discussion on the article?

HEEN: It says here, "or any personal pronoun is used, the same shall be interpreted to include persons of both sexes." In a lot of places in the articles which have already been adopted, you find the personal pronoun "it," so shall that be construed as being him or her?

CHAIRMAN: I don't believe that's a personal pronoun, Delegate Heen.

HEEN: Personal pronoun is - - oh I see, that refers to persons, is that it?

CHAIRMAN: That is a pronoun.

DELEGATE: Maybe Dr. Larsen would like to clarify that.

CHAIRMAN: Is there any further discussion on the article?

NIELSEN: I question the last two words. How can a person be of both sexes?

CHAIRMAN: Is there any further discussion on the article? Delegate Larsen, will you answer Delegate Nielsen's question, please?

LARSEN: There are people who have both sexes.

CHAIRMAN: Thank you very much. I thought so all along.

AKAU: I just wanted to clarify two things. In the first place, "it" is neuter, so it might not refer to either. And, I think, "interpreted to include persons of both sexes," perhaps there should be some parenthesis put down, "or either sex" when it refers to one. It just would be more clarification, but it isn't absolutely necessary. I think as it is, it's all right.

CHAIRMAN: Ready for the call for the question? All those in favor please say "aye." Opposed. The ayes have it. Carried.

Now I believe it is the intention of the committee to continue until 6 p.m. or thereabouts. The Chair will therefore call for a very brief recess.

KING: I was going to suggest that we maybe finish one more proposal and then rise. We have some little business on the desk, so that we'll conclude by about 5:30 or 5:45, but I have no objections to a five minute recess.

CHAIRMAN: Five minute recess is ordered.

(RECESS)

H. RICE: I move for the adoption of Committee Proposal No. 13.

SAKAKIHARA: Second the motion.

CHAIRMAN: It's been moved and seconded to adopt Committee Proposal No. 13 which reads:

> State flag. The emblem of the Territory of Hawaii known as the Hawaiian flag shall be the flag of the State of Hawaii.

Any discussion?

DELEGATE: Question.

CHAIRMAN: All those in favor please say "aye." Opposed. Adopted unanimously.

ASHFORD: I now move that there be inserted in one of these reports something that hasn't been covered yet and is imperative to cover. When the judiciary article was up, I talked to Mr. Anthony, the chairman of that committee, about it, and he said he thought it should go in Miscellaneous, so I have here provided it. May I read it?

CHAIRMAN: I believe, Delegate Ashford, that we are committed to taking up these various proposals as they come up. Have you determined that they don't belong in any one of those places?.

ASHFORD: I move to amend that proposal by adding another section to it.

CHAIRMAN: Which proposal, Delegate Ashford?

ASHFORD: The one we just - -

CHAIRMAN: Would you like to add it to the next one that was coming up?

ASHFORD: Well, I'd like to - -

SILVA: I would like at this spot to move that we reconsider our actions so that Miss Ashford can get her amendment in.

C. RICE: Second the motion.

CHAIRMAN: I wasn't trying to stop Delegate Ashford. Delegate Ashford, I was just trying to find out, do you want to bring in an entirely new proposal or an amendment to a proposal?

ASHFORD: I can't bring in an entirely new proposal; therefore, it must be an amendment and it can - -

CHAIRMAN: There is no proposal before the committee. That's what I'm trying to point out.

ASHFORD: Well, may I have the consent of the Convention to read it; then anybody who wants to can - - the Chair or anybody else can decide where it should go. It should certainly go in.

CHAIRMAN: Proceed.

ASHFORD:

> The style of all process in the State courts shall hereafter run in the name of "The State of Hawaii," and all prosecutions shall be carried on in the name and by the authority of the State of Hawaii.

That is the language of the Organic Act excepting from Territory to State. It must go in the Constitution, in my opinion, and I don't know where else it should go now except - -

KING: May I ask Delegate Ashford, would that provision not properly come under ordinances or would it more properly come under miscellaneous matters?

ASHFORD: It shouldn't come under ordinances because ordinances are of a temporary nature and this is permanent.

KING: If Delegate Ashford would preserve her amendment for a moment, we could ask the chairman of the committee to bring up Proposal No. 12, which is the seat of government and her suggestion would very properly come as an amendment to that, as an additional paragraph to this section. Is that agreeable to Delegate Ashford?

CHAIRMAN: Do you feel that at the time that Section 12 is brought up, that Committee Proposal No. 12 is brought up, that that would be the proper time for such an amendment?

KING: I understood the chairman was about to ask to have that considered next.

CHAIRMAN: I see. Delegate Yamauchi.

YAMAUCHI: I move that [Committee] Proposal No. 12 and Standing Committee Report No. 53 - -

CHAIRMAN: I don't believe it's necessary that you make a motion. I think that as chairman of the Committee on

Miscellaneous you indicate that that is the next proposal that you wish to take up; the Committee of the Whole will go along.

YAMAUCHI: Would it be necessary to make any motion?

CHAIRMAN: Not necessary as far as the Chair is concerned. The next committee proposal to come before this committee is Proposal No. 12, along with Standing Committee Report No. 53. Is there a motion to adopt?

YAMAUCHI: I move that we adopt Committee Proposal No. 12.

CHAIRMAN: Is there a second?

KAGE: I second the motion.

CHAIRMAN: It's been moved and seconded to adopt Committee Proposal No. 12 which reads as follows:

> The seat of government of this State shall be located at the City of Honolulu, on the island of Oahu, unless otherwise provided by law.

Any discussion?

ASHFORD: I move we delete that section and insert instead the amendment which I read.

KING: Will the lady delegate yield for a question? I thought Delegate Ashford was going to add that on as an additional phrase.

ASHFORD: Yes, but I don't like the original section, so I moved to delete that.

DELEGATE: Second the motion.

KING: If Delegate Ashford offers her proposal as a substitution, she is likely to lose the proposal.

ASHFORD: I'll offer this as a second section, and ask that the second section be voted on first and then perhaps we can move it up to Section 1.

CHAIRMAN: You are offering an amendment? Are you in the process of offering an amendment, Delegate Ashford?

ASHFORD: Yes.

CHAIRMAN: Well, would you please read it then, thank you.

ASHFORD:

> The style of all process in the State courts shall hereafter run in the name of "The State of Hawaii," and all prosecutions shall be carried on in the name and by the authority of the State of Hawaii.

I have copies that could be distributed.

CHAIRMAN: Is there a second?

SAKAKIHARA: Second.

CHAIRMAN: There is a second to the motion to amend. Would the messengers please distribute.

SMITH: I don't believe that's germane to the section. Therefore, it should be put in a separate part of this proposal, if the chairman so thinks.

CHAIRMAN: It is added, I believe, as a second section of the proposed article.

SMITH: I believe that this new addition is properly or more germane to the -- coming under general provisions. That was one that we had in the Constitution, statements like this which we want to have in, we could insert.

CHAIRMAN: Is there any discussion on the amendment? May I ask for a copy of that amendment?

AKAU: Is it legal terminology to use the word "run"? I'm not familiar with it and I just simply asked.

CHAIRMAN: Pardon me, the Chair didn't get your question, Delegate Akau.

AKAU: Delegate Ashford answered it really. I was asking about the legal terminology of the word "run." I didn't know how it was being used here, but apparently it is a legal term with which I am not familiar.

CHAIRMAN: The word what?

AKAU: "Run," the second line.

HEEN: That's correct. That's one of the 90 meanings that can be used in connection with the word "run," as pointed out by Delegate Arashiro the other day.

CHAIRMAN: Is there any discussion on the amendment?

PORTEUS: I'm not satisfied that this is an essential amendment. I'd like time to look into it. I don't know in what other style the process in the State courts would run, save in the name of the State.

ASHFORD: In many courts it runs in the name of the people.

PORTEUS: Well, so long as the process runs effectively in criminal prosecutions, I don't think it makes much difference whether it runs in the name of the people of Hawaii, or whether it runs in the name of the State of Hawaii. That to me is not particularly a constitutional matter.

ASHFORD: Well you're wrong. It was considered necessary and desirable to have it in the Organic Act. It seems to me that when we're starting with the State, the very day after we become a State we should know how that process should run.

PORTEUS: I think we can handle that in ordinances. Incidentally, if the Organic Act is a test, I think we'd better spell out all the homesteading laws, because the homesteading laws are spelled out in detail in the Organic Act. But I don't know if the Organic Act always is the best thing to turn back to.

In order to give time to look into this problem, I move that action on this committee proposal, or rather, on the amendments be deferred. Then we can see whether we wish to adopt the question of the seat of government and following that, we can come back to this Committee Proposal 12 at some later time. I move that the proposed amendment and Committee Proposal No. 12 be deferred till a later sitting of this committee.

YAMAUCHI: Second the motion.

CHAIRMAN: The Chair's understanding is that you are asking for deferment of Committee Proposal No. 12 and the proposed amendment. All those in favor please say "aye." Opposed. Carried. Committee Proposal No. 12 is deferred.

Delegate Yamauchi, you wish to take up Committee Proposal No. 14 at the present time?

YAMAUCHI: No, we would like to make a change in here.

CHAIRMAN: What's that? Fourteen?

YAMAUCHI: We would like to make a change in here in the order.

CHAIRMAN: Yes.

KING: I suspect there will be considerable discussion on this next proposal, the State seal. There seems to be two schools of thought. The discussion may run a little long. I would like to suggest that that proposal not be called up at this time.

YAMAUCHI: The Committee would like to take up Committee Proposal No. 17.

CHAIRMAN: Committee Proposal No. 17 has been called for by the chairman of the Committee on Miscellaneous, so that is before the house. That goes along with Standing Committee Report No. 58. Is there a motion to adopt?

YAMAUCHI: I so move.

DOWSON: Second it.

CHAIRMAN: The motion is to adopt Committee Proposal No. 17, which reads as follows:

> The legislature may provide for cooperation with the United States, or other states and territories, and political subdivisions in all matters affecting the public health, safety and general welfare, and may appropriate such sums as may be necessary to finance its fair share of the costs of such activities.

Is there any discussion? Delegate Larsen, did you wish recognition?

LARSEN: Well, I was just wondering why it was necessary to spell it out. "Public health, safety and general welfare," whether that could be eliminated. I'd like to ask the chairman if it's necessary, because I can conceive of matters relating to shipping and so on, business, that might not be; of course, it probably would be general welfare.

YAMAUCHI: Call on Dr. Kawahara to explain that.

KAWAHARA: Dr. Larsen's last quotation hit it right on the head there. It is covered by general welfare.

CHAIRMAN: It is covered by general welfare in your estimation. Any further discussion? No amendments? The Chair will put the question.

TAVARES: I have no objection to this section; I think it should be understood, however, that if we find that this doesn't fit some other provision, that we will reconsider it. Some question seems to be raised as to whether this will fit into some of the other articles that have not yet been considered. But I believe that there should be no difficulty in reconsidering, if we find that there is some language that we need to conform to other articles.

CHAIRMAN: That is the general understanding of the committee. All those in favor of the adoption of Committee Proposal No. 17 as submitted by the committee, please say "aye." Opposed.

A. TRASK: Point of information. A question of the chairman of this committee. I just wonder whether or not, say under the question of public health, whether there is -- would be some legislation in Congress providing for, well, sterilization, and that from Congress, now would this article provide a coercive effect on the legislature that such things must be -- such a conformitory expense or charge must be made? And if it isn't made, why, some action may be taken in the legislature or courts of some, some nature? I am quite concerned about that situation.

YAMAUCHI: I think that Delegate Roberts can inform you in regard to that paragraph over there.

ROBERTS: The section reads, "The legislature may," and "may appropriate." It doesn't require them to appropriate.

HEEN: This article reads, "The legislature may provide for cooperation with the United States, or other states and territories, and its political subdivisions." The word "its" refers to what, may I ask?

YAMAUCHI: The word "its"? The intention of the committee in regard to the word "its" referred to the State.

HEEN: You have states there and territory.

NIELSEN: Point of order. There is nothing before the Convention.

CHAIRMAN: Yes, there is, Delegate Nielsen. The Chair --

HEEN: I think the word "its" is incorrectly used. It should have been, "their political subdivisions."

CHAIRMAN: The question is as to --

AKAU: A point of being purist -- On the excuse of being a purist, United States, it may be considered not as a collective thing, collective word; therefore, you could very well use "its."

HEEN: Well, what are you going to do about the words "states and territories"?

AKAU: In order to be interpreted --

CHAIRMAN: Has your question been satisfied, Delegate Heen?

HEEN: No, it has not.

CHAIRMAN: Your question was what does "its" --

HEEN: I move that that word "its" be deleted and the word "their" be substituted for that word.

NIELSEN: Second the motion.

KING: Second the motion.

CHAIRMAN: There is -- the motion is to delete in the third line the word "its" and substitute in lieu thereof the word "their."

YAMAUCHI: The committee accepts it.

CROSSLEY: I move that we defer action on this section until tomorrow and that we rise, report progress and beg leave to sit again.

DELEGATE: Second the motion.

CHAIRMAN: If you will, Delegate Crossley, I believe we can get through this section in just a moment.

CROSSLEY: Well, there seems to be a lot of question on some of the words in here; that's why I made it a two-part motion, because we would have to defer action on this in order to rise. There seems to be quite a bit of controversy about some of the words. I thought that would give some of us a chance to look them over.

CHAIRMAN: I believe, Delegate Crossley, the only word that's been questioned is this pronoun which has now been amended. Now, if there are any other questions, the Chair isn't aware of it at the present time.

A. TRASK: I want to know what cooperation with states. Does it mean the northern states or does it mean the southern states?

CHAIRMAN: I don't believe that that question is in order.

HOLROYDE: I'll second Delegate Crossley's motion.

CHAIRMAN: The motion has been made to defer action on Committee Proposal No. 17; to rise and report progress and ask leave to sit again. All those in favor please say "aye." Opposed. Will those in favor please raise their right hand. Opposed. Carried.

CHAIRMAN: The Committee of the Whole will come to order. Delegates may sit at their ease. When we rose

yesterday afternoon, we had just deferred Committee Proposal No. 12. The Chair would like to ask the chairman of the Committee on Miscellaneous Matters whether or not he would like to take up Committee Proposal No. 12 now or pass on to 16.

YAMAUCHI: We would like to defer No. 12 and take at this time, Standing Committee Report No. 55 and the Committee Proposal No. 14, and Resolution No. 29.

CHAIRMAN: We will then turn to Standing Committee Report No. 55, which covers Committee Proposal No. 14, and along with the Committee Proposal there is in your separate book on resolutions, Resolution No. 29.

YAMAUCHI: I move that we tentatively adopt Committee Proposal No. 14.

OKINO: I second the motion.

CHAIRMAN: Delegate Okino seconds the motion.

APOLIONA: Speaking for the adoption of the State seal incorporating the present seal of the Territory of Hawaii, your Committee on Miscellaneous Affairs begs leave of this Convention to accept the present Territory of Hawaii seal. But at the same time, the committee knows that another seal has been proposed by a fellow delegate of this Convention and as we know, a committee proposal is always on the defensive. So, at this time, your Committee on Miscellaneous Affairs on the seal rests its case, the defense rests.

CHAIRMAN: For the benefit of the delegates - -

LARSEN: Mr. Chairman - -

CHAIRMAN: One moment, please. For the benefit of the delegates, the seal proposed by the committee is the smaller of the two copies of which you should all have, and the other seal referred to is the larger, copies of which you should all have. The Chair will recognize Delegate Larsen.

LARSEN: I always hesitate to get up after a committee has made a proposal and suggest some changes. However, I appreciate what the delegate said, and I also appreciate that we should continue this coat of arms, that carries with it a great deal of tradition. Therefore, I want you to note, on this large seal, that it is the coat of arms of Hawaii. As you know, this has gone through various changes. It was first adopted in 1896, and then in 1900 made into the territorial seal. I want to call the committee's attention, however, that now I speak for the sake of better art. I would like to ask our chairman, who just recently crowned Miss Hawaii, how he would have felt if she went to Atlantic City garbed in the bathing suits of 1896. I'm sure he would have blushed; I'm sure he would have felt unhappy; and he would know very well that Miss Hawaii could never expect to win with the bathing suit of 1896.

CHAIRMAN: She never would have gotten kissed, Delegate Larsen.

LARSEN: I'm sure he wouldn't have enjoyed sizing her up as well either.

However, I now call to your attention that this seal is merely taking off the bathing suit of 1896, and putting on a modern streamlined one. It's the seal as it was.

There has been some objection, too, to the fact that Kamehameha stands there, with his hand down. Could I read for you just a moment, a newspaper of the nineteenth century, faded with age, but in which it tells the story of the coming of the statue. It says, "It has an odd fault. The artist familiarized himself with the Hawaiian type of physique and there is besides every reason to be assured that the likeness of the subject is excellent in every detail. The flaw is with the upraised hand. The Hawaiian gesture is always made with the palm of the hand downward. In this case, the palm is upward." That's really the only change.

The other suggestion made by one was that perhaps Liberty should be - - the Statue of Liberty, familiarly called Columbia, should be holding the American flag for a State seal; and if she does, then we would have to put Liberty on the right side, and Kamehameha on the left. This is the State of Hawaii, and I feel as the old seal shows it, the flag should, be on the left. Now, so much for the seal.

With everything remaining except the suggestion that the star, which was put in in 1900, with the hope that we would become a star of the flag of the U.S., should now contain the number, whatever numbered star it is, 49 or 50. The date "1950" down below is shown in 23 seals of the United States states.

I might also say, I compared this seal, I mean our old seal, the seal presented by the committee, with the seals of all the states and all the territories, and with all these—what the artists call garbage that was used as the baroque style of decoration in 1900 and in 1896—removed, we now have the present seal. I want to also call your attention to the fact that the rays around of this rising sun represents 23; there are 23 islands in the Hawaiian group we adopted yesterday.

In other words, I think everything else has been explained, and I've tried to give as much evidence as I could so we wouldn't have to discuss too much. You either want it or you don't want it. But may I suggest two ways of doing it. For instance, the State flag is only in one constitution, that is Florida. The State seal is in some 33, I think it is. However, to do a proper seal, this should be done completely. This that you have here is done by one of our outstanding artists of Hawaii, but is merely a sketch. It should be done carefully, in proper color and so on, as to become the coat of arms. To do a proper type of sketch, which this State really should have, and in none of our previous seals we've had true art, it should cost anywhere from $300 to a $1,000. I've asked various artists and I know. This committee is not ready, I believe, to spend that sum, but I don't think we should be niggardly about this. And there were two suggestions made. One was that we adopt this in principle and pass it on to the legislature; and the second, that we adopt it as a seal along this line, but hoping that funds would be found to create this proper seal.

Now I ask you, that this result of a happy hour might end in your hands in an abortion, but I'm hoping that it will become the real child of Hawaii and live on in its more beautiful style. The turning out is deliberate, because it means a broad horizon, rather than a narrowed horizon. I rest my case.

APOLIONA: Your committee has very little to say against the good work of Dr. Larsen. But our committee's proposed seal, as is represented by the blue one here, has been the tradition of the people and the government of Hawaii and of its people. Dr. Larsen's seal, as he has stated, was drawn by one of the foremost architects in town. I am sorry to say right now that your Committee on Miscellaneous Affairs did not have the facilities to go to one of the good architects.

Now, Dr. Larsen's seal has some good points, and so has the old Hawaiian seal. Maybe we can get together with Dr. Larsen, and compromise on the certain things that should go in our new seal. We submit that the shield, Hawaiian shield as presented in the old - - in our present seal, is much better than the one proposed by Dr. Larsen. Also the figure of Kamehameha as illustrated in our Hawaiian seal, is the same as the statue that you see in the front there, in the front of the Palace on King Street.

Dr. Larsen has stated that Kamehameha with an upraised hand, palm turning out is asking for something. In old Hawaiian tradition, the Hawaiian people have always raised up

their hand with the palms toward the heaven and invited you into the home. The missionaries found that out. Dr. Larsen has stated that he wants his palm to be turned downward. To me, it means that King Kamehameha the Great wanted all his subjects to bow. That is not the case. Kamehameha, as we want him to be and as we want him to act, with his palm raised up to the heaven, is a welcome sign to all of his subjects and to his people and to his friends.

We submit that Dr. Larsen's seal, with all the different industries—sugar, pineapple, flowers, coffee, fruits, cattle, fish, kukui, calabash, coconut, banana, taro and hala are represented in his seal—but I want to ask him whether that represents all of the things that are Hawaiian. It is true that the figure of Kamehameha, as represented in our Hawaiian seal, is sort of a chunky little fellow, representing the menehune. Maybe the figure as illustrated by Dr. Larsen is much better. But the present seal of the Territory of Hawaii has been on all important documents from the very existence of the government here. The people of Hawaii, as your committee has gone out and found out, wish to retain as much of the old Hawaiian tradition and principle which they have learned to know. And, therefore, and now, Mr. Chairman, I ask that you and this Convention will consider the present seal of the Territory of Hawaii as the seal for the State of Hawaii.

HAYES: I'd like to present another seal, but I'm not quite prepared this morning to present it, and so, I'm hoping that the Convention would defer this matter until a little later. The seal that has been presented by the committee is the seal that was presented in 1894 during the -- assigned by President Dole when we became a territory [sic]. It's a seal that the committee has worked on. Though there is an error that I see, which the Hawaiians have often mentioned, that the two in the white sections here, they represent the puloulou sticks or the tabu sticks, and it doesn't -- it's not a true picture of the tabu stick. You should have -- that could be taken care of when the committee meets to go over these different proposals. And I see that another proposal has also been talked about, and it hasn't been presented this morning. So in view of the fact that there are two others, that perhaps the committee can get together, and I'll present mine this afternoon.

CHAIRMAN: Do I understand, Delegate Hayes, that you are asking for deferment of the consideration of Committee Proposal 14?

HAYES: Yes, I do, because I have also a seal to offer to this committee.

ASHFORD: I second the motion.

CHAIRMAN: The motion to defer action on the Committee Proposal No. 14 has been made and seconded.

SILVA: What I'd like to know is, I know that the question to defer is not debatable but the question is, until when? I would suggest, probably we should move to defer action for another month on this seal matter. The question for that deferment is that, I really feel there is no place --

CHAIRMAN: The Chair understood that Delegate Hayes would have the seal completed in a matter of a few hours, which would mean that this would come before the committee perhaps today, perhaps at another time.

SILVA: Well, another time can mean next year; it can mean tomorrow; it can mean next week. I'm just trying to save time, that's all. Otherwise I was going to ask for the absolute deletion of the seal in the Constitution because I really believe that men like Reverend Judd, perhaps John Lane and a few of those people should get together and draw the seal. If we are going to be here without knowing just exactly what it is -- It seems very funny to have two-thirds of the people of the whole territory, three-fourths, to change the seal. So I think it should be purely legislative and let the authorities of Hawaiian lore draw up a seal.

CHAIRMAN: Well, the motion has been made to defer action.

HAYES: I just wanted to present mine this afternoon, so that they will all go to the committee and should be referred to the group of people that has been recommended, I mean mentioned by Delegate Silva.

LARSEN: Personal privilege. The worthy delegate from Hawaii seems to think we haven't put any time, authority or energy into this. I beg to differ.

SILVA: Point of order. I just asked for deferment till a certain time. The debate can be argued on the deferment up to a certain time, but the question to deferment is not debatable.

CHAIRMAN: That is correct, Delegate Larsen.

LARSEN: However, I was asked a question by the committee and if they are going to take it up, may I have the privilege of answering that question?

CHAIRMAN: You may.

LARSEN: The chairman asks the meaning of the border. The meaning of the border represents the health of the Hawaiian soil, as shown by the ancient agriculture, as well as the modern agriculture, as well as the protein, as well as the vegetable. But you'll note that doesn't really have to do with the coat of arms. That is merely a lei of blood, sweat, tears and joy that surrounds the seal of Hawaii and that has made Hawaii great. And to recognize this in the border, I feel adds that much to our seal.

CHAIRMAN: There is a motion to defer. The Chair will not permit any further argument on the seal. All those in favor of the motion. Opposed. The Chair will ask for the vote again. All those in favor please say "aye." Opposed say "no." Carried.

We turn now to Resolution No. 29. The Chair will recognize Delegate Yamauchi.

YAMAUCHI: I move that we adopt Resolution No. 29.

CHAIRMAN: I'll ask the Clerk to read the Resolution No. 29.

DOWSON: I second the motion to adopt the resolution.

YAMAUCHI: May I explain that Resolution No. 29 which was amended --

CHAIRMAN: We will ask the Clerk to read it first, Delegate Yamauchi.

CLERK:

Resolution [No. 29, RD 1]: Whereas, each state has a heraldry consisting of symbols reflecting its past and present; and,

Whereas, Hawaii has a very unique code of symbols from its royal background; now, therefore,

Be it resolved that the Legislature of Hawaii be, and it is hereby respectfully requested to enact appropriate legislation for the adoption of the following heraldic symbols:

1. That the motto shall be: "Ua mau ke ea o ka aina i ka pono." The translation of which is "The life of the land is perpetuated in righteousness"; and

2. That Hawaii's official song shall be "Hawaii Ponoi," with the same music as in the past, but with words bringing it up to statehood; and including an old Hawaiian motto which indicates our present harmonious amalgamation of races: "Maluna a'e o na lahui apau, ke ola

ke kanaka," the translation of which is "Above all nations is humanity."

3. That Hawaii's official flower shall be the ilima, the flower of old royalty; and

4. That Hawaii's state colors shall be orange (from the ilima and suggestive of the soil) and deep blue (our sky and ocean); and

5. That the official birthstone shall be the olivene. (This dates back to the birth of Hawaii when it crystalized out from the hot lava.)

YAMAUCHI: Originally the resolution included the seal and the flag, but the committee felt that in the event the Convention takes positive action as to include the seal and the flag in the Constitution, that portion which was in the original resolution should be deleted. Thereby the redraft has been made.

ASHFORD: I'm in great sympathy with this resolution but there is one question that disturbs me, and that is making the ilima the State flower. The reason it disturbs me is that it is almost impossible to get an ilima lei, and I go further than that and say impossible to get an ilima plant. All you can see is the false ilima.

CHAIRMAN: Perhaps it would be better, in view of the fact that there are five sections, to take them up one at a time and go into a tentative agreement on each. So we'll turn our attention to Section 1, as to the motto. Is there general agreement on the adoption of a motto? All those in favor please say "aye." Opposed. Tentatively agreed to.

On Section 2, the official song shall be "Hawaii Ponoi" with the added words. Delegate Yamauchi, would you like to indicate where in the song those words would appear?

YAMAUCHI: We have not discussed it; we left it up to the legislature in regard to that point. We have not taken any positive action, but Dr. Larsen, who is the introducer of the resolution, might be able to give you a better idea on that.

LARSEN: Again I realize tradition means a lot.

CHAIRMAN: There has been a suggestion that you indicate in the verse where the words would appear.

LARSEN: Well, I'll just read the translation as it is.

Hawaii's own true sons
Be loyal to your chief
Your country's liege and lord
The Alii.

Hawaii's own true sons
Look to your lineal chief
Those chiefs of younger birth
Younger descent.

Hawaii's own true sons
People of loyal hearts
Thy only duty lies
List and abide.

Father above us all
Kamehameha e
Who guarded in the war
With his ihe.

The idea is not to change; anybody who naturally wants to sing those words, they can, but it does seem as though we should add some words, and I have my suggested ones, but some feeling is that with something like this, we shouldn't pass on it right now. We should leave it perhaps to a contest, to let somebody suggest two new verses, and in that way, just pass the resolution as is, but with the suggestion that, as is in the resolution, that sometime in the future, words that really do bring it up to date or verses that bring it up to date should be adopted. Now that doesn't mean we do away with the first three verses. They still stand as history, but we could add one or two verses to show that history has marched on.

CHAIRMAN: Any further discussion?

COCKETT: There is a correction to be made here in this Hawaiian section here, "Maluna a'e o na lahui apau, ke ola ke kanaka." That is wrong as a Hawaiian sentence. I'd like to insert "o"; "ke ola o ke kanaka." That would make it -- Yes, grammatical error. It may be acceptable.

CHAIRMAN: You make a motion to amend?

COCKETT: I do.

APOLIONA: Second the motion.

CHAIRMAN: Is that acceptable to the committee?

YAMAUCHI: Perhaps it might be a slight clerical error, that part over there. I myself am not an authority on that, so I can't say one way or the other, but the committee accepts the amendment.

CHAIRMAN: Fine. Any further discussion on this section?

AKAU: I think it's a very nice idea to want to add some more verses, and all that sort of thing. "Hawaii Ponoi" is "Hawaii Ponoi." It was written by a particular person and the music was written especially. Therefore, it would be taking poetic license to assume the idea of somebody else writing some extra verses because that is a particular song, and we consider it as such. I would say that "Hawaii Ponoi" should be the official song, period.

Now, then, if any suggestions wish to come eventually, through, shall I say, the legislature or something, I don't see any harm in that. But to me, it's heresy to change something that has been so much tradition over a period of years and accepted so wholeheartedly by all of our people.

CHAIRMAN: Does the Chair understand that to be a motion, Delegate Akau?

AKAU: I so move.

CHAIRMAN: Is there a second?

SMITH: Second it.

LARSEN: May I call the attention. It's not changing the song, it's merely adding two verses as a State song.

CHAIRMAN: Pardon me. Did you second that motion?

SMITH: Yes.

CHAIRMAN: It's been moved and seconded that Section 2 be amended to read as follows: "That Hawaii's official song shall be 'Hawaii Ponoi,'" period; delete the balance of the paragraph. Any further discussion?

KING: "Hawaii Ponoi" is the song that was adopted in the days of royalty and glorifies the crown. Now, we have some of the same proposition in our American background where we sing "America, 'tis of Thee," I think it is—I've forgotten the title of it—

CHAIRMAN: "My Country, 'Tis of Thee."

KING: -- to the tune of "God Save the King," but we don't keep on singing "God Save the King" in our American song. The words of "Hawaii Ponoi" would be a little bit inappropriate for a state of the Union. I feel that Section 2 is all right the way it is.

CHAIRMAN: Anyone wish to discuss the amendment further? The Chair will put the question. All those in favor of the amendment please say "aye." Opposed, "no." Amendment is lost.

Any further discussion on the section as submitted by the committee? All those in favor of the section please say "aye." Opposed. Section is carried.

Section 3, "That Hawaii's official flower shall be the ilima."

ASHFORD: I'm not making an amendment; I'm merely saying that we can have it as an official flower, and then we won't be able to get any official flowers to decorate our guests with.

CHAIRMAN: You have no substitute flower?

LARSEN: The substitute flower was the lehua. The idea was to pick a flower that was distinctly Hawaiian. It was either the ilima or the lehua; and I feel as soon as we begin to use it, certainly on Oahu, we will find plenty of ilima. I feel if it becomes a State flower, there will be plenty of them grown.

CROSSLEY: I don't know if it would be appropriate at this time to suggest a change in the ilima, but if it is, I would like to suggest that it be the vanda. I have no pecuniary interest in such. It's a beautiful flower and it's prolific; it's easy to grow and there are plenty available to decorate visiting dignitaries.

CHAIRMAN: Is that an amendment, Delegate Crossley?

CROSSLEY: I didn't offer it as an amendment, only as a suggestion. I wouldn't presume to offer it as an amendment.

APOLIONA: Will the delegate from Kauai specify what type of vandas?

CHAIRMAN: I see we have an argument amongst the orchid lovers.

DOWSON: I believe the types of orchids which are being referred to are imported plants. They are not traditional to Hawaii. Hawaii has a few native orchids which are very small and not noticed at all. The flowers are so small that people don't even look at them. They grow wild near some of these arid places. The so-called ilima which is the false mallow, I mean the mallow plant or false mallow, is a native endemic to Hawaii. So is the flower that comes from Hawaii which Dr. Larsen picked out, the lehua. The lehua comes in several colors. Just above Hilo is quite a bit of the yellowish and orange lehua, besides the red. There is a tradition behind the lehua. If one picks a lehua blossom, there is sure to be rain. Perhaps that should be remembered, too.

SAKAKIHARA: I wish to offer an amendment to Section 3. Insert the word "lehua" in place of the "ilima." We only have one Hawaii, and that Hawaii is the island of Hawaii.

CHAIRMAN: Is there a second to the motion?

YAMAMOTO: I second the motion.

CHAIRMAN: It's been moved and seconded that in Section 3, the word "ilima" be deleted, and the word "lehua" be inserted in lieu thereof.

WOOLAWAY: Before we vote on that subject, I would like to have this body of able persons consider roselani before we make the mistake of voting for the last amendment.

HAYES: I'm afraid I would have to oppose the lehua flower as the flower of the State, because from the history of Hawaii, ilima has always been the color for the - - and it also represents the section in the seal, the color yellow. I believe that I wouldn't be able to go with any other flower for the State of Hawaii but the ilima. While I'm not prepared to go into further details of the ilima, I have been approached by many, many old families, the old Hawaiian families, and requested that - - they hoped that we would keep to the ilima flower as the State flower of Hawaii.

PHILLIPS: I would like to speak in favor of the motion on the floor right now. I remember when I went to Hawaii, I was told that the lehua only grows on a volcano, and I would feel - -

DELEGATE: Oh, no!

PHILLIPS: It's not true? Well, I got that from a native on Hawaii, so you can take it for what it's worth.

CHAIRMAN: You didn't have the right - -

SAKAKIHARA: I was shut off when I made a motion to amend the resolution when you recognized the delegate from Maui. As I was about to inform this committee, we do have various varieties of lehua. As Delegate Dowson ably put before the committee, we have yellow lehua, we have dark red lehua, light-shade red lehua, green lehua. Any one of them would symbolize the flower of Hawaii. Naturally, Oahu delegate Madam Hayes, is very sentimental, like all women, and I don't blame her for wanting to retain lehua for Oahu. I believe this Convention can truly be broad-minded enough to recognize the outside island, your neighbor island, in the various symbols apparently we are going to enact now. We have considered, almost unanimously, over the protest of some of the neighbor islands, the seat of government for Honolulu. Lehua symbolizes the island of Hawaii, its mountains, Mauna Loa, Mauna Kea, Hualalai and Madam Pele. I believe that this flower should be given some consideration.

CHAIRMAN: Any further discussion? If not, I'll put the question on the amendment.

C. RICE: I want to ask the last speaker how often the lehua blossoms and in what month?

SAKAKIHARA: It's once a year, around August, I think.

C. RICE: On Kauai we have a lot of lehua. Lehua-makanoe, in a swamp up back of Waialeale, the lehua is only two feet high, three, and the blossoms are five inches across. But there, as I remember, there was only bloom in summer. I want to get a flower for Hawaii that blooms all the year around. How about your ilima?

HAYES: The ilima blooms all the year around.

C. RICE: I think the lehua only blooms three months of the year.

A. TRASK: I think there is a good bit of merit in what Delegate Ashford called attention to, namely, that there aren't very many plants on the islands; but, when I was a boy I remember that almost every family had lehua [sic] bushes around the place. It just so happens that the passage of the last few years, the people are not going in so much for lehua, I mean ilima. But I do believe this is maintained as the official flower and it's always been. It should be remembered that when there's a Republican Convention or a Democratic Convention, what do you send there to the delegates? You send the ilima leis. I mean, it's always been symbolic of Hawaii—ilima leis. I'm sure that in the Convention here, the leis that have been worn by the ladies here, in many instances, have been ilima.

I haven't seen yet in this hall a lehua lei, that has been advocated. On Oahu, I think there are about one, if not two lehua trees on the Pali road, and they bloom, if they do at all, I don't think I've seen at any one time, more than three or four flowers in the entire Pali area. In the entire Koolau, I haven't yet seen a lehua flower except on a bush in our yard down at Kaneohe Bay which my mother planted; but that was not the lehua flower that the delegate refers to, it's the cultivated type of lehua.

I believe that if the ilima is made the official flower, we'll have a lot of people planting it, so that there will be more flowers. I want to say to the Delegate Ashford from Molokai,

that if possible, I would secure for her, ilima flowers tomorrow.

LYMAN: The lehua is a seasonal flower; it does not bloom all the year around. I would like to speak against the lehua. The lehua, as you all know, is a flower that is not ordinarily picked because Hawaiian superstition says that when you pick the lehua, it rains. On the island of Hawaii, we have many lehua flowers and that's the reason it rains so much. The people are always picking those flowers. However, I would like to suggest that we think of the maile as the official wreath, the maile and the ilima. If we cannot use the true ilima flower, we have substitutes that can be used—the paper lei, the cloth lei, and those leis can be shipped to the mainland and could be used for occasions when you really want the official wreath of Hawaii. I, therefore, suggest that we consider the maile and ilima as the official wreath of Hawaii.

CHAIRMAN: The question before the committee is whether or not to adopt the amendment; that is, the lehua shall be flower of Hawaii. The Chair would like to put the question.

SILVA: [The delegate's microphone was not functioning, and the following statement is taken from the minutes.] He stated that he was of the firm conviction that all these things, including the seal, the song, the flower, should be referred to the legislature, and a committee could then be appointed to look into the merits so that the whole territory might participate in these decisions; and he so moved.

CHAIRMAN: I believe you will find, Delegate Silva, that that is the purpose of this resolution.

SILVA: Beg your pardon.

CHAIRMAN: That is the very purpose of this resolution, as stated in the third paragraph of the resolution.

SILVA: To refer it to the legislature?

CHAIRMAN: That is correct.

SILVA: Then why are we wasting our time?

CHAIRMAN: There is a question before the committee, and I'd like to ask the question now, that is the adoption of the lehua. All those in favor please say "aye." Opposed, "no." Lost.

This is the original question. That Hawaii's official flower shall be the ilima. All those in favor say "aye." Opposed, "no." Carried.

Paragraph 4. Hawaii's state colors. Any discussion? All those in favor of the paragraph as written, please say "aye." Opposed, "no." Carried.

Paragraph 5, as to the birthstone being the olivene. Any discussion? All those in favor please say "aye." Opposed. Carried.

Is there a motion to adopt the resolution?

YAMAUCHI: I move that Resolution No. 29 as amended be adopted.

DOWSON: I second the motion.

CHAIRMAN: The motion is for the adoption of Resolution No. 29. All those in favor please say "aye." Opposed. Adopted as amended.

YAMAUCHI: I move at this time that we take up Committee Proposal No. 16 referring to the civil service.

CHAIRMAN: The call is for Committee Proposal No. 16, covered by Standing Committee Report No. 57.

YAMAUCHI: I move that we tentatively adopt Committee Proposal No. 16, Standing Committee Report No. 57.

DOWSON: I second the motion.

CHAIRMAN: It's been moved and seconded to accept Committee Proposal No. 16 which reads:

> The employment of persons in the State civil service, as defined by law, shall be governed by the merit principle.

Is there any discussion? All those in favor of the proposal, please say "aye." Opposed, "no." The ayes have it.

YAMAUCHI: I move that we adopt -- tentatively adopt Committee Proposal No. 20 and Standing Committee Report No. 64, which pertains to the preamble.

DOWSON: I second the motion.

CHAIRMAN: It's been moved and seconded that Committee Proposal No. 20 be adopted, which reads as follows:

> We, the people, of the State of Hawaii, grateful for Divine Guidance, and with pride in our Hawaiian heritage, reaffirm our belief in a government of, for, and by the people do hereby ordain and establish this Constitution for the State of Hawaii.

Is there any discussion?

LARSEN: I would like to offer an amendment. May I speak on the amendment or do I have to make it? I move for the amendment as is on the delegates' desks.

> Preamble. We, the people of Hawaii, hereby reaffirm our belief in a government of the people, by the people, and for the people, and do express in the words of Kamehameha First our reverence to God; also our respect for the big man, the small man, the aged man, the women and the children, who may ever walk the highways, or sleep by the wayside, without molestation. We, therefore, with an understanding heart toward all the peoples of this earth, do ordain and establish this Constitution.

CHAIRMAN: I believe the proper procedure would be to -- have they been circulated?

LARSEN: Yes, it's been circulated. I so move.

APOLIONA: Second the motion.

CHAIRMAN: I'm sorry, I don't have a copy. The Chair can't follow you.

CORBETT: I'd like to second the motion.

LARSEN: May I speak on this for a moment?

CHAIRMAN: Yes, would you?

LARSEN: As you all know, we've been working on it for a long time. Again I apologize to the committee for offering an amendment, but the committee knows, and committee has been cognizant of this right along. I think the committee report very wisely states, you can't confuse amendments, you either -- I mean preambles, you either take one type or another. I think it won't take too long. We either want it or we don't want it.

However, I would like to call your attention to the fact that, as we all know, most of our Constitution is not an original document, is not something that -- but comes from the Model Constitution, from New Jersey, from Missouri, and so on. In our preamble, we have an opportunity to present something a little different. I'd like to call your attention to the fact that there are two great ideals of government presented here. The first—and I might say, one of the delegates suggested the correction—instead of combining by, for and of the people, he said, "You can't improve the words of a great man. This great emancipator said to this group at Gettysburg, 'in a government of the people, by the people and for the people,'" and this delegate felt we should use the words as they came from the great man. This emancipator, as you know, at the end of a long and bloody war, combined and reunited the United States.

In the second part are again the words of the great conqueror of Hawaii. At the end of a long and bloody war, he brought the Hawaiian Islands together under one rule. But the great thing that he did do was recognize that force can never produce a good nation; there must be justice. And so, this particular clause, one of the great documents of expression of government, and the greatest expression of government that has been put out in the Pacific, was put out by Kamehameha the First. It's a question of keeping that; it's the one part where we might recognize the greatness of Hawaii philosophically in the line of government, and something that, I believe, will bring more attention to Hawaii than anything else in our Constitution. In today's terrible upset in the world, this is the philosophy, this is the principle, that's more necessary than anything else that's being done. I feel we have in a small way, this opportunity to show the world that Hawaii recognizes principle.

The words, "We, therefore, with an understanding heart" are also the words of Kamehameha the First, and, I feel, quite important because certainly we inside of our little corral here, where we're champing at the bit to get through with this, we have shown the world that it is possible. We take it for granted that all the races of the world can work amicably, peaceably and together to produce a document. We would like to record that because we all know that in many parts of the world, this type of assembly would be impossible. And so the expression, "Therefore with an understanding heart toward all the peoples of this world," I feel is extremely fitting for Hawaii.

Therefore, the few extra words are not so important as are we producing and are we giving this mission, this philosophy, that we have stood for so long, and combining with the philosophy of the great emancipator. Between the two, they express the principles of government that we hope someday will actually be regarded as the real government for all nations.

CHAIRMAN: Any further discussion on the amendment?

YAMAUCHI: The suggestion that was made by Delegate Larsen, another preamble to substitute the preamble that was submitted by your Miscellaneous Committee, was considered by the Miscellaneous Committee. We have taken into consideration by putting that phrase, "and with pride in our Hawaiian heritage." We felt that that particular clause would cover the intent that is being brought forth by Dr. Larsen.

CHAIRMAN: Is there any discussion? The Chair will put the question on the amendment.

PHILLIPS: I would like to offer an amendment, too. I feel that the more of these individual items that the Convention has an opportunity to inspect, why the broader will be its view on it.

CHAIRMAN: Delegate Phillips, I believe in this particular case, the Chair would be correct in asking that the vote be placed on this amendment. It's not a single word, you want to submit another preamble?

PHILLIPS: I have one on the desks of the delegates at present. However, it was suggested that we adopt the other one tentatively, and then I make an amendment to that.

[Part of the debate was not recorded. Delegate Phillips introduced the following amendment. After it was seconded by Delegate Hayes, he spoke in support of his amendment.]

> Preamble. We, the people, the supreme political authority, proclaim our sovereignty and create this State in this sacred covenant and Constitution; we shall ever be grateful to our Creator, perpetuate our Hawaiian traditions, defend our constitutional rule, and follow the American way of liberty, justice, equality, and freedom. We are gathered from the earth's every corner in brotherhood and unity to teach and be taught, each by the other, the blessings and burdens of our singular democracy. We, therefore, do in solemn mutual faith, ordain and establish this declaration of rights and frame of government as the Constitution of our beloved Hawaiian State.

PHILLIPS: . . . our beloved Hawaiian State, but as you know the people on the outside that would read this would realize that we are fond of our new State and we don't mind telling everybody about it. I rest my case.

YAMAUCHI: I would like to talk in regard to the proposed amendment made by Delegate Phillips. The committee had considered Delegate Phillips' proposal -- preamble, rather, and we have incorporated the words, "We, the people, are the supreme political authority." It is implied that the people are the supreme political authority and we felt that the words "We, the people, of the State of Hawaii" would be sufficient. And under section 2, it's also taken care of; the words, "being grateful to our Creator," is also in our committee preamble. The third part which pertains to the perpetuation of the Hawaiian tradition has also been considered under the phrase, "and with pride in our Hawaiian heritage." The other portion pertains to the government, which reads "defend our constitutional rule, and follow the American way of liberty, justice, equality and freedom." That phrase is taken care of by the committee proposal which states that "We . . . reaffirm our belief in a government of, for and by the people."

Thereby the committee felt that the language should be simplified where the students can acquire the preamble which may be recited in the schools. We would like to make it as short as possible so that every individual can understand, as well as make it a part of the school curriculum.

CHAIRMAN: The question before the committee is the amendment to the preamble, Committee Proposal No. 20, as offered by Delegate Phillips.

AKAU: I wonder if Mr. Phillips would accept the amendment so that in the first line, "We, the people" and add "of the State of Hawaii," even if it does down below say "beloved Hawaiian State."

PHILLIPS: I mentioned already that I felt that that should be changed to "We, the people, of the State of Hawaii."

CHAIRMAN: Then you accept the amendment?

PHILLIPS: Oh, well, excuse me, please. "We, the people, the supreme political authority of the State of Hawaii." Now, is it all right to speak -- to discuss that briefly?

CHAIRMAN: As I understood the request from Delegate Akau, "We, the people, of the State of Hawaii."

AKAU: Yes, but it could also fit in the other place, so I would say it could be -- the amendment might be "of the State of Hawaii" after the "supreme political authority."

PHILLIPS: May I address a question to the Chair for Delegate Akau? Would it be satisfactory if we were to strike out the fourth line of the first verse and then spread it out in that manner?

While I have the floor, I wonder if I'd be permitted to answer the committee chairman's question about whether the words "supreme political authority" --

CHAIRMAN: The Chair doesn't have any answer to the question yet. Do you accept the amendment, "We, the people, the supreme political authority of the State of Hawaii"?

PHILLIPS: "Proclaim our sovereignty and create this State," leaving out the fourth line. I'll accept that amendment.

Now, I would like to say, I feel in the Bill of Rights, the very first section, will state right there that the supreme political authority of the State rests in the people. That is the fundamental doctrine of American constitutional law. Consequently I think it's good that we set it forth and let them know in Washington; and the people of this territory, let them become familiar right away with the fact that we are aware of it, too.

CHAIRMAN: The question is on the amendment. Any further discussion on the amendment? Call for the question.

KELLERMAN: What is the order? Do we vote on Mr. Phillips' amendment first, and if that fails, we vote on Dr. Larsen's?

CHAIRMAN: That is correct, Delegate Kellerman. The question before the committee now is whether or not the preamble as submitted by Delegate Phillips and amended by Delegate Akau shall be adopted. All those in favor please say "aye." Opposed. The amendment fails.

The question now before the committee is the amendment as offered by Delegate Larsen.

HAYES: I would like to speak in favor of the amendment offered by Doctor Larsen, for many reasons. First, I feel that it speaks for Hawaii, what we have done, and what the Hawaiian people believed in. He says here, "We, the people of Hawaii, hereby reaffirm our belief" and I feel that we, in this Constitution, feel that the past record of our provisional government and of the present situation is being reaffirmed in the government of the people, by the people and for the people. We therefore express in the words of a great king who brought these islands under one form of government, and in the reference to the Almighty God our respect.

Here in the next paragraph, he gives the law of the land, that great law which was obeyed by every citizen of Hawaii, or, otherwise, those who did not believe or those who did not - - who went against the law and did not abide by the law set by Kamehameha the First, had no other reason for not abiding by such law, and death was the penalty.

I recall some time back during the Massie case here in Hawaii, one of the strongest points that was brought up in favor of the people of Hawaii was the law that was set by King Kamehameha, "for the big man, the small man, the aged man, the women and the children, who may ever walk the highways or sleep by the wayside without molestation. We, therefore, with understanding heart toward all the peoples of this earth, do ordain and establish this Constitution." In Hawaiian I would like to just interpret those words of King Kamehameha. "E hiki ka elemakule, a me na makuahine, a me na keiki, ke moe i ka alahele"; that is, they may be on the wayside, they may be on the road, but no one dared to molest them. I, therefore, would like to support this preamble.

SMITH: As a member of the committee who worked out this proposal, who had gone over the different preambles submitted, we couldn't help but feel, looking over all the different preambles in other constitutions, where we found very, very long preambles and very, very short preambles. Some were as short as saying, "We the people of this State," whatever it was, "grateful for Divine Guidance, do hereby ordain and establish this Constitution for the State of Hawaii."

We felt that the preamble should be brief and concise and carry out our traditions and beliefs. We are very sentimental people and would love to have such wording as Dr. Larsen's, which is very, very nice, but I feel that it's a lot of words. I believe the rest of the committee felt that by putting it down in as brief and concise a form as we possibly could, and then present it to the committee for them to decide on, that we had a preamble which carried all the thoughts and views of the preambles presented.

"We, the people of the State of Hawaii, grateful for Divine Guidance." There was great argument as to whether it should be "our reverence to God" or there are many forms, but in Hawaii with all our different religions, we felt that the wording "grateful for Divine Guidance" would be more proper. "And with pride in our Hawaiian heritage" everything that goes along with it. A child that studies Hawaiian history will be reading and the people who live here will be believing in it. "And reaffirming our belief in a government of, for and by the people, do hereby ordain and establish this Constitution for the State of Hawaii." This carries everything; it's brief and concise, and I, as much as I liked the two or three preambles presented—they both had their points—as a Convention, I felt that without adding too many words which would carry the same thought, that the preamble of Committee Proposal No. 20 would be sufficient.

CHAIRMAN: We're having a little trouble with the public address system so the Chair would like to call a brief recess while the necessary repairs are being made, and also in the hopes that there will be possibly an amalgamation of some of these ideas.

BRYAN: My microphone is working, and I'd like to speak on this subject.

CHAIRMAN: I'm sorry, Delegate Bryan, but all of the mikes on this side are out and I think that possibly we'll call a brief recess subject to the call of the Chair.

(RECESS)

BRYAN: I don't think that in the interests of brevity or keeping our Constitution's preamble short that we should throw out these beautiful words that no state in the Union could find an equal to it. Any of the 48 states could rightly write a preamble similar to the one that's submitted by the committee, which I agree is a workable, usable, and very good preamble. But what state in the Union could say in the words of Kamehameha the First, "our reverence to God, also our respect for the big man, the small man," and so forth? Not one out of the 48, or the forty-ninth if it should be Alaska. Hawaii is the only state or possible state in the Union that can have a preamble in those beautiful words.

I'd like to say also that those words appeal to me because they are simple words. They are words that the people themselves can read and understand. I think one speaker said that many of the people may not read the Constitution, but certainly they will read the preamble, and I think that this is a preamble they can understand. I think it's beautifully said. I think that it really goes to the heart of the people who have their territory and have had for a long time, and I think that the proposal by Dr. Larsen warrants the support of this Convention.

CORBETT: I would like to speak in favor of the amendment offered by Delegate Larsen. I, too, feel that this is a very individual preamble. The other one, while workmanlike, is the sort of thing that could have been written in New York City or Buffalo or any place else. People on the mainland think of Hawaii as a land of poetry, and this is something of poetry to write into the workmanlike document that we have toiled on so diligently.

CHAIRMAN: Any further discussion on the amendment?

A. TRASK: I like this because I think the life in Hawaii is simple. The life of Hawaii is simple and everybody wants to be a kamaaina. The malihini, if you call anyone who has been here about two or three times, who visited here, he insists he is a kamaaina. Everybody wants to be a kamaaina.

The simplicity is just simply wonderful. I think there's warmth; I think there's a glow; I think there's a feel and there's a beauty and there's the startling loveliness of the ilima about this thing, and I'm all for it. Thanks to Dr. Larsen.

COCKETT: I am too in favor of this preamble given by Dr. Larsen. I think there's a lot of history pertaining to it. It's good for people now and also for our future generations to think and to know the people who lived here, and something about our King Kamehameha, the kind of king who brought the islands together under one government, and who believed in God, and also in serving the people; not only one class of people, but the big man, and the small man, and even the children, women and so on. So I am heartily in favor of this preamble by Dr. Larsen.

ASHFORD: If this could be put in the original Hawaiian, I think it might be better, but I'm wondering, I would like to ask a question of the proponent, whether the Committee on Style would have any leeway if it were to check with an Hawaiian scholar to see if the interpretation were correct. For myself, I think that - - I intensely dislike, "for the big man, the small man." I think that as a matter of style, that could be improved upon.

CHAIRMAN: Delegate Larsen, would you care to answer to that?

LARSEN: Yes, I must say that we did try to get the very best interpretation. I got the two best authorities on interpretation, Mary Pukui and Maude Jones at the Archives, and this is the correct interpretation. Now, as far as changing the words is concerned by the Style Committee, it seems to me that if we're quoting a person, then we should quote him, and that's what we tried to do.

KELLERMAN: I would like to speak in favor of Dr. Larsen's amendment. I suppose I am really a malihini. All those who have spoken in favor of it so far can claim, I think, the islands as their place of birth. I've been in these islands only ten years. To me this quotation from King Kamehameha would be a contribution to the culture of the United States. It expresses in simple and beautiful words the entire concept of social morality which is the basis and the only living basis for a republican form of government.

It also, in the last two lines saying, "We, therefore, with an understanding heart toward all the peoples of this earth," that is the same meaning that we have—or did have when I was there on the mainland—with respect to America, the haven of refuge for people from all over the world. On the mainland, it has largely been a haven of refuge for people from across the Atlantic. In these islands it is truly a haven for people from all over the world, and our islands have expanded the generosity of that thought in the fact of our tremendous diversity and unanimity and harmony living together.

I feel that rather than use a fairly stereotyped and simple preamble which, as Mr. Bryan has pointed out, could well have been used anywhere by any of the states, this is a contribution which we should hesitate not to give to our American constitutional and political thought.

CHAIRMAN: Further discussion?

ANTHONY: I wonder if the proponent of the amendment would tell us where the quotes are from the statement of Kamehameha.

LARSEN: Sorry, I've given away all my copies, but it starts with - - it ends with "with an understanding heart."

ANTHONY: No, the quotes, I mean, where is the beginning?

LARSEN: It was toward all his people, not toward all the peoples of the earth; therefore, it begins with Kamehameha expresses "our reverence to God, also his respect," and so on down to "with an understanding heart toward all his people."

ANTHONY: Mr. Chairman, I'd like to know where the quotes start.

CHAIRMAN: Where do the quotes begin, Dr. Larsen?

LARSEN: "Our reverence to God," and ends with "with an understanding heart toward all our people."

ANTHONY: In other words, the quotes are before the word "our" - -

CHAIRMAN: And after the word "earth." Is that correct? Does that answer your question, Delegate Anthony?

ANTHONY: I have a good deal of sympathy with the expression here, but - -

LARSEN: Could I correct that for a minute? It's not - - "earth" is not there. It's "with an understanding heart toward" is really the end of the actual quotes; it was toward his people, not all the people of the earth. That's the change we made, because in the evolution of Hawaii that's the change we would like.

CHAIRMAN: The quotations, then, are after the word "toward"?

ANTHONY: It should be, if you are going to put quotes, I think it should come after the word "heart." But what I wanted to call the body's attention to is, while we may want this bit of Hawaiian law in there, we don't want to be misunderstood. We don't want the people on the mainland to think we are a bunch of savages sleeping in the jungles, such as Mr. Bennett of the Hearst press reported during the Massie case. Also, you can't sleep on the wayside now; it's against the statutes. I'm being serious about this. I think if we are going to adopt this sentiment, we ought to make it perfectly clear that we are quoting from some ancient document, and we are not endeavoring to express anything that exists in Hawaii today.

LARSEN: May I answer my worthy opponent from the fourth district. I agree with him. I hope he'll make the amendment that the quotations will go after "toward" and beginning with "our reverence to God."

The other thing, the question of sleeping by the wayside, that's historic. The thing that's going to happen is, once you adopt this, throughout the states you are going to have the story of Kamehameha the First, the story of the splintered paddle, the story of Mamalahoa Kanawai. This is a great story of Hawaii, our greatest contribution, I believe, toward the peace of the world.

And, sleeping by the wayside, we're still sleeping by the wayside. I have a house that sits right by the wayside, and I like to feel I can sleep in that house with my doors open and not be molested, and we can translate it today. If Mr. Hearst misinterprets something, Mr. Hearst hasn't got half the standing in America that Kamehameha the First has, and I think Kamehameha the First's words, we want given.

I might say somehow the press apparently was interested in this story, so much so that two of my friends on the mainland, one from the *Arizona Times*, and another one a professor of public health in San Francisco, sent me clippings where the paper had written out the full story, in Arizona and California, about Kamehameha the First and the "law of the splintered paddle." It apparently appealed to them. I'm quite sure, as a number of these delegates have said, this is our great appeal and this is something that we can contribute to American culture.

KAWAHARA: I've been wondering all morning about the difference in the statement between the two proposals, the

proposal proposed by Dr. Larsen and the proposal as proposed by the committee. In the proposal as proposed by the committee the word "Divine Guidance" is used, and in the proposal suggested by Dr. Larsen, the word "God" is used. Do I understand it to mean that we are going to put in our Constitution the words, "in the words of Kamehameha the First, who said 'our reverence to God.'" Does it not mean his reverence to God? Does it not mean that perhaps his idea of God and some of our ideas of God may be different? If we are going to use the word "God" in this proposal and use the words "Divine Guidance" in the other proposal, there must be some difference.

Now, then, I have no objection to using the words of a great man. I have no objection to using the words of Washington or Lincoln or Caesar or anybody else, but in a document of this kind, I'm wondering whether we should place the name of a person. In looking over the preamble of our Federal Constitution, I see no reference to the word "God." "We, the people of the United States, in order to form a more perfect union, establish justice, ensure domestic tranquility, provide for the common defense, promote the general welfare and secure the blessings of liberty for ourselves and our posterity." Now, I have no objections to reference to God, except that perhaps many people have many different ideas as to what they believe the word to mean, and, of course, people may say well, if they believe differently, it's their own privilege and there's no harm done in putting that phrase in there.

I think we tend to confine ourselves too much to one man. Secondly, by putting the word "God" there, instead of some other word like "Divine Ruler" or "Divine Providence," we confine ourselves to one word, "God." For that reason I'm wondering about this proposal that Dr. Larsen has proposed.

LARSEN: May I answer that, please. I think we've evolved to the point where we no longer accept a two by four God that's good for Americans, another one good for Germans, another one good for somebody else. The amazing thing in reading the story of old Hawaii is that Kamehameha as a youngster grew up at the heiau. Every morning he got up on this heiau and prayed to the great Spirit that rules over all. Call that Divine Guidance, call it God, call it the Great Spirit that rules over all. As we are evolving, we are not trying to specify which God and what God. We recognize how ridiculous our own concept is when, during the first World War, I picked up a prayerbook by the Germans, where each German solder was reading and he was praying to God to help his arms to overcome the Americans; and the Americans were praying to their God to overcome the Germans. We should go beyond this concept and recognize this philosophy which so many people believe in, that there is something up above and higher than just human worth—Divine Guidance, if you will, God that rules over it all. The concept, "God," covers everyone's concept of something above man's laws. I also would call attention to the fact that this is a quotation, and that this was the quotation that Kamehameha made.

KAWAHARA: According to your statement, Dr. Larsen, you are inferring and implying that I should believe the way you do as far as God is concerned.

CHAIRMAN: Would you address your remarks to the Chair, please?

LARSEN: I didn't get that question. What was the question?

KAWAHARA: By the inference in the statement, you are inferring that perhaps I should believe in the same God as you do. I don't know enough about religion to know the difference; however, I think many people have their own beliefs as far as religion and God is concerned, and for that reason I - - the word here "God," capital G-O-D, in comparison to the other statement here, "Divine Guidance," I think there is a marked difference between the two. I would prefer something like "Divine Guidance," or "our Divine Creator," or something to that effect.

ROBERTS: I'd like to speak in favor of the amendment, but I would like to offer a few suggestions in the form of amendments which would bring the proposal of the committee closer to the proposed amendment, and include the basic ideas which are set forth in the committee proposal. I'd like to offer the following amendments. I'd like to read them first and the article, and then I would like to speak to the question, if I receive a second.

CHAIRMAN: Proceed.

ROBERTS: "We, the people of Hawaii," and add the words after that, "grateful for Divine Guidance," "grateful for Divine Guidance, reaffirm our belief in a government of the people, by the people and for the people - -

CHAIRMAN: Pardon me, Dr. Roberts, do you mean - -

ROBERTS: That's the same language, I'm reading the section.

CHAIRMAN: - - to leave the word "hereby" out?

ROBERTS: Delete the word "hereby," and substitute "grateful for Divine Guidance." Then continue the same language down to next to the last line and delete the word "our reverence to God, also"—we have taken care of that by putting the words "grateful for Divine Guidance"—and then put a quotation mark before the word "our." Then you have a quotation mark "our respect for," and that goes down to the word "molestation" and a quotation mark should be placed at the end of that word. Then the last line, add the word "hereby," "do hereby ordain and establish this Constitution," and add the words "for the State of Hawaii." Now that gives you the language of the committee proposal, plus the basic ideas presented by Dr. Larsen, with some slight changes in language.

[Part of discussion not recorded.]

KELLERMAN: . . . The preamble is basically a style instrument, but it is also, and it seems to me, it should be combed very carefully. I don't think Style should be allowed to change on that basis.

KING: A request has been made already to have Delegate Roberts read the form of preamble, the amendment that he proposed to Delegate Larsen's proposal. I'd like to have Delegate Roberts read that again more slowly and we can all copy it down.

CHAIRMAN: Would you read the amendment to the preamble, please?

ROBERTS:

> We, the people of Hawaii, grateful for Divine Guidance, reaffirm our belief in a government of the people, by the people and for the people, and do express in the words of Kamehameha the First "our respect for the big man, the small man, the aged man, the women and the children, who may ever walk the highways or sleep by the wayside without molestation." We, therefore, with an understanding heart toward all the peoples of this earth, do hereby ordain and establish this Constitution for the State of Hawaii.

ASHFORD: May I make another suggestion? Why do we have to say Kamehameha the First? When Kamehameha is referred to, it always means the Great Kamehameha.

CHAIRMAN: Do I understand that to be an amendment?

AKAU: May I analyze this very briefly?

CHAIRMAN: Pardon me, Delegate Akau. Do I understand that to be an amendment, Delegate Ashford? Is that

acceptable to Dr. Larsen? Delegate Larsen. Then we don't have to vote on it? Delegate Larsen.

LARSEN: I'm sorry.

CHAIRMAN: Is the deletion of the word "First" after "Kamehameha" acceptable to you as the maker of the amendment?

LARSEN: Does Delegate Ashford want "Kamehameha the Great"? Because there were many Kamehamehas.

ASHFORD: My point was that when Kamehameha is referred to, it always means Kamehameha the Great or the First, the others are the minor Kamehamehas referred to as the Second, the Third or what not.

LARSEN: Having been at Queen's Hospital for 20 years, we talked about Kamehameha the Fourth all the time, and it might be confusing. I think maybe the other thing, "in the words of Kamehameha the Great," does Delegate Ashford have any particular objection to "the Great"?

CHAIRMAN: You are willing to incorporate the words "the Great" after "Kamehameha"?

LARSEN: "The Great" is all right, yes.

TAVARES: When we are making a speech and we want to quote a philosopher, we don't say, "In the words of" and give a long history about the man. We say, "In the words of Kant," or, "In the words of Lincoln." We don't say Abraham Lincoln or which Lincoln it was. There was only one man who said those words, and, therefore, when you say "In the words of Kamehameha," anybody who wants to find it out will look which Kamehameha said that. So I don't think you need "the First."

LARSEN: I'm willing to accept that, especially when I get a legal opinion on it.

AKAU: While I realize that this quotation has been cut down somewhat, I say that it isn't a question of style, it's a question of content and substance. You have a quotation here, if I may be very technical, but you have nothing that it hangs on to. In other words, you haven't any verb, any action. You've got here, "our respect for the big man, the small man, the aged man, the women and the children, who may ever walk the highways or sleep by the wayside without molestation." That's the end of the quote. While I realize you go down there and say you do ordain something, by cutting this down you have taken out something that it needs. This can't stand up accurately in the form of English.

CHAIRMAN: Do you have a suggestion, Delegate Akau?

AKAU: I have no amendment to make, but I do think that we've lost something by eliminating our verb.

BRYAN: I'd like to answer that. The words "do express," I think adequately take care of that. "And do express our respect for the big man, the small man, the aged man, women and children," and so forth.

KING: As a matter of historical fact, there was only one Kamehameha. The others used the name as a title, just like King George, the First, Sixth, Seventh, Eighth, Ninth, Tenth. They had their own individual names, while Kamehameha was the name of the first Kamehameha; it was his personal name. I think that the elimination of the word "First" and the addition of no other word, would be quite all right. I would like to change the quotes - - the quotation marks, and put it after "our respect," beginning "for the big man." Quote, "for the big man, the small man" and so on. That possibly - - that quotation comprising five short lines there could be put in Hawaiian, and get the actual language that Kamehameha used in the famous law of Mamalahoe Kanaiwa.

CHAIRMAN: Is that suggestion acceptable to Delegate Larsen?

LARSEN: Perfectly O.K.

CHAIRMAN: Quotations be moved to in front of the word "for" at the top of the second column.

LARSEN: That's perfectly all right.

ASHFORD: Point of information. I would like to ask the proponent whether the words substituted by Delegate Roberts would not be a proper translation of the words of Kamehameha. "For the great man and the small."

CHAIRMAN: Delegate Larsen.

LARSEN: You mean "Divine Guidance"?

CHAIRMAN: No.

ASHFORD: "For the great man and the small" instead of "the big man and the small man."

LARSEN: Well, that to my mind is poetry. To me, we're talking in the terms of the countryside, the big man, the small man. We're not trying to make it sound great. I think it's a question of what it means, and to me the very simple, almost, words from the grass roots, have that much more clarity and poetry, than trying to bring in a word that possibly came from Harvard.

TAVARES: Do I correctly understand that Dr. Larsen has accepted removal of the words "our reverence to God" also?

LARSEN: Correct.

TAVARES: May I lighten the moment a little by an old story of World War I when across the trenches in the cold wintry weather, a German soldier hoisted up a sign reading "Gott mit uns," meaning "God with us," and an American soldier on the other side hoisted up another sign, "We got mittens too!"

CHAIRMAN: Is there any further discussion on the amendment as amended?

NIELSEN: I have a suggested amendment if it will be accepted. In this whole preamble we have stated nothing about our own constitutional liberty, which I think is, if not not on a par with Divine Guidance, it's certainly the thing that has built America. I'd like to ask if the proponents of this bill would accept to follow the words "grateful for Divine Guidance," the words "and our Constitutional liberties," because I think we should have something in about what we stand for and what we believe in. I think we believe in that just as much as in Divine Guidance. How about that?

LARSEN: May I ask Mr. Nielsen if he doesn't think that the great words of the Great Emancipator that "we reaffirm our belief in a government of the people, by the people and for the people," doesn't cover our constitutional liberties?

NIELSEN: That's a question of interpretation. I'd like to see our constitutional liberties spelled out.

CHAIRMAN: Do I understand you propose an amendment that the words "constitutional liberties" be incorporated after "Divine Guidance"? Would you restate your motion.

NIELSEN: After the words "Divine Guidance," "and our constitutional liberties."

CHAIRMAN: Is that acceptable to the maker of the amendment?

LARSEN: Well, no. To me it just kills the point that we are quoting a great American on constitutional liberties, and we are quoting it in his words, not our words, but we reaffirm our belief.

CHAIRMAN: Is there a second to the amendment?

PHILLIPS: Second the amendment.

NIELSEN: Speaking about what Mr. Larsen just said, he said we are speaking about a great American. I don't think Kamehameha the Great was a great American. He might have thought as we did, but - -

LARSEN: I was thinking of Abraham Lincoln.

CHAIRMAN: Gentlemen, please. I'm asking if there is a second to Delegate Nielsen's amendment.

PHILLIPS: I second that motion.

CHAIRMAN: There is a second. Is there any discussion on the amendment? All those in favor. Opposed. The amendment is defeated.

AKAU: Would you kindly give us, when you're giving, "all those in favor," say what we are in favor of?

CHAIRMAN: There has been an amendment proposed by Delegate Nielsen, and seconded, that after the word "belief" "grateful for Divine Guidance" -- pardon me—after the phrase "grateful for Divine Guidance," there be added the words "and our constitutional liberties." Everybody get that? Now for the question again. All those in favor please say "aye." Opposed. The amendment fails.

PHILLIPS: I would like to speak on the amendment that includes "grateful for Divine Guidance." I notice that the Federal Constitution does not include any reference to Divine Guidance, a Creator, a God or anybody else. It depends on the men themselves to make their government function and to devise those devices of government which will make it function. Now, that reminds me of a story I heard about a farmer who was looking at his fields and talking to a friend from the city, and his friend from the city said, "What a terrific job you and God have done with this land." And the farmer replied with, "You should have seen it before I helped God out. There was nothing but weeds here at that time." So I would feel that our government would be very much the same thing. There will be nothing but weeds in our government if we don't do it ourselves, and, therefore, we remain on the subject. I, therefore, move to delete the phrase "grateful for Divine Guidance," as it is in the Federal Constitution.

CHAIRMAN: Is there a second? There is no second.

ROBERTS: I was going to speak against that, and point to our Declaration of Independence which was signed on July 4, 1776, which ends, "And for the support of this Declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor."

CHAIRMAN: Are you ready for the question?

IHARA: I would like to ask the proponents of the amendments whether we are to respect the great man, the small man, the aged, women and children, who do not walk the highways or sleep by the wayside?

CHAIRMAN: I'm sorry, I can't hear you.

LARSEN: I heard it, Mr. Chairman, if I may answer. I'll call your attention, it not only respects them when they are in their homes, but it hopes that when they go outside "who may ever walk the highways," who may, if they wish; if they wish to stay home, they may. I think that's fairly clear, and to me, of course, it's beautifully simple. But I think that was the idea he had in mind, wasn't it? It doesn't limit it; there's no limitation here.

CHAIRMAN: Is the committee ready for the question?

KAUHANE: May I beg indulgence of the Chairman that we take a five minute recess, that we get the proper Hawaiian language from which this preamble is taken to satisfy the other delegates.

CHAIRMAN: I understand you are moving for a five minute recess?

KAUHANE: That's right.

ASHFORD: I second that motion.

CHAIRMAN: There is a motion for a five minute recess. All those in favor. Opposed. The ayes have it.

(RECESS)

CHAIRMAN: Committee of the Whole come to order. There is being printed a revised copy of Delegate Larsen's amendment to [Committee] Proposal No. 20, which will be distributed in a moment. Now, is there any further discussion on the proposal?

C. RICE: I think the committee's proposal is the best of the two. I don't see why we have to put Kamehameha's words in here. Kamehameha never conquered Kauai. No, he never conquered Kauai. He wasn't the ruler of all the people.

KING: Mr. Chairman, if I may reply to Senator Rice. Kamehameha did rule Kauai by cession from the last king of Kauai, Kaumualii, who ceded the kingdom of Kauai to Kamehameha and was retained as viceroy for Kamehameha after that cession.

C. RICE: Well, he enticed him on a schooner and really didn't conquer Kauai. Twice they sent in invading fleets of canoes, but the weather was with Kauai, and they got a Kona storm each time, and we killed five thousand at a time. These were the invading forces.

Now, the committee report - - I think they are only seeing sentiment in this other. I think the committee report—the one in the committee report is much better.

SILVA: Can I ask Mr. Rice a question?

CHAIRMAN: Delegate Silva, proceed.

SILVA: Mr. Rice, would you answer a question?

C. RICE: Gladly from the Senator from Hawaii.

SILVA: The question is this, "Was you there, Charlie?"

C. RICE: I was there in spirit.

LARSEN: May I also just remind you that Kamehameha was a contemporary of Washington, Jefferson. In the story that we're going to tell on the mainland, to think that this great contemporary of our great men who formed our nation should have expressed in these simple words the great rule that everyone is after.

[Part of discussion not recorded.]

CHAIRMAN: . . . by Delegate Larsen, and the amendment has just been read, and the question before the committee is whether or not to adopt the amendment as just read by the Clerk.

HEEN: I suggest that we adopt it in principle, so that if we do that, I think we can still improve upon the language.

CHAIRMAN: The suggestion is to adopt it in principle.

FONG: I am in sympathy with traditions and I am in sympathy with the words expressed by Kamehameha, but I'm speaking against this preamble because I feel that it does not express the sentiment of the people of Hawaii. Now, we are gathered here for the purpose of framing

a constitution. We are here for one purpose and that is to concentrate the political philosophy that we know best, the political philosophy as it has evolved through the ages, the political philosophy as it now stands as far as the people of Hawaii can, in their very developed state of mentality, express to the people and the world. Now, to me, these words of Kamehameha, although uttered by a very great man, do not in a way represent a very matured political thinking. It is difficult for me to accept this preamble the way it's written. "Respect for the big man, the small man, the aged man, the women and the children, who may ever walk the highways or sleep by the wayside without molestation." Now, people may pick up this preamble and make fun of it. What do you mean by "sleeping on the wayside without molestation"? Do you mean that the drunk can sleep on the wayside? That anyone can sleep on the wayside? To me, it represents not the best or the most developed political philosophy which we are capable of.

Now, we are writing this preamble which will be read by the 48 states of the Union, which will be read by 150 million people. To me, our preamble should be stately, should conform with the high ideals of the philosophical thought that we are capable of, and to express it in these words would not be in keeping with the spirit and with the purpose for which we are gathered here, that is, to write a Constitution in the best political theory that we know how. And certainly, in writing a preamble with these words, we are not expressing what we are capable of in our very highly developed society.

A. TRASK: I am rather surprised that the learned previous speaker does not see in this brief preamble two great spirits and two great names. Here we have, joining hands, two great contemporaries of world history and political thought, and that is Abraham Lincoln and Kamehameha. "Government of the people, by the people and for the people" unfortunately is a statement that the Republicans claim; and if the gentleman from the fifth district cannot see the great words engraved in simple language that are enshrined in the Lincoln Memorial in Washington, which I'm sure he has seen, I am rather surprised.

FONG: Point of order. I did not refer to the first part of this preamble. The first part of the preamble is also in the preamble which was presented by the committee. I am just talking about the second, the latter part.

A. TRASK: I'm afraid the gentleman is backing up on this matter. He refers to the preamble -- his entire objection to the offered amendment is the entire front face [of the] preamble. "The government of the people, by the people and for the people" are words enshrined so much, and how old they are we all know. We have without even quoting Lincoln -- and I would submit to an amendment if he wants "the words of Lincoln" in there, that's perfectly all right with me, but I'm sure he doesn't. The question is one of historical significance, of Lincoln and his expression, and we don't even have to mention Lincoln; any student with an elementary knowledge of history would know the words of Lincoln.

But to those who don't know the words of Kamehameha, and the great history and tradition and culture of Hawaii -- and let us remember, please, that it's only about as old as the Constitution is, about 1776, thereabouts, that the first white man, Captain Cook, came to Hawaii's shores. Let us understand that we have had a civilized government. Certainly any country in the world that has created people as big in stature, big in heart, as big in mind, with poetry and love, to create flowers and to have a word "Aloha" so magnificently loved by people all over the world, and the song enshrined by Queen Liliuokalani.

However, we may have advanced with respect to industrial and Flowers of Hawaii, enterprise and so forth, I'm sure we would be very hesitant to say that with respect to that great number of people—400,000 population in Hawaii at the time of Kamehameha, according to Vancouver's count or Captain Cook's count—there was no importation. We had a population almost as great as it is today supporting themselves and living off the land and the sea and the air. Can we in Hawaii do it today? We cannot. And were the people as little as I am today compared to the bigness of mind and heart of the people of those days?

I think, as Delegate Kellerman properly said, this preamble shows a continuity of history of these islands, and the culture and intellectual continuity that goes from Lincoln to Hawaii and back to the United States of America in the adoption in writing of what the Hawaiians had achieved here, had achieved and are continuing to achieve and to accomplish, the aspirations of America as defined in the Declaration of Independence. The greatest argument for statehood is that we have achieved completely in Hawaii the amalgamation of the races, all men are created equal. And for the delegate to say that we have not expressed in this poetic preamble something that embodies the very soul and heart and accomplishment of Hawaii is an extremely surprising statement.

APOLIONA: I am a Hawaiian and I pay my respects to that great alii, Kamehameha, but in reading over this amendment to our preamble, I find that the main essence in thought is Kamehameha and his law. It is because of the words of Kamehameha and his law that the people reaffirm their belief in that type of government. That's not true. We should not glorify one man in our Constitution, but we should give the people of the land the credit for the greatness of the land as it is today. The Constitution of the United States provides in its preamble for a more perfect union, towards a better understanding. We should not go back into the thinking of ancient history to look for contents to be put into our Constitution. The able delegate from Kauai has said that Kauai has never been conquered by Kauai -- I mean Kamehameha, pardon me. Kauai is going to be a part of this State of Hawaii. The people of Kauai are going to be part of the State of Hawaii; so, therefore, I say to you, Mr. Chairman, and this Convention, give to the people of Kauai, who are also the people of the State of Hawaii, the law of the land and the thinking of the people of the land and not the thinking of one man.

DELEGATE: Question.

ANTHONY: I think there is a great deal in what my brother Hawaiian has just said. We must remember that Kamehameha was a savage. He was a great man. We all recognize that. He lived in a Stone Age. Now I think that if we are going to incorporate this in the Constitution, we don't want language in there that's going to subject us to ridicule. I think if we're going to put that in at all, we certainly should take out the stanza, "who may ever walk the highways or sleep by the wayside without molestation," because if that's in there certainly people will wonder about what kind of life we have here. So I, therefore, move an amendment to delete the words, "who may ever walk the highways or sleep by the wayside without molestation."

CHAIRMAN: Is there a second to the amendment?

KAWAHARA: I second it.

HEEN: I have this contribution to make.

CHAIRMAN: Pardon me a moment, Delegate Heen. Was there a second to Delegate Anthony's -- It has been seconded. Proceed, Delegate Heen.

HEEN: This should read:

We, the people of Hawaii, grateful for Divine Guidance, reaffirm our belief in a government of the people, by the people and for the people, and mindful of the words of Kamehameha that the law of the land shall be for the big, the small, and the aged man, the women and the children who may ever walk the highways or sleep by the wayside without molestation, we, therefore, with an understanding heart toward all the peoples of the earth, do hereby ordain and establish this Constitution for the State of Hawaii.

CHAIRMAN: Pardon me, is that an amendment?

CROSSLEY: That was an amendment, and I second it.

HEEN: That's an amendment.

LARSEN: I accept the amendment. I'd like to talk on it for just a minute.

CROSSLEY: I would like to say -- Am I recognized?

CHAIRMAN: I just wanted to make sure that everybody had the additional words of Delegate Heen.

TAVARES: Point of order.

CHAIRMAN: State your point of order.

TAVARES: I thought it was the understanding we were just going to vote in principle. Now we are going back to amending the words again.

CHAIRMAN: That is correct. The Chair would like to rule that the question is whether or not to accept this preamble in principle, and that the words do not alter the sense of the preamble, and I believe the call for the question is in order.

CROSSLEY: It would seem to me that in voting on the principle then, I would have the right to speak to the principle?

CHAIRMAN: Correct.

CROSSLEY: I think the principle as just expressed by the delegate from the fourth district, who made the previous motion, would perhaps clarify in the minds of quite a few of us as to how this would work. Therefore, I would now be in favor of this amendment as just changed, because I do think that it changes the sense considerably; and in adopting a principle we also would like to know the intent of the words and that would give us a guidance as to how they would work. Now, most of the people who have spoken against "who may ever walk the highways or sleep by the wayside without molestation" are people from the City and County of Honolulu where you just pound the gutters, the streets and hot pavements; but it's still true, especially on Kauai, that people do walk the highways and that they do sleep by the wayside. You can see it any day, and they do it without molestation. I think the trouble is too many people live in the city, and I'm in favor of this thing, and I do not think it will be held up to ridicule to read those words. I think they mean something different to people who live in rural areas.

HAYES: Point of privilege.

CHAIRMAN: State your point, Delegate Hayes.

HAYES: I rise to personal privilege in regards to a statement just made by Garner Anthony. I don't believe he really meant what he said, that Kamehameha was a savage. I would like to say that there would be no Statehood Convention today if the history of Hawaii had been one of hostility instead of hospitality.

[Part of the discussion was not recorded. The following is from the minutes of the committee.]

ANTHONY: May I clear the record by retracting that remark; what I meant to say was that I think he was a pagan; the President told me he was a pagan.

Delegate Larsen quoted from a nineteenth century journal an article on Kamehameha.

Delegate King stated that the question was on the amendment offered by Delegate Heen.

Delegate Larsen accepted the amendment.

Delegate Kauhane read what he said were the true words of King Kamehameha when he issued the law of the broken paddle, which he quoted. He said: "He speaks of the small man, of the little children when he refers to them as --" (read in Hawaiian and gave the English translation of the law of the broken or splintered paddle.)

[Recording resumed.]

KAUHANE: . . . when we say in this preamble, "in the words of Kamehameha the First, our reverence to God, also our respect." Kamehameha had never, in the utterance of the "Law of the broken paddle," said a prayer to God before he uttered those words. Certainly we read in Hawaiian history where Kamehameha has always paid homage to God. The Hawaiians had their own gods before the white man came to these islands. They had Lono who was the god of fish; they respected Hina; and the gods spoken of by the Hawaiians most frequently were Lono and Hina. So that when they went to pray and pay homage to their gods, they paid homage to Lono and Hina. It was the white men who came to these islands, who brought the Bible with them and took the Hawaiians away from the gods, their respected gods, Lono and Hina, and told them that there is a Divine God in heaven. That's why we have in the Hawaiian Bible the phrase "Praise to Almighty God," which is "Ka Makua ka Lani." When the Hawaiians open their prayers by saying such Hawaiian words, "Ka Makua ka Lani" they mean "the God in heaven," and that was taught to them by the white man when he came to these Islands.

So I see no reason for us to continue saying or trying to put in the preamble the "Law of the broken paddle." Let us express that in the committee report through our sincerity in carrying on that great homage to that "Law of the broken paddle" rather than write it in the Constitution as a preamble. I believe the committee report is sufficient when we say, and embody the same thinking that was expressed by Kamehameha, when we say this in the preamble, "in a government of the people, by the people, and for the people." Those are the very words by inference Kamehameha said when he laid down the "Law of the broken paddle." Even though some have said those are the words spoken by Abraham Lincoln, it is true that no truer words were spoken by Kamehameha when by inference he said the law is the government of the people, by the people, for the people, when he laid down the "Law of the broken paddle."

I feel that the committee proposal is proper, and if we want to make any reference to the "Law of the broken paddle" as laid down by Kamehameha, let us put it in the committee report and I believe everyone will respect the words of Kamehameha.

LOPER: I have a suggestion that might help solve this problem. By rearranging the language, if we would make it read something like this, I think it would be more accurately an expression of our thought.

We, the people of Hawaii, grateful for Divine Guidance and mindful of the ancient words of Kamehameha's law of protection "for the big man, the small man, the aged man, the women and the children, who may ever walk the highways or sleep by the wayside without molestation," reaffirm our belief in a government of the people, by the

people and for the people; and with an understanding heart toward all the peoples of this earth do hereby ordain and establish this Constitution for the State of Hawaii.

ANTHONY: Thus far, we have asked what the version of the Hawaiian is. We've gotten two, and the proponents of the amendment to the preamble have not been able to furnish us with the Hawaiian text. It seems to me that we should have that text here, and then translate it. Now, the translation of President King is different from the translation of the proponent of this amendment. I think that this matter ought to be deferred until we've gotten more information so we can vote intelligently on it. If we have the text, we can get a Hawaiian dictionary and find out what these words mean.

ARASHIRO: Second the motion.

CHAIRMAN: Do I understand that to be a motion to defer, Delegate Anthony?

ARASHIRO: Second the motion.

ANTHONY: Yes, I move to defer.

LARSEN: Could I speak on that for a moment? The one way not to translate Hawaiian is by taking a dictionary and trying to get it word by word.

CHAIRMAN: I'm sorry, Delegate Larsen, the motion to defer does not allow debate. All those in favor of deferring the amendment to Proposal No. 20, please say "aye." Opposed, "no." Motion is lost.

LARSEN: I think we're ready to vote on it and I would like to call for the motion.

SERIZAWA: Are we voting on the question as to whether we accept the principle as written by Dr. Larsen and one by the committee?

CHAIRMAN: The question before the committee is whether or not to accept the preamble offered by Dr. Larsen as an amendment to Proposal No. 20 and as amended on the floor.

SAKAKIHARA: Can I further amend the amendment, Mr. Chairman?

CHAIRMAN: You may.

SAKAKIHARA: I would like to amend the proposal -- the amendment of Delegate Larsen in the following way:

We, the people of the State of Hawaii, grateful for Divine Guidance, mindful of our Hawaiian heritage, reaffirm our belief in a government of the people, by the people and for the people, do hereby ordain and establish this Constitution for the State of Hawaii.

KAUHANE: I second the amendment.

LARSEN: That misses the point entirely, of course. I would like to call for a motion, because we either accept the idea of expressing these two great principles of government in quotes, or we don't. I feel that Sakakihara's goes back to the original of the committee. It seems to me what we're voting on is whether we accept that simple language, you might say the ordinary, or whether we use the quotes.

CHAIRMAN: You are speaking against the amendment which you do not accept. Is that correct?

LARSEN: That is correct.

CHAIRMAN: Then any discussion would be on Delegate Sakakihara's amendment.

ARASHIRO: Was there a motion to the previous question?

CHAIRMAN: No, there was not. The question before the committee now is the amendment as offered by Delegate Sakakihara. Call for the question? All those in favor please say "aye." Opposed, "no." The Chair is in doubt. I will ask for a show of hands. I believe that will be sufficient.

SAKAKIHARA: Roll call.

CHAIRMAN: Call for a roll call. How many in favor of a roll call? Roll call is ordered.

CROSSLEY: Before the roll call is taken, a point of information, please. As I understand it, we're not voting on Mr. Sakakihara's amendment or any other amendment, we're voting on the principle as to whether or not we want the language as proposed by the committee and quite similarly proposed by Delegate Sakakihara, or the language proposed by Delegate Larsen and amended by Delegate Heen; the two principles, as I understand it, that we're going to vote on.

CHAIRMAN: That is not correct, Delegate Crossley. The amendments up to now have been acceptable to Dr. Larsen as the maker of the original amendment. This amendment is not acceptable, and the question now is whether or not the amendment will be accepted by the committee. So I'd like to ask the Clerk now to read the preamble as it would sound amended by Delegate Sakakihara.

TAVARES: Before that happens, may I ask a further question, and that is, it seems to me that first of all we should decide in principle, and then we should have it understood that we can further amend whichever language is adopted in principle, because I'd want -- if the Sakakihara amendment is adopted, I would want to suggest a further amendment to it.

CHAIRMAN: The Chair at the moment is powerless to do anything unless Delegate Sakakihara wishes to withdraw his amendment. A roll call has been asked for, and I'm going to ask the Clerk to read the preamble as amended by Delegate Sakakihara.

HAYES: I move for a five minutes recess.

CHAIRMAN: I don't think it would be necessary, if you'd wait until --

CLERK:

We, the people, of the State of Hawaii, grateful for Divine Guidance, mindful of our Hawaiian heritage, reaffirm our belief in a government of the people, by the people and for the people, and do hereby ordain and establish this Constitution for the State of Hawaii.

A. TRASK: Point of order.

CHAIRMAN: State your point.

A. TRASK: This is not an amendment. This is not an amendment at all. It's nothing else but the original article of Committee Proposal No. 20. Only one word "affirm," and it's altogether the same. It is not a proper amendment, and I say that therefore that leaves with us the amendment of Dr. Larsen, which is in truth an amendment.

CHAIRMAN: The Chair rules that it is an amendment.

SERIZAWA: It is an amendment because the words -- additional words have been added to it.

CHAIRMAN: Will the Clerk call the roll.

J. TRASK: It is my understanding that if we vote "aye" we'll be voting for the amendment as submitted by Delegate Sakakihara.

CHAIRMAN: That is correct. Roll call, please.

LARSEN: And if you vote "yes," you vote against including any of Kamehameha's words, is that right?

CHAIRMAN: That's correct, even though you are out of order, Dr. Larsen. Roll call.

Ayes, 28. Noes, 26 (Ashford, Bryan, Cockett, Corbett, Crossley, Hayes, Heen, Holroyde, Kellerman, King, Kometani, Larsen, Loper, Lyman, Mizuha, Ohrt, Porteus, Roberts, St. Sure, Tavares, A. Trask, J. Trask, Wirtz, Woolaway, Yamamoto, Castro). Not voting, 9 (Gilliland, Lai, Lee, Mau, Phillips, Richards, Sakai, White, Wist).

CHAIRMAN: The ayes have it. The - -

LARSEN: Mr. Chairman, the noes have it.

CHAIRMAN: What was that again? 28 ayes.

LARSEN: I thought that you said the ayes have it.

CLERK: 28 ayes, 26 noes, 9 not voting.

LARSEN: Sorry, I - -

CHAIRMAN: The ayes have it.

ROBERTS: I'd like to offer an amendment to the proposal, in line four after the word "people," add the following words, "and with an understanding heart toward all the peoples of this earth," and continue, "do hereby ordain and establish."

YAMAMOTO: Second the motion.

CHAIRMAN: It's been moved and seconded that after the word "people" in the fourth line, the following words be added, "and with an understanding heart toward all the peoples of this earth," and then proceed with "do ordain and establish." Is that correct?

ROBERTS: That's correct. May I speak in favor of that?

CHAIRMAN: You may.

ROBERTS: The delegates seem to feel ready to vote on this thing. I assume that they mean they will vote in favor of it. All right.

CHAIRMAN: Proceed, Dr. Roberts, if you wish. Is there any discussion on the amendment as proposed? All those in favor?

ANTHONY: Can we hear the amendment? Will the Chair have the Clerk read the amendment, please?

CHAIRMAN: Will the Clerk read the amendment?

CLERK: In line four, after the word "people," add the following words, "and with an understanding heart toward all the peoples of this earth."

CHAIRMAN: Does that answer your question, Delegate Anthony? Call for the question?

HAYES: I would like to speak against this amendment, and I would like to reaffirm my stand on why I feel that Kamehameha the Great should be a part of the Constitution of the State of Hawaii.

SILVA: Point of order.

CHAIRMAN: Do you have a point of order, or don't you?

SILVA: She isn't speaking on the amendment; she's speaking on the previous question.

CHAIRMAN: The Chair rules she's speaking on the amendment. Proceed, Delegate Hayes.

HAYES: My reasons against the amendment which I'm speaking on; from New York, the State of New York to the State of California, each state, I believe, has its own background and history and reasons why they believe that in their constitutions certain principles should remind them of the old grand State of New York or of California. For the same principle, I feel that Hawaii should maintain her historical spot, the most important thing that Hawaii has presented to other nations. Hawaii is different from any other state, and the reason why I say she is different is because she is the only territory of the United States that ever had a king rule the territory. No other state in the Union has had that privilege and, therefore, the people of the United States do look to Hawaii as one of the historical and most interesting territories.

CHAIRMAN: Delegate Hayes, may I interrupt? Would you confine your remarks to the amendment. The question of whether or not Hawaii is included is not germane to the amendment.

HAYES: The reason why I'm trying to compare the difference between this amendment, which has ignored that great Kamehameha - -

CHAIRMAN: That has been voted.

SILVA: Point of order. I asked a moment ago and you ruled that she was in order. Then you finally say that she's out of order.

HAYES: May I say just say one more word, and then I'll stop. I would just like to say to the chairman and the delegates of this Convention that Hawaii would never be known to any other state. Why? Other states have everything which is in common with one another, but Hawaii doesn't because of her great king, her people, the historical background that we should have in this preamble of the new State of Hawaii.

CHAIRMAN: Does everybody understand what the amendment is?

ROBERTS: I'd like to state that the amendment which I offered is on the assumption that the previous motion was made and lost. I was in complete sympathy and supported the proposal presented by Delegate Larsen; but once the proposal has lost, it seems to me that this amendment is in order and proper and does provide some language, and therefore, ought not to be opposed by those who have favored the previous proposal.

I'd like also to state that the language, "government of, for and by the people," is essentially the language of Lincoln and drafting of that in terms of language could be left with the Style Committee.

CHAIRMAN: Are you ready for the question?

ANTHONY: I'm a little bit confused here. What is the status of Delegate Sakakihara's amendment?

CHAIRMAN: Delegate Sakakihara's amendment passed by a vote of 28 to 26. To that amendment has been added the phrase after the fourth line, after the word "people," comma, the phrase, "and with an understanding heart toward all the peoples of this earth," and then proceed with "do ordain" - - "do hereby ordain and establish."

ANTHONY: I'm substantially in accord with this; I'm substantially in accord with the expression of the ancient doctrine of protection as enunciated by Kamehameha. What I did object to was the attempt at a literal translation of words which we didn't have before us. Now, it seems to me that if we take a little time on this, we can get that thought that Dr. Larsen wanted to get in without putting words in that are not true translations.

SILVA: I rise to a point of order. That motion has been lost. The only thing before this Convention now in the Committee of the Whole is Dr. Roberts' amendment.

ANTHONY: I move for a deferment.

CHAIRMAN: That is correct.

A. TRASK: I second - -

BRYAN: Point of order.

CHAIRMAN: Delegate Kometani, did I hear you second the motion to defer?

A. TRASK: I did second that.

CHAIRMAN: Was that Delegate Trask?

A. TRASK: I second the motion of Delegate Anthony to defer this matter.

CHAIRMAN: The motion has been made and seconded to defer the Committee Proposal No. 20 as amended. All those in favor please say "aye." Opposed. Carried.

KING: I move the committee rise and report progress and ask leave to sit again.

HOLROYDE: I'll second that motion.

CHAIRMAN: All those in favor say "aye." [Carried.]

Afternoon Session

CHAIRMAN: Committee of the Whole come to order. Delegates may sit at their ease.

When we rose to report progress, prior to lunch, there was still being debated Committee Proposal No. 20. The chairman of the Committee on Miscellany has asked that the Committee of the Whole turn its attention to those committee proposals which yesterday were deferred. So, in accordance with that request, the Chair would like to request that the committee turn its attention now to the committee proposals in the following order: 18, on distribution of powers; and then after that, 19, 17, 12 and ending with Proposal No. 20 on the preamble. So we will now turn our attention to Committee Proposal No. 18 on the distribution of powers. The Chair recognizes Delegate Yamauchi.

YAMAUCHI: The committee still feels that there should be an article in regard to the distribution of powers and we haven't come to an agreement after talking to some of the members. I would like to ask Delegate Smith to talk on this matter.

CHAIRMAN: Possibly before we hear from Delegate Smith, I'll ask the Clerk to read the Committee Proposal No. 18 as it stands amended, just to make certain.

CLERK:

> The powers of government shall be divided into three branches; legislative, executive and judicial, except as expressly provided in this Constitution.

CHAIRMAN: That is the way the committee proposal stands with the proposed amendment, "except as expressly provided in this Constitution."

SMITH: Going to the Legislative Reference Bureau and getting more information, I tried to get as much information as I possibly could. It seems to me that among the 41 states that have this provision, it's a matter of statement of philosophy that there shall be three distinct branches of government, and apparently the majority of them have the same wording. I thought I'd read a couple of them to show you the same trend of thought. "The powers of"—this is from Alabama—"The powers of the government of the State of Alabama shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit, those which are legislative to one, those which are executive to another, and those which are judicial to another." They all have the -- practically all of them are the same in thought, that there should be some expression in the constitution of the concept of having three distinct branches of government. I'll read one more and that is from Missouri: "The powers of government shall be divided into three distinct departments—the legislative, executive and judicial—each of which shall be confided to a separate magistracy, and no person, or collection of persons, charged with the exercise of powers properly belonging to one of those departments, shall exercise any power properly belonging to either of the others, except in the instances in this constitution expressly directed or permitted."

From all the information that I could gather, it seems that it's just a statement which has been brought down through the years and as far as the different states following them, there are not very many. In writing the Model Constitution, they tried to put it right in the Constitution in making three distinct branches of government.

I am quite sure that in all the literature that's written up that you will find that the sentiments are these. The doctrine of the separation of powers, inherited from a political theory long since discredited, is soundly enunciated as a matter of course, the phraseology varying but little from state to state. During the last century and a half Americans have gradually been learning that they must concentrate authority in order to prevent the diffusion of responsibility. But the doctrine in very explicit language still has a prominent place in most state constitutions, even though, as one commentator remarked a number of years ago, it is rapidly falling into a condition of harmless senility.

But the way we have it worded as amended, I haven't been able to find any constitution that has that wording because it's just knocking the teeth out of it. Now I know that there will be persons objecting to it thoroughly, that there will be instances where certain things will be unconstitutional, but it's the very fact that we have three branches of government which we wanted, with separate powers, so that the lawmakers will not be -- the ones making the laws will not be carrying them out.

CHAIRMAN: Any further discussion on Committee Proposal No. 18 with its proposed amendment?

TAVARES: I agree with what has just last been read, that this business of trying to put each department of government into a separate vacuum, sort of a contained compartment, is impracticable and unworkable. I say again that the Federal Constitution has no such requirement of -- express requirement of separation of powers and yet the courts have at times held that actions which went too far in attempted exercise by one department of powers which by the Constitution are given exclusively to another department, were invalid.

Now, I'd like to point out some of the difficulties you get into with an express provision like this. Here's *American Jurisprudence* that says this. Here is one decision that is cited. "If the removal of a sheriff by the governor is an executive function, a statutory provision for review of his action by the courts would be unconstitutional as an attempt to invest the judiciary with a function of the executive department." That's *American Jurisprudence,* page 888. Another statement, "It is the rule in some jurisdictions that under a constitutional provision that the three departments of the government shall be distinct and that no one branch can interfere with the duties of the others, a writ of mandamus will not lie to compel official action by a governor, whether the act is of the kind regarded as ministerial or otherwise. Under this view, such a writ is not issuable against an executive for the purpose of compelling him to perform a duty even though such duty is imposed upon him by statute."

That is the danger that we run by putting an express provision and tying every department up so that one can't interfere with the other, by an express provision like this. And when you say that the governor shall perform ministerial acts, some courts have said that kind of a provision prohibits

the courts from making him do his duty. I warn the members of this Convention, therefore, that if they put in a provision like this, they are likely to run the risk of this kind of court decision in the future, instead of leaving it to the well-interpreted separation of powers implied in the Federal Constitution and implied in this.

ANTHONY: Will the speaker yield just a moment?

TAVARES: I'll yield.

ANTHONY: What this endeavors to do is to incorporate in a sentence the basic doctrine that came down from Montesquieu, which was incorporated in the Federal Constitution, of the doctrine of the separation of powers. As Brother Tavares has pointed out, that is a well-understood doctrine in constitutional law, and we know what that means. There is certain danger in endeavoring to state it in a brief sentence like this. It seems to me that we will have the doctrine of separation of powers without incorporating it in so many words. Therefore, it seems to me unnecessary that we should incorporate a statement in the Constitution to that effect.

CHAIRMAN: Any further discussion?

TAVARES: For the benefit of the lawyers, may I make one more—there's various others—but I'll quote one more citation from *American Jurisprudence,* page 910. "An act creating an executive tribunal with power to adjudicate disputes arising out of motor vehicle accidents on the highways of the state contravenes a distributive constitutional provision. In one jurisdiction laws establishing the Torrens system of land registration,"—that's the land court—"and providing for an examination by the recorder of deeds or registrar of titles of the facts in relation to the title to land and for the issuing of a certificate of ownership, have been held invalid as constituting an unconstitutional conferring of judicial power, even if the effect of such certificate is only to start the running of a statute of limitations. There are, however, contrary rulings on this point . . . " and so forth. In other words, the courts are in dispute over the meaning of that type of term.

CHAIRMAN: Is the committee ready for the question?

A. TRASK: May I ask Delegate Tavares, if the judicial decisions in the cases referred to, that the constitutions of those states had such a provision in their constitution?

TAVARES: In one or two of those citations, it did state that there was an expressed - - such an express provision. I rather think that most of these are states which have that express provision. That's the impression I get from reading, but I haven't checked - - double-checked the decisions; I didn't have the time since yesterday, except to find the general citations in the search books.

CHAIRMAN: Does that answer your query, Delegate Trask?

A. TRASK: Yes, certainly. I feel similarly to Delegates Tavares and Anthony. I feel—and attorneys are not much respecters of themselves as a class—I think it would be - - it would give unscrupulous lawyers a great opportunity to hamstring a lot of legislative matters that ordinarily would fall within that zone between the various departments.

I am inclined to be in favor of it, but in appreciation of the committee's work I would not move, but I would suggest that for them to consider that after the word "government," to consider, "The power of government is," insert, "is declared to be divided into three branches, legislative, executive and judicial." Primarily, the question is one of declaration; that there is certainly a judicial declaration that we recognize the historical and continuing construction of the form of government, that it is divided into three parts. And this would be merely declaratory of a principle. Now, it seems to me that it would put it therefore in a liquid state and not make it as concrete and distinct and rigid as the form of the article now appears. But for the safety of all, I would be in favor of having the matter altogether deleted.

CHAIRMAN: You then do not - - you do not propose that as an amendment?

NIELSEN: I'd like to ask Delegate Smith a question. How many states did you say had a similar provision as Proposal 18 in their constitution?

SMITH: Forty-one.

NIELSEN: Forty-one.

CHAIRMAN: Any further discussion on the committee proposal, with its proposed amendment? Are you ready for the question?

ROBERTS: I have a question to ask some of the lawyers. Would the deletion of this section which states very succinctly the separation of powers, would the deletion of this section prevent a suit by a person claiming that one branch of government was usurping the authority of another.

CHAIRMAN: Is there an answer?

TAVARES: I would say not within the limits that have already been established by the federal courts in interpreting the Federal Constitution. They have struck down some infringements where they went beyond a reasonable twilight zone between the two departments. The courts have said that there is a separation of powers, that that is the effect of the Federal Constitution. For instance, if Congress, I believe, assumed to try a judicial question, a case pending before the courts, and tried to pass a law saying that the judgment shall be thus and so, undoubtedly the Supreme Court or the federal courts would strike it down as being an invasion of the judicial power.

ROBERTS: I'm talking now about the State Constitution.

ANTHONY: There was an instance in recent years which I think Delegate Roberts has reference to. That involved a statute passed by the legislature, I believe it involved a claim. It went to the courts and the courts threw it out. It went to the Supreme Court of Hawaii. The same statute in modified form was again readopted and the Supreme Court of Hawaii held—in my judgment erroneously—that that action of the legislature was a usurpation of the judicial power. I think that's the sort of thing that Mr. Roberts is talking about. Now, I wouldn't be particularly in favor of this provision to correct that sort of a decision. It seems to me that the place to correct that is in the courts themselves rather than to try to do it in a rigid statutory - - constitutional provision.

CHAIRMAN: Does that answer your question, Delegate Roberts?

ROBERTS: Yes, it does. May I make a statement now?

CHAIRMAN: Proceed.

ROBERTS: It is my general feeling that when we set up our Constitution we are providing for the separation of powers. We have provided for three branches of government, very specifically; so that whether we put this section in or leave it out, there is still the basic concept that there has to be a separation of powers. If the legislature were to take on responsibilities or to divide responsibilities in contravention of that basic policy of separation of powers, it would seem to me that the courts could strike that down, even if we did not have this particular paragraph. It is, therefore, my feeling that there is no objection to the inclusion of this section, which does point out that from the point of view of our government that we do recognize that there are three branches of government, that we do not want one

branch of government to operate the entire government. Therefore, I would suggest that that section be retained in the Constitution, even though the courts ultimately do have the responsibility of construing it. But if one branch of government takes upon itself too great powers, it would seem to me then that there is a proper safeguard, in terms of our basic philosophy, that there are and should be a separation of powers as between judicial, legislative and executive.

TAVARES: Am I correct in my recollection, we have already struck out the latter part of that article, "and no person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others" and so forth?

CHAIRMAN: That is correct.

TAVARES: And also the first sentence has been amended to read as follows: "The powers of government shall be divided into three branches: legislative, executive and judicial." Is that the way it now reads?

CHAIRMAN: After "judicial" there is a comma, followed by the phrase, "except as expressly provided in this Constitution." That was an amendment by Delegate Roberts yesterday.

ANTHONY: I'd like to have an explanation as to the exceptions. I didn't know there were exceptions. Would the delegate who made that amendment explain the exceptions.

CHAIRMAN: Delegate Roberts, would you like to answer that question?

ROBERTS: When the original proposal submitted by the committee was amended to delete the words, "No person or persons belonging to or constituting one branch, etc." My feeling was that some exception ought to be made for those sections in the Constitution where we have, in fact, recognized that there is an overlapping of power. Unless those things which we have written into our Constitution, which recognize that - - are expressly that this section shall not apply to the things which we have expressly written into our Constitution.

ANTHONY: That does not quite satisfy me. I didn't know what the express exceptions were. It seems to me that if we want to express the political philosophy of the separation of powers, you can do that very simply by saying, "The powers of government shall be divided into three branches: executive, legislative and judicial," period.

CHAIRMAN: Do you amend to delete the clause?

ANTHONY: I would move to make the amendment that I have just stated. "The powers of government shall be divided into three branches: executive, legislative and judicial," period, and to strike out the rest of the language.

CHAIRMAN: Is there a second to the motion?

A. TRASK: I second that motion, but is the pending motion, that of Delegate Roberts, with respect to the words, "except as expressly provided in the Constitution"?

CHAIRMAN: No, Delegate Trask, the pending motion is whether or not to adopt the article to read, "The powers of government shall be divided into three branches: legislative, executive and judicial, except as expressly provided in this Constitution." The amendment by Delegate Anthony deletes the words, "except as expressly provided in this Constitution."

A. TRASK: I second the motion of Delegate Roberts - - I mean Delegate Anthony. And I say with reference to the deletion of the contribution by Delegate Roberts, "except as expressly provided in this Constitution," those words, I feel, are very dangerous. He has not referred himself or addressed himself specifically as to any particular necessity for this thing and I see danger in it.

In our Constitution, as in the Federal Constitution, the courts have interpreted great implied powers in the Congress to do this, that and the other thing. It may very well be that the supreme court of Hawaii may, by looking over the Constitution from all corners, decide that there are certain implied powers, and certain implied powers may be given to certain departments of the government. Now, if you have this situation, where there is some question with reference to the executive having some power that may border on a legislative matter, like with respect to delegation of power or with respect to quasi-judicial determination, this expression, "except as expressly provided in this Constitution," when you are faced with only an implied power, it would be very doubtful in my mind whether or not "except as expressly provided" could spell out effectively an implied power. Therefore, I think it should be left out altogether.

CHAIRMAN: Ready for the question? The question before the committee is as to whether or not - -

HEEN: I think the word - - the use of the word "into" is wrong. "The powers of government shall be divided into three separate branches."

CHAIRMAN: Delegate Heen, we would like to have the expression of the committee on the deletion of the phrase, "except as expressly provided in this Constitution," after which time, I think the discussion of the word "into" would be in order.

The amendment is for the deletion of the phrase, "except as expressly provided in this Constitution." Those voting aye will vote to delete that phrase. All those in favor please say "aye." Opposed, "no." Carried unanimously.

The amended section before the committee now reads, "The powers of government shall be divided into three branches: legislative, executive and judicial," period.

HEEN: Instead of using the word "into," I think we ought to use the word "among." "The powers of government shall be divided among three branches of government."

ANTHONY: I accept the amendment.

CHAIRMAN: Will you make that as a - -

HEEN: I so move, that the word "among" be substituted for the word "into."

CHAIRMAN: I believe, Delegate Anthony, the proper motion is to second.

ANTHONY: I second it.

CHAIRMAN: It has been moved and seconded that the word "into" on the second line be deleted and in lieu thereof the word "among" be placed.

HEEN: I move to strike the words "separate and distinct."

CHAIRMAN: That has been stricken.

HEEN: That's been stricken?

CHAIRMAN: That has been stricken.

HEEN: How does it stand now?

CHAIRMAN: With your amendment, it would read, "The powers of government shall be divided among three branches: legislative, executive and judicial," period.

HEEN: Between the word "three" and the word "branches," I move that the word "fundamental" be inserted so that that sentence would read, "The powers of government shall be divided among three fundamental branches: legislative, executive and judicial."

CHAIRMAN: Is that further amendment seconded?

ANTHONY: I'll second it.

CHAIRMAN: After the word "three," the word "fundamental" be inserted. Is that the extent of your amendment, Delegate Heen? Is there any discussion on the amendment?

ROBERTS: I have a question. The way the section now reads it provides that "The powers of government shall be divided among three fundamental branches." Does that mean that you can divide among three branches in such form that you can give the judicial certain executive powers? I have in mind, for example, an action in the supreme court of the State of Michigan dealing with an arbitration statute. That arbitration statute provided that a member of the judiciary be permitted to sit on the court dealing with certain executive functions, an arbitration tribunal. The supreme court of that state held that that was contrary to and in violation of the separation of powers. This section permits the setting up of any functions in any branch of the government. The original language of the committee provided for three separate and distinct branches, so whatever functions were allocated must be allocated in the appropriate division of government. This would give you a hodgepodge, an opportunity to divide your functions instead of maintaining your separation of powers.

CHAIRMAN: Delegate Roberts, I understood that you rose for a question?

BRYAN: I think that the answer to his question is that you have -- Dr. Roberts? Mr. Chairman.

CHAIRMAN: Dr. Roberts, there is a question being addressed to you instead.

BRYAN: Is not the answer to your question that the word "divided" provides that it be divided into three departments? I don't think if you divide anything three ways that you can have a hodgepodge.

ROBERTS: You can divide functions among three powers, and give each power part of it.

MIZUHA: At this time I would like to move for the deletion of this entire article.

KAWAHARA: I second the motion.

CHAIRMAN: It has been moved and seconded that the entire article be deleted. I believe that we have agreed in the committee that we would vote on the merits of the motion and not to delete. The amendment before the committee is that the section should read, "The powers of government shall be divided among three fundamental branches: legislative, executive and judicial." The Chair is ready to put the question.

MIZUHA: I rise to a point of order. When did we agree that we could not delete this article?

CHAIRMAN: I would like to ask the delegate to withdraw his motion so that we may vote on the proposal as presented.

MIZUHA: Would the defeat of the previous motion result in the deletion of the article?

CHAIRMAN: The question before the house is the amendment, Delegate Mizuha.

MIZUHA: Well, I believe that if the motion to delete the article is put and carried, then the article will be defeated and we don't have to vote on the amendment.

J. TRASK: Point of order. I think the delegate from Kauai is wholly out of order. We've already got a motion and a second to the amendment to the proposed section. The Chair has recognized the motion and the second. So the question on the floor is the inclusion of the word "fundamental" and the Chair has ruled that that motion is in order, so we should proceed along those lines.

BRYAN: Wouldn't it be -- The motion to amend would be purely academic if the motion to delete would have carried.

CHAIRMAN: That is correct, and the Chair is willing to put the motion to delete. Ready for the question? The motion has been made by Delegate Mizuha and seconded by Delegate Kawahara to delete the entire article.

ROBERTS: May I speak in favor of that?

CHAIRMAN: You may.

ROBERTS: I was for the inclusion of this article in such a form that it spells out the separation of powers. I believe that the separation of powers exists whether we have this article or not. Rather than see it go in this form, I'd just as soon have it deleted.

CHAIRMAN: All those in favor of the motion to delete please say "aye." Opposed. Motion is deleted -- The proposal is deleted.

The Chair feels, however, that those delegates who feel that these articles should be deleted should speak up early in the debate rather than to waste an hour of the committee's time.

HOLROYDE: On that point, I moved to delete that section yesterday but you wouldn't let me.

CHAIRMAN: We'll now move to Committee Proposal No. 19. I'll ask the Clerk to read the proposal as it stands with amendments.

CLERK:

> Oath of Office. All public officers and employees shall, before entering upon the duties of their respective offices and employment, take and subscribe to the following oath or affirmation: "I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States, and the Constitution of the State of Hawaii; and that I will faithfully discharge the duties of my employment or the office of ____ to the best of my ability; and that I do not advocate or belong to any party, organization or association which advocates the overthrow by force or violence of the government of the State of Hawaii or the government of the United States." The legislature may prescribe further oaths or affirmations.

CHAIRMAN: What is the pleasure of the committee?

KAGE: I am speaking against the amendment to include the word "employee" and also to amend the oath --

CHAIRMAN: May I ask -- there is no motion to accept the proposal before the committee.

KAGE: That motion was made yesterday.

CHAIRMAN: No, the motion was to defer.

HOLROYDE: I move for the adoption of this section.

BRYAN: I second the motion.

CHAIRMAN: Thank you.

KAGE: We are specifically speaking of the oath of office in this particular proposal and when we end it with the sentence, "The legislature may prescribe further oaths and affirmations," we are speaking of the oaths of loyalty. If we were to include the word "employees" and request that he take the oath of office, we will be having a rat catcher or a janitor trying to faithfully discharge the duties of his office. The committee feels that the office -- the oath of office and oath of loyalty are two separate and different matters. If you try to combine the two oaths into one, you are trying

to put two things into one basket. The committee further feels that the oath of loyalty is a statutory matter and that it should be left to the legislature.

CHAIRMAN: Any further discussion on the proposal? Ready for the question?

TAVARES: Just what is the proposed amendment now? May we get it?

CHAIRMAN: The proposed amendment is - - The proposal as amended reads:

> All public officers and employees shall, before entering upon the duties of their respective offices and employment, take and subscribe to the following oath or affirmation, "I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States, and the Constitution of the State of Hawaii, and that I will faithfully discharge the duties of the office of _____ to the best of my ability; and that I do not advocate or belong to any party, organization or association which advocates the overthrow by force or violence of the government of the State of Hawaii or the government of the United States." The legislature may prescribe further oaths or affirmations.

BRYAN: Point of order.

CHAIRMAN: Delegate Bryan, state your point of order.

BRYAN: I don't believe that the amendment to include the word "employees" was ever voted on yesterday, was it? I believe the rest of the amendments were.

CHAIRMAN: The Chair's understanding is that it was, but I - -

A. TRASK: I made the amendment and it was considered and debated upon and then at long last the committee said that it would accept the inclusion of the words "employees" and "employment," and "my employment or," Now, is it that the committee today is not accepting that amendment?

CHAIRMAN: Delegate Kage, would you - -

KAGE: The committee did not accept "employees" and "employment."

CHAIRMAN: The committee did not?

KAGE: Did not.

CHAIRMAN: I see.

TAVARES: Can't we start all over again and consider now that the amendment is being proposed and vote on it that way?

A. TRASK: I do move that after the third word "officers" we have inserted the words "and employees"; and on the second line after the word "offices," insert the words "and employment"; and on the sixth line after the word "duties of," insert "my employment or."

CHAIRMAN: Is there a second to the motion to amend?

J. TRASK: I second the motion.

TAVARES: In opposition to that motion, I should like to add my voice. I feel that when a person takes an office, it is proper to require in the Constitution that he take an oath of office. I feel that when you come down to employees, that should be left to the discretion of the legislature and I don't think it is necessary. We actually do have a loyalty oath now for all officers and employees by law. I do feel that in a Constitution you shouldn't go into too much detail and the officers are the ones that perform the important functions of government. The employees only take orders from somebody else. I think there is a distinction between an oath of office for officers prescribed in the Constitution and trying to prescribe an oath for all employees.

CROSSLEY: I have the original language which has been amended. I now have another amendment on my desk which is written out and my fellow delegate over in the fifth has proposed a third. I wondered if we couldn't have a few minutes recess to get these all correlated so that we can find out whether the committee is far apart on these others and then have a committee proposal or a committee report as to how they feel on these amendments. So I would move that we have about a five minute recess.

A. TRASK: I second it.

CHAIRMAN: All those in favor of the recess say "aye." Opposed. Carried.

(RECESS)

CHAIRMAN: Committee of the Whole come to order, please.

ANTHONY: Point of information. What's before the house at the moment?

CHAIRMAN: Before the house is the amendment offered by Delegate Trask calling for the insertion in the first line after "officers," the word "and employees"; in the second line after "offices," the words "and employment"; and in the third to the last line after "duties," the words "my employment or."

ANTHONY: I understand the delegate may withdraw that.

A. TRASK: These amendments were offered because of the oath that has been offered by Delegate Ashford and that's why these were made, but if the other portion is going to be left out, I at this time withdraw the proposed amendment.

CHAIRMAN: You withdraw your proposed amendment?

ASHFORD: I've been advised that everything will be much simplified if the amendment which I offered yesterday and which was adopted was dropped out as being an appropriate matter for the legislature to take care of. In view of the fact that the ordinances will contain a provision that no officers shall be eligible - - that no one shall be eligible for office if he advocates or is a member of an organization, and so forth, advocating the overthrow of the government. So I, therefore, move the reconsideration of the amendment I offered, which was adopted yesterday.

NIELSEN: I'll second that to clear the deck.

CHAIRMAN: It has been moved and seconded that the amendment which was adopted yesterday, offered by Delegate Ashford, which was adopted be reconsidered. That amendment was in the second to the last line after the word "ability," a comma and add the words "and that I do not advocate or belong to any party, organization or association which advocates the overthrow by force or violence of the government of the State of Hawaii or the government of the United States." Do you wish to reconsider? All those in favor of reconsideration please say "aye." Opposed. Carried.

Now is there a motion - -

TAVARES: Before the final motions are adopted, I was going to offer an amendment but I changed my mind.

CHAIRMAN: Delegate Tavares, if you will hold a moment. The purpose of the reconsideration was to allow for the withdrawal of the amendment.

ASHFORD: May I now withdraw my motion to amend?

CHAIRMAN: Delegate Ashford has withdrawn the amendment which we have voted to reconsider.

ANTHONY: Mr. Chairman.

CHAIRMAN: Delegate Tavares had the floor.

TAVARES: I would yield to Delegate Anthony.

CHAIRMAN: Delegate Anthony.

ANTHONY: I move that Proposal No. 19 as brought out by the committee be adopted.

TAVARES: I second that motion, but in seconding it I would like to state that I was about to offer an amendment but changed my mind when it was shown to me that Section No. 19 of the Hawaiian Organic Act applies to all offices of the government of the Territory of Hawaii. However, I believe that the committee report, or the record at least here, should show that there have been exceptions to this rule in cases where we have had to appoint someone outside of the territory, say like a commissioner of deeds, and so forth, where he isn't a citizen of the United States, that this would not prevent the State from appointing in cases of necessity when we couldn't get a citizen in a foreign country to serve as a commissioner of deeds or some officer like that for the State. We would not require him to swear -- support the Constitution of the United States or the Constitution of the State of Hawaii because in so doing he would be asked to commit an act of disloyalty perhaps to his own country. With that understanding, I will not offer the amendment which I was going to, making an exception in just such cases.

CHAIRMAN: The Chair will see that is incorporated in the report of the Committee of the Whole.

DOWSON: The committee has concurred on that matter and we are heartily in accord that it be included in the report of the Committee of the Whole about the non-citizens, the exception about taking the oath by non-citizens in special cases.

CHAIRMAN: It shall be done that way. Question before the committee --

HEEN: In line six of the proposal as printed, I would suggest that we delete the word "the" following the word "discharge" and substitute for the word "the," the word "my."

CHAIRMAN: The word which?

HEEN: "My," M-Y. And delete the words "of the office of" at the end of that line and substitute for those words, the word "as," A-S. So that, for instance, if you were to appoint members to a board, then it would read: "My duties as a member of the Board of Regents." It would be easier to use for different situations. "As a member of the commission." I move the adoption of my amendment.

CHAIRMAN: Is there a second? There is a second that in the sixth line after the word "discharge," the word "my" be substituted for the word "the" and the word "as" be substituted for the phrase "of the office of." Any discussion on the amendment? The question before the committee is on the amendment. All those in favor please say "aye." Opposed. Carried.

Now the committee proposal as amended is before the committee.

DELEGATE: Question.

CHAIRMAN: Call for the question.

DOWSON: I move the adoption of the committee proposal as amended.

CHAIRMAN: The motion has been made.

H. RICE: Second it.

CHAIRMAN: All those in favor of adopting the committee proposal as amended, please say "aye." Opposed. Carried.

We will now turn our attention to Committee Proposal No. 17 relating to intergovernmental relations. When we deferred action on this proposal yesterday, one amendment had been offered and that was in the third line to substitute in lieu of the word "its" appearing before "political," substitute in lieu of the word "its," the word "their," t-h-e-i-r. The Chair's understanding is that that amendment was accepted by the committee. Is that correct, Delegate Yamauchi?

YAMAUCHI: That's correct.

CHAIRMAN: That is correct, so that the committee proposal is before the committee now. Is there any discussion?

LOPER: Do I understand that there is now a motion for the adoption of this section before us?

CHAIRMAN: There is not yet.

ANTHONY: I move that the word "all" be deleted.

CHAIRMAN: May I have a motion to adopt the committee proposal?

DOWSON: I move for the adoption of [Committee] Proposal No. 17.

SAKAKIHARA: Second it.

CHAIRMAN: Moved and seconded.

ANTHONY: I move that the word "all" be deleted in line three of the proposal.

CHAIRMAN: That is, the word "all" to be deleted in the third line before the word "matters."

NIELSEN: Second the motion.

CHAIRMAN: It has been moved and seconded to delete the word "all."

KANEMARU: The committee accepts the deletion.

CHAIRMAN: Delegate Kanemaru, the committee does accept the deletion of the word "all" in the third line. Any further discussion?

LOPER: I rise for some information. I would like to ask the committee chairman or a member of the committee why this section is necessary. It would seem to me that this can be assumed to be true without putting it into the Constitution at all.

KANEMARU: As a member of the subcommittee on Miscellaneous Matters, if you will allow me I will attempt to clarify this matter to the honorable delegates of this Convention. I'm not an authority on this, so I will quote a few paragraphs [from a letter from the Legislative Reference Bureau.]

> The proposed section on federal-state relations is necessitated by the growth in recent years of programs involving actions by both levels of government, typically entailing the use of grants-in-aid by the federal government. Some of the constitutional obstacles which have been encountered by states, and which in large part would be obviated by adoption by Committee Proposal No. 17, are set forth in the *Manual on Federal-State Relations* of the Missouri Constitutional Convention of 1943, at pages 35-37.
>
> The authors of the Model State Constitution also noted the necessity for a provision similar to Committee Proposal No. 17. The fourth edition of the Model State Constitution explains the advocacy of such a provision as a means of overcoming the barriers to federal-state cooperation created by state courts:
>
> > . . .Recent developments have clearly indicated the desirability -- indeed, the necessity -- of such provisions, for the states now have important relations with the federal government on the one hand, with

their own local units on the other, and with each other. The questions which arise in this field are so numerous and are frequently so pressing that provision should be made in advance to insure the constitutionality of such measures as may be thought necessary by responsible legislative and executive officers in dealing with them.

The provision of federal-state relations is a direct answer to those barriers to federal-state cooperation erected by the courts of a number of states in the early thirties. It has the backing not only of leading authorities in constitutional law but of actual experience. There would normally be no question regarding the right of the legislature to establish agencies for interstate cooperation, as provided in . . . the section on interstate relations, but questions have arisen in a number of states as to the right of the legislature to appropriate for the support of agencies of an interstate character. If the development of interstate cooperation is to be promoted as it can and should be, under present day conditions, this is one obstacle which should not be permitted to arise.

The proposed section would also facilitate cooperation between Hawaii ahd mainland states. It would remove any possible constitutional barriers to participation by Hawaii in such interstate activities as the Council of State Governments or the National Conference on Commissioners on Uniform State Laws; entering into compacts with other states; or, more generally, joining in the growing movement towards cooperation and reciprocity by the various states.

CHAIRMAN: Does that answer your question, Delegate Loper?

LOPER: Thank you very much.

H. RICE: Why shouldn't this proposal read, "The legislature shall" instead of "may"?

CHAIRMAN: There is a question of the committee. Any member of the committee wish to answer?

ROBERTS: There might be some agencies with which we don't want to cooperate. This merely provides for those when we do want to cooperate and want to expend funds, that we don't run into any difficulties. But if this requires that we "shall," then we may be required to join all of the various operations of a character of this type and would be required to cooperate with them, even though we're not in accord with some of their policies.

KAWAHARA: May I ask a question of a member of the committee here? I notice a similar provision in the Model Constitution and in that constitution the words, "The legislature shall provide by law for the establishment of such agencies as may be necessary and desirable to promote cooperation on the part of this state with other states of the Union." And I noticed in the committee proposal the words, "The legislature may provide for cooperation." I wonder if it's possible for the legislature to directly provide for cooperation without passing certain statutes or certain laws.

CHAIRMAN: Is there a member of the committee that would like to answer that question?

KAWAHARA: Because this seems to be an outright grant of power that they may provide for cooperation, and that seems to be a very difficult thing to do, as far as I can see here.

CHAIRMAN: Is there an answer to the question of Delegate Kawahara?

KAGE: I think if he were to read the word "for," I think that clarifies the situation. You do not provide cooperation, but you provide for the cooperation. What we are trying to do in this article is bring about cooperation between the state and Union, between state and state, between state and city, between city and city.

CHAIRMAN: Does that answer your question, Delegate Kawahara?

NIELSEN: Would you read the article now, the section as amended.

CHAIRMAN: The article reads as amended:

The legislature may provide for cooperation with the United States, or other states and territories, and their political subdivisions, in matters affecting the public health, safety and general welfare, and may appropriate such funds as may be necessary to finance its fair share of the cost of such activities.

CHAIRMAN: Call for the question.

RICHARDS: I have a question to ask. I was not here when the amendment was made changing the word "its" to "their." I think there is a distinct difference in meaning between those two points. If it's the legislature providing cooperation between the political subdivisions of the State of Hawaii, the term would be "its." If it is referring to the State to cooperate with political subdivisions of other states and territories, then "their" is the proper word, but I don't think that the two are synonymous in this case.

CHAIRMAN: I believe the Chair can indicate the reasoning there. It was brought out by Delegate Heen yesterday that the reference in the pronoun is to the United States and, therefore, the word "their" is used - - and other states and territories, "their" is used in reference to United States, other states and territories.

RICHARDS: Well then, the legislature by inference then may not provide for the cooperation between one of its political subdivisions and the political subdivision of another state.

CHAIRMAN: Is there any - -

HEEN: When we had a ban on the exportation of orchids, there was a situation where they might have had some cooperation between the County of Hawaii and the County of San Francisco. So it would seem to me that the language to be used here should be broad enough to take care of a situation of that kind. In order to do that, and in order to conform to the idea that Delegate Richards has in mind, that first part should read: "The legislature may provide for cooperation on the part of this State and its political subdivisions with the United States, or other states and territories, and their political subdivisions, in all matters affecting the health" and so on.

CHAIRMAN: Now you move an amendment then.

HEEN: That seems to be satisfactory. That will take care of cooperation between counties.

RICHARDS: I'll second that motion.

CHAIRMAN: Delegate Heen, will you restate your amendment for the benefit of the committee as well as the delegates?

HEEN: "The legislature may provide for cooperation," after the word "cooperation," insert the words "on the part of this State and its political subdivisions."

CHAIRMAN: Is that amendment agreeable - - acceptable to the committee?

YAMAUCHI: The committee accepts the amendment.

CHAIRMAN: The committee accepts the amendment. There is a call for the question? Committee ready for the

question? All those in favor of the Committee Proposal No. 17 as amended please say "aye." Opposed. Carried.

YAMAUCHI: I move for the adoption of this proposal as amended.

CHAIRMAN: That was the motion that was just carried, in view of the fact that the committee had accepted the amendment. I'll ask the committee to turn their attention to Committee Proposal No. 12 regarding the seat of government. The committee proposal reads,

> The seat of government of this State shall be located at the City of Honolulu on the island of Oahu, unless otherwise provided by law.

Is there a motion to adopt?

DOWSON: I move for the adoption of Committee Proposal No. 12 relating to the seat of government.

KING: Second the motion.

CHAIRMAN: It's been moved and seconded.

ASHFORD: I think that was moved yesterday and I moved an amendment. I wish now to withdraw the amendment. I think it was in an improper place.

CHAIRMAN: Delegate Ashford has withdrawn the amendment which she offered yesterday.

C. RICE: Why do we have to put in the words "unless otherwise provided for by law"?

CHAIRMAN: Would a member of the committee care to answer the question of the delegate?

C. RICE: Let's have it once and for all.

YAMAUCHI: I didn't get the question.

CHAIRMAN: The question is, why should the words "unless otherwise provided by law" be included?

YAMAUCHI: I think that was explained in the committee report. In the event the legislature feels that the capital should be shifted to another area, then the provision should be made for such change.

BRYAN: I think there's another good reason for that, too. The Legislative Committee is going to report out a section which will include in the event of disaster and so forth, the capital may be moved temporarily.

YAMAUCHI: I would like to explain further that in the event, "in case of invasion, insurrection, conflagration, epidemic, or for other emergency resulting from an act of God, the legislature would be empowered to move the seat of government to a temporary location." And I believe that is taken care of by the Legislative Committee. Also, "the phrase 'provided by law,' shall authorize the legislature to establish methods to employ in determining the location of the seat of government."

CHAIRMAN: Does that answer your question, Delegate Rice?

YAMAMOTO: I'd like to add a little bit on this. I prefer to have the words left in because of the reason that, as you know, there is a chance that the capital city at the present time, we haven't got enough room, and in the years to come, you might have to expand. That is the reason why I would say that these words must stay in. It wasn't very well stated in this committee report that just because you have the population on the island of Oahu, the capital city must be here, because in the State of New York, I would say that New York City has a population over eight million people, while your capital city is in Albany where there is a population of 130,000.

CHAIRMAN: Any further discussion?

SAKAKIHARA: I move for the previous question.

SILVA: Second the motion for the previous question.

HEEN: I was wondering why they didn't use the word "capital." In other words, if that word is used, it might read "Honolulu, on the island of Oahu, shall be the capital of this State."

CHAIRMAN: Do you move that as an amendment to the proposal, Delegate Heen?

HEEN: I do.

HAYES: I'll second it.

CHAIRMAN: It has been moved and seconded that the proposal should read: "Honolulu, on the island of Oahu, shall be the capital of the State, unless otherwise provided by law."

HEEN: Correct.

KAGE: I think both the amendment and the proposal, the intent are the same. I think it's a matter for the Style Committee to take it up.

HEEN: To me, my amendment is more fashionable than the other.

CHAIRMAN: All those in favor of the amendment, please say "aye." Opposed. The amendment is lost.

SILVA: Previous question, I so move.

CHAIRMAN: The Chair will now call for the question.

NIELSEN: I want to explain my vote. I think it should be in Kona, so I'll have to vote no.

CHAIRMAN: All right. The question before the committee is whether or not Committee Proposal No. 12 as brought in by the committee shall be adopted. All those in favor please say "aye." Opposed. Carried.

The Chair will ask the committee now to turn its attention to Committee Proposal - -

HAYES: Personal privilege. Sitting on this side, it sounds as if the same crowd says "aye" and the same crowd says "no."

CHAIRMAN: That sounds the same way up here, Delegate Hayes.

Before the committee now is Committee Proposal No. 20 regarding the preamble to the Constitution. Prior to the recess, the amendment by Delegate Sakakihara carried, so that the preamble would read:

> We, the people of Hawaii, grateful for Divine Guidance, mindful of our Hawaiian heritage, reaffirm our belief in a government of the people, do hereby ordain and establish this Constitution for the State of Hawaii.

Subsequently, there was an amendment proposed and seconded, proposed by Delegate Roberts, to insert after the word "people" in the fourth line, the word - - the clause "and with an understanding heart towards all the people of this earth." That amendment is before the committee at the present time. Is there any discussion?

ANTHONY: During the noon recess there has been distributed three or four versions of the attempt of Dr. Larsen to put into the Constitution the Law of Kamehameha. In order that we may consider those versions, I now move that we reconsider our prior actions on Dr. Larsen's amendment.

MIZUHA: Second.

CHAIRMAN: There is a motion to reconsider our action on the amendment. All those in favor say "aye." Opposed. The ayes have it.

DELEGATES: Roll call.

SILVA: There is a request for roll call.

CHAIRMAN: The Chair has ruled, Delegate - -

SILVA: A roll call is always in order, if you know your rules. The Chair is out of order.

CHAIRMAN: How many in favor of a roll call. Roll call has been ordered. The question before - -

LOPER: I rise to a point of personal privilege. I believe the purpose of the roll call is to publicize the way people vote. I suggest that they vote so we can hear. I think I missed at least 12 last time.

KING: As a matter of information, I'd like the Chair to state that the roll call is on the motion to reconsider, is it not?

CHAIRMAN: That is correct.

KING: I'd like to speak to that point of reconsideration. It is made in good faith by one who voted against the original proposition offered by Dr. Larsen - - Delegate Larsen and amended by several versions of the same proposal. It meets the feeling on the part of a good many of the delegates that the preamble to the Constitution of the State of Hawaii should pay some attention to our unique and exotic background in history and make some reference to the traditions that make Hawaii a little different from any one of the other 48 states.

SILVA: I rise to a point of order. I think the speaker is out of order.

KING: Well, I'm speaking on the point of information that the reconsideration will nullify and abolish that effort to give those an opportunity to rephrase their amendment to meet the feeling of the majority. The amendment as originally proposed was not acceptable, but the various versions that have been worked out since might be acceptable. So a vote against reconsideration would estop any effort to meet the majority opinion of the delegates, and I feel that the vote against reconsideration should not carry.

SILVA: I would like to know - -

ANTHONY: Can't the Chair ask those who requested the roll call to withdraw it. It's only fair; work has been done on it; let's take a look at it. It's not going to hurt anything.

SILVA: It always seems that fairness lies in the minority. There was a vote taken; the majority ruled against it. Then you ask for reconsideration and you say, well the minority will rule this Convention.

ANTHONY: I voted against it.

CHAIRMAN: Delegate Silva, I believe you stand to be corrected. Delegate Anthony voted with the majority and he has asked for a reconsideration. Now the Chair rules that the motion for reconsideration is in order. There has been requested a roll call and a roll call is now in order unless the motion is withdrawn. I presume the motion will not be withdrawn. Further debate is out of order.

APOLIONA: I'm not going to debate on that question. I voted against the adoption of Dr. Larsen's motion. As a matter of courtesy, I will vote yes to reconsider that question.

CHAIRMAN: Thank you. Will the Clerk please call the roll. The question is on whether or not to reconsider the action on Committee Proposal No. 20.

KING: Mr. Chairman, may I ask - - make a motion to have a five minute recess?

CHAIRMAN: The roll call hasn't been announced, the results.

Ayes, 42. Noes, 10 (Akau, Doi, Fong; Kanemaru, Kauhane, Kawahara, Luiz, C. Rice, Serizawa, Silva). Not voting, 11 (Arashiro, Fukushima, Lee, Mau, Okino, Phillips, Porteus, Sakai, J. Trask, White, Wist).

CHAIRMAN: The ayes have it. Delegate King.

KING: I now move for a five minute recess.

A. TRASK: Second.

CHAIRMAN: Recess has been called. All those in favor. Opposed.

(RECESS)

CHAIRMAN: Will the Committee of the Whole come to order.

It is now 3:45. If we can confine our debate to the essential points, I think we can get through with Committee Proposal No. 20 and Committee Proposal No. 14 which relates to the seal and that will conclude all the miscellaneous matters and possibly we can adjourn by 5:00.

We now have before us Committee Proposal No. 20 and the motion to reconsider the action of this morning was carried, so that we have before us the amendment to Committee Proposal No. 20 as originally offered by Delegate Larsen.

KAGE: As I see it, we have five amendments to the committee proposal and the committee proposal makes it the sixth. In other words we have six different versions of the preamble. I am not expressing the views of the committee; I'm just expressing my own personal views. If we were to, as the Convention, work on these six versions of the preamble, I think we'll stay until doomsday to decide on one and we'll never get anything done. I am not in favor of that, and so I would like to move that these six preambles be referred to the Style Committee and be reported out.

CHAIRMAN: Your motion is to refer. Delegate Kage, actually we have only one amendment before the Committee of the Whole. There are several typewritten sheets on the desk of the delegates, but the amendments have not been placed formally before the committee.

KAGE: I'm sorry.

LARSEN: Could I just tell the chairman that the number who put out these various propositions, I think they boil down to one that Senator Heen has and that I think that all those who want Kamehameha's law expressed have that. If that's voted out after Heen gives it, then we go to the committee proposal and then we're through.

CHAIRMAN: If I may bring out the matter before the committee. The amendment before the committee is the amendment as originally offered by Delegate Larsen. Now if there is to be an additional amendment, it is in order at the present time; otherwise, action on Delegate Larsen's amendment is in order. Is there any - -

KING: I think the motion to reconsider carried with it the abolition of all preceding amendments. I'm not sure that that is the parliamentary situation, but I'd like to suggest now that we start from scratch with the committee proposal pending before the committee and the amendment about to be offered by Delegate Larsen or Delegate Heen to the committee proposal will be considered as the first amendment. If that is the proper procedure, I would suggest that the committee move a pro forma adoption of the committee proposal to bring it before the committee.

CHAIRMAN: The Chair is in doubt as to whether that is the correct procedure, but possibly if Delegate Larsen at this time would withdraw his amendment - -

LARSEN: I'll be very happy to.

CHAIRMAN: That places before the committee, Committee Proposal No. 20 without amendment, and that is the matter before the committee at the present time. What is your pleasure, gentlemen?

YAMAUCHI: I move that Committee Proposal No. 20 be adopted.

APOLIONA: I second that motion.

CHAIRMAN: It has been moved and seconded that Committee Proposal No. 20 be adopted. Any discussion?

HEEN: Delegate Larsen has asked me to submit this amendment on his behalf.

LARSEN: Correction, please.

HEEN:

> We, the people of Hawaii, grateful for Divine Guidance, and mindful of the ancient words of Kamehameha, that the law of the land shall apply equally to all the people, so that the aged man and the women and children, may forever walk the highways or sleep by the wayside without fear, and, with an understanding heart towards all the people of this earth, do reaffirm our belief in a government of the people, by the people and for the people, and do hereby ordain and establish this Constitution for the State of Hawaii.

CHAIRMAN: Delegate Heen, you offer that as an amendment? Is there a second?

LARSEN: All right. I think Senator Heen is a little bit modest, so I'll offer that as an amendment.

LOPER: Second the motion.

CHAIRMAN: Has this amendment been printed?

ANTHONY: It will be printed in just a minute.

CHAIRMAN: As I understand the amendment, taking it from the amendment which bears the name of Delegate Heen, in the third line after the word "shall" delete the words "be for the big, the small and," insert in lieu thereof the words "apply equally to all people so that"; and in the fifth line delete the word "molestation" and insert the word "fear"; so that starting on the third line with the word "shall," the printed amendment that we have before us will read, "shall apply equally to all people." "Shall apply equally to all the people, so that the aged man, the women and the children who may ever walk the highways or sleep by the wayside without fear." Is that correct, Delegate Heen?

HEEN: Delete the word "who."

CHAIRMAN: Delete the word "who" in the fourth line, so that starting with the word "shall" in the third line, the amendment would read -- that portion of the amendment would read, "shall apply equally to all the people, so that the aged man, the women, and the children may walk the highways or sleep by the wayside without fear." Is that correct?

WOOLAWAY: How about the young adults?

CHAIRMAN: Is that correct?

HEEN: That's correct.

CHAIRMAN: Now that amendment is before the committee. Is there any discussion?

LARSEN: It's just being passed out now, if there is any question.

IHARA: Where does the quote start?

CHAIRMAN: Delegate Ihara, that is now printed and is being passed out, so we'll have a moment's pause. Now the amendment is before the committee. Is there any discussion?

KAWAHARA: Is there any reason why the words, "a government of the people, by the people and for the people," is there any reason why those words shouldn't be in quotes? After all, all morning I've been hearing that these words have been taken from the speech, Lincoln's Gettysburg Address. If that is true, I believe some due credit should be given to Abraham Lincoln. For that reason, I'd like to know whether Dr. Larsen intends to have those words in quotation.

LARSEN: Well, they were so well known and everybody knows who pronounced them and we weren't quoting the whole speech, but just a sentence that we didn't think quotes were necessary, but I'd like to ask Mr. Wist if he feels quotes would be necessary when we say, "of the people, by the people, and for the people"?

KAWAHARA: As I see it, then, in this preamble here we are ordaining and establishing a constitution for one or two or three or four reasons. As I can see it, one of the first reasons is we are grateful for Divine Guidance; next, the whole phrase there has reference to the words of Kamehameha; and the third section has some reference to the words used by Abraham Lincoln. Because of these reasons, we are ordaining and establishing our Constitution. Our Federal Constitution, in the preamble of our Federal Constitution, we go a little beyond that, and the preamble of our Federal Constitution was written quite long ago. I repeat that in our Federal Constitution, in our preamble, there is some reference to justice, domestic tranquility, common defense, general welfare, liberty, posterity, and so forth and so on. I don't know. I think this preamble here somewhat limits the activities of government. For that reason, I believe that we should not adopt this type of a preamble.

CHAIRMAN: Any further discussion on the amendment?

SILVA: I would like to speak against the amendment. The purpose, in my opinion, is you are using in this preamble, "mindful of the ancient words of Kamehameha," then you explain Kamehameha's law. That should not be the preamble, it should be in the report to this preamble, that whatever was gotten into the preamble was gotten because of the words of Kamehameha, in the report and not the preamble. I just want to point that out and I think that we're going off half-cocked here by getting the words of Kamehameha and using Kamehameha as an example because surely Kamehameha should not be set up as an example for democracy of the kind we have here. I do say that he may have, in his later years, come up with some law, some rule, but that is not the true life of Kamehameha. Kamehameha never lived in a democracy and to use -- it's all right to use his one sentence in his old age that he finally made a so-called law and in the report to show how this is put in the preamble. But surely not to cite Kamehameha as an example in our preamble.

APOLIONA: On May 19, 1950 at one of our Miscellaneous Committee meetings, Dr. Larsen appeared in person and spoke on the seal and on the preamble and this is his thinking. As far as the seal, he firmly believed that it was the one place in our Constitution, in the seal, where we could give recognition to old Hawaii and to Kamehameha. But on the preamble, he was of a different opinion. In the preamble, he was of the opinion that the preamble to the State of Hawaii would be totally different than that of any other state of the Union. I disagree with him. Our preamble here should be the same as the other states of the Union, same in thought, same in thinking. If you want to change the language around to make it a little poetic, fine, but the meaning should be the same. And he continued and added

that the preamble should contain the meaning of the Constitution for the benefit of the people. Does this amendment contain the meaning of the Constitution for the people? I say no, and, therefore, I will again vote against the amendment.

AKAU: I think we all want a very good preamble. I think we also realize that the preamble does not necessarily have to stand up in a court of law. We're anxious to finish it up and we're anxious to do something. I raise this point for your consideration. We talk about King Kamehameha which the implication means or makes, the royalty, up here, shall we say, even autocracy. In the next breath, we talk about the people, "of the people, for the people, and by the people." The thing is incongruous. I would like to suggest, if I may, that we defer action on this particular thing, sleep on it, have a couple of people get together, perhaps early tomorrow morning, and draw something up that has the incorporation of justice and whatever have you, following somewhat our Federal Constitution. I think we want to do something, but we don't know how to do it. I therefore move to defer action.

LARSEN: Could I have just a word before that?

CHAIRMAN: Is there a second to that motion?

SAKAKIHARA: I would like to - -

CHAIRMAN: Are you seconding the motion?

SAKAKIHARA: No, I want to amend this amendment.

CHAIRMAN: I hear no seconds. All right.

SAKAKIHARA: I offer the following amendment to Senator Heen's amendment which is before the committee.

> We, the people of the State of Hawaii, grateful for Divine Guidance, and mindful of our Hawaiian heritage, reaffirm our belief in a government of the people, by the people and for the people, and, with an understanding heart toward all the peoples of the earth, do hereby ordain and establish this Constitution for the State of Hawaii.

CHAIRMAN: Delegate Sakakihara, is there a second to that?

DOWSON: I second the motion.

CHAIRMAN: The Chair wishes to state that in his opinion the motion to amend is out of order in that it incorporates almost in its entirety Committee Proposal No. 20.

LARSEN: Mr. Chairman.

SAKAKIHARA: I beg to differ from the ruling of the Chair. It is an amendment, nevertheless. Any more than the amendment here is a repetition - -

HEEN: The amendment here in substance is similar to the amendment originally offered by Delegate Larsen.

LARSEN: Could I have just one word. I feel we can take a vote very shortly. I don't think we have to go around the bush in this way. I would just like to answer, however. There apparently is some misconception. The idea that in this day and age when the great fight for dictatorial government or freedom is at stake, the idea of including Kamehameha was, he is the only dictator in history who at the height of his power suddenly realized that power or might did not make right, but that justice did. So his law, Mamalahoa Kaniwai, is considered by authorities as one of the greatest spoken documents on government in history. It recognizes justice instead of force. This goes right along the line with Abraham Lincoln. And our whole concept was, should we recognize one of the greatest spoken documents of our government that was spoken in Hawaii or shouldn't we. It's that simple. And I would like to suggest that we vote on this and we either accept it or else accept the one that Sakakihara has just suggested, but as I remembered, it was voted on this morning.

CHAIRMAN: The Chair has ruled, and unless the delegate wants to call for the division of the house, the Chair has ruled that the amendment of Delegate Sakakihara is out of order.

ANTHONY: I move an amendment. That the "words of Kamehameha" be stricken.

CHAIRMAN: Is there a second?

BRYAN: I may second it. I have a suggestion that the movant might accept. If you would put "mindful that the ancient law of the land applied equally."

ANTHONY: I accept that. The purpose of the amendment, I think there are a number of delegates here who don't like the glorification of one single human being. I know of no other constitution, American constitution, that does that. I think that's why some of us who are Jeffersonian Democrats don't like the idea of one single person being singled out.

CHAIRMAN: Delegate Anthony, would you restate your amendment, please.

AKAU: I second Mr. Anthony's motion, if he wants to have stricken, "of Kamehameha."

CHAIRMAN: I'm asking for a restatement of the amendment, Delegate Akau, and then I'll recognize a second.

ANTHONY: The amendment was not amply stated. This is what I would move to strike, "words of Kamehameha that." The sentence would then read, "mindful of the ancient law of the land."

KING: I'd like to speak in favor of the amendment. I think we should incorporate in it the suggestion made by Delegate Bryan, so that it would be "mindful that the ancient law"; striking out the words, "words of Kamehameha that the," including "the" that Delegate Anthony didn't mention; "shall apply" and so forth.

Now, the only purpose in this is that Kamehameha when he conquered the whole of Hawaii was the first one to enunciate a general law for the protection of the old man, woman, child, and so forth. It is the first record in Hawaiian history of a law that would control the chiefs and the common people. The Hawaiian phrase, if one could read it in Hawaiian - - I have here an extract from "Ka Moolele A Kamehameha I," by S.M. Kamakau, written in the 1820's or 1830's, that gives a little of the background of that. In the Hawaiian he forbade any of the old men, women, children from being robbed or molested or beaten up or their goods taken away. There is quite a lot of language there. "Pepehi kanaka, aihue, pakaha, pauwale, powa, akole, aiahulu i ke akau" and so forth. So that they couldn't be molested in their goods, in the faith and in their free movement over the lands of Hawaii.

The only reason we want to preserve that sentiment is because that is the beginning of established law in these islands. However, I can understand that the reference to an individual might not be applicable if we are going to become a sovereign state of the Union and we're not going to live according to the ways of the old days at all. We are just paying our respect to it.

The point was also made by Delegate Tavares that a preamble is not substantial law. It isn't a part of the constitution. It is an expression of sentiment. So I feel that with the amendment suggested by Delegate Anthony, this preamble should be satisfactory and I am in favor of the amendment.

RICHARDS: I think in order to correct that amendment and make proper English we should on the second line, delete the word "of" and put in the word "that."

CHAIRMAN: I believe that has been read into the amendment.

ANTHONY: I'd like to state the motion again. Delete the following, beginning with the second line: "words of Kamehameha that the"; and insert after the word "land" in the third line "which applied"; and then in the fifth line, first word, strike out the word "may" and insert the word "might"; and then if I might read the sentence: "We, the people of Hawaii, grateful for Divine Guidance, and mindful of the ancient law of the land, which applied equally to all of the people so 'that the aged man, the women and children might ever walk the highways or sleep by the wayside,'" and so on.

LARSEN: In line with the comments of Delegate --

CHAIRMAN: Is that the amendment that Delegate Akau has seconded?

AKAU: Not now, you see, because if we're going to use quotation marks, we can't change the wording. In other words, if we're going to quote, we've got to quote; otherwise, we take away the quotation marks. Now, if Mr. Anthony wants to take the quotation marks away, that's another story.

ANTHONY: I didn't mean to delete the quotation marks.

AKAU: Well, then, we may not change it. If we're going to quote, we have to quote verbatim or not at all. Otherwise, we take away the quotation marks. I don't second it.

CHAIRMAN: Is there a second?

BRYAN: I second it.

CHAIRMAN: The motion has been seconded.

KAUHANE: Point of information.

CHAIRMAN: Delegate Kauhane, state your point of information.

KAUHANE: I'd like to have the matter clarified so that I will be able to vote intelligently. This morning by a vote of 28 to 26, we adopted the amendment offered by Delegate Sakakihara. And by a vote of 41 to 10 we adopted the motion to reconsider action on the amendment offered by Delegate Larsen. Am I to understand that - -

CHAIRMAN: May I correct you, Delegate Kauhane. The motion to reconsider was to reconsider our previous action on the amendment - - on the proposal.

KAUHANE: Well, then I misunderstood the motion put by the Chair, because I certainly wrote down the motion put by the Chair was to reconsider action on the amendment offered by Delegate Larsen - -

CHAIRMAN: No - -

KAUHANE: - - which I feel, that the motion made for the adoption of the amendment offered by Delegate Sakakihara is proper and is still active before this committee.

CHAIRMAN: The motion to reconsider was on the amended proposal which was nothing more than the action on the amendment offered by Delegate Sakakihara. Upon that motion being carried, Delegate Larsen withdrew his amendment, so that the committee proposal was once again before the committee. Number 20.

KAUHANE: It doesn't sound right, Mr. Chairman. I think it's putting the - - just like having the tail wagging the dog instead of the dog wagging the tail.

CHAIRMAN: I don't get the analogy.

SMITH: Anyway, without worrying about the persons who voted in the minority because of common decency for reconsideration, we're still of the view - - I'm speaking in opposition to the amendment.

CHAIRMAN: Proceed.

SMITH: I believe thoroughly that all these arguments that are coming up -- I haven't got the number of hours that the committee spent and the reasons why we considered all these different preambles. We considered this morning on Dr. Larsen's preamble, practically the same one that was considered in the committee, and we felt that to be concise and brief and to state our pride in our Hawaiian heritage, that the statement as submitted by the committee was one that would carry all the requirements that were really needed.

I might state that if you look at the different constitutions and the preambles, a lot of them are just stock. "We, the people of the state of," whatever state it was, "grateful for Divine Guidance, do hereby ordain and establish this constitution for that state, to wit" and they then state the boundaries of that state.

With the voting this morning of 28 to 26, that should show that we had sentimentalities and considerations of kahunas and so forth. We were considering the people of Hawaii as of today and in the future, and that the people out of Hawaii will be reading our preamble. The children will be able to memorize it a little easier. With all those considerations we felt that the [Committee] Proposal No. 20 was sufficient.

TAVARES: I'm not going to offer this as an amendment, but as a suggestion maybe we could get together on. Instead of deleting the words suggested by Delegate Anthony, if we deleted the words in the second line "ancient words of Kamehameha" and inserted "first Hawaiian Bill of Rights," so it would read, "and mindful of the first Hawaiian Bill of Rights that the law of the land shall apply equally," wouldn't that satisfy the situation?

CHAIRMAN: I understand that to be a suggestion and not a motion?

A. TRASK: I speak against the amendment offered by Delegate Anthony and for several reasons. First, I cannot subscribe to the thought announced by Delegate Apoliona and apparently his committee that we are or should be just like the other states in our preamble. That is certainly not a fact. That is not a fact consistent with the program that we intend to launch.

SMITH: A point of order.

CHAIRMAN: State your point.

SMITH: I believe that if you examine the records, the statement just made by the last speaker does not conform with what Delegate Apoliona said.

CHAIRMAN: Proceed, Delegate Trask.

A. TRASK: The statement made, as I remember, was that we should not refer to any of our ancient edicts or anything like that, and he said we should be like the other states or something along that line. To me, there is only one Hawaii, and - - I have a right to speak against the amendment; I'm advised, of course, by President King.

The delegate lately from Pennsylvania said that Kamehameha should not be mentioned and I submit respectfully to him that when we quote a law or we quote a decision we refer respectfully to that particular court from which those words came, those words of wisdom.

There are very few people in the history of the world who have given edicts which the world has admired and

kept. There are such people as Asoka; there are such people as Justinian; there are such people as Napoleon; there are such people as Edward of England and so forth. We're referring not so much subjectively to them as tyrants, but we refer to the words and thoughts that they express which humanity has accepted and honored.

Hawaii is launching itself, asking and trying to support itself and has gone to the legislature for money in respect to its tourist attraction. What is the tourist attraction? What is the question of the tourist attraction to people who come to Hawaii? Is it because Hawaii is like every other state? It is certainly not. It is our uniqueness. There is only one Hawaii. We are the most isolated community in all the world. We are separated uniquely, thousands of miles from any civilized community, and in Hawaii we have built a civilization that is unique.

The word "aloha" can be claimed by no other people but that of Hawaii. Consistent with the "aloha" is the expression from Kamehameha and no other ruler in all the world, and shouldn't he be given credit for this? Without naming Kamehameha, wouldn't you confuse the issue? Who is being quoted, is the first thing the scholar would want to find out. Shouldn't he be told? Shouldn't he be told with dispatch that it is Kamehameha?

A lawyer in court makes a statement. Immediately the judge says, "From what court are you quoting, from the jurisdiction of Wailuku or from the jurisdiction of Honolulu?" Immediately. And it does carry weight. Whether or not it is the judge of Honolulu or the judge from Hawaii or Maui or Kauai, the judge and the court carries weight, whether it's the Supreme Court or the Commonwealth of Massachusetts.

So I cannot see, consistent with ordinary respectful characterization and giving credit where credit is due, if you take away the word -- the tribute to Kamehameha, you might just as well adopt the innocuous proposal of the committee and make it like the sovereign state, perhaps, of Kansas.

And in conclusion, let me invite the eyes of the delegates to all those symbols on the wall. Just walk along there and look at those symbols and what they represent. Look at the symbols from Oklahoma. It's a pipe of peace; it's the Indians' tradition that is symbolized, of which the Oklahomans are proud. Look at Virginia, "Sic semper tyrannis." "We shall always be against tyranny." Look at Connecticut, which Brother Anthony can quote. It's "Qui transtulit sustinet."

CHAIRMAN: May I remind the delegate that the five minutes is up. Would you conclude your report.

A. TRASK: In conclusion, it seems very clear that --

KAUHANE: Mr. Chairman.

A. TRASK: I'm not concluded, if you please.

CHAIRMAN: Would you conclude your remarks, Delegate Trask.

A. TRASK: Yes, I shall. That's all.

CHAIRMAN: Thank you.

KAUHANE: This morning I voted for the adoption of the amendment offered by Delegate Sakakihara. At this time I'd like to support the amendment offered by Delegate Larsen, without any consideration of any amendment that has been made to it. In support of the amendment made by Delegate Larsen, I'd like to read excerpts made by Kalanianaole who was then Delegate to Congress and appearing before a congressional body.

"The religion of my people was so highly developed. The laws were edicts of the king, commonly called tabus and the breaking of them was punishable. The tabu was in fact the ancient law of the Hawaiians; there were religious tabus, there were tabus which prohibited certain acts such as killing of man, eating together of husband and wife, the eating of certain fish, the eating of certain fruits by women, these were the king's tabu. Then, there were certain tabus which went to the land. For instance, the right to fish was recognized as a public right by the natives, the fish being the property of all. Still, the occupier of land upon the seashore had the privilege of naming certain fish in the adjacent waters as his own property. Many persons could fish upon the fishing grounds, but were forbidden to catch the fish named as the tabu fish. This system of tabu runs throughout history and is sacred to them. Even today, if you were to go down to the seashore while the Hawaiians were bringing in their nets, you would be entitled to a share of the catch, the natives are still maintaining the old custom that the fish, except the tabu fish, belong to all.

"Though Kamehameha the First may have appeared to be a heathen to the outside world, yet during a long and vigorous reign there were manifest in everything that he did, a superior intelligence and deep reverence for a power greater than he. With such an influence governing his life, he ruled his people, even those whom he had conquered, with justice. He it was who established the independence of the individual by that oral decree which reads -- "

ANTHONY: Point of order.

CHAIRMAN: Point of order decreed.

ANTHONY: I think I was called to order for referring to the distinguished warrior as a heathen this morning.

CHAIRMAN: Continue, Delegate Kauhane.

KAUHANE: "It was he who established the independence of the individual by that oral decree which reads, 'The old and feeble men and women, and the small child may walk and rest unharmed on the public highways of my kingdom and no one shall molest them. Death shall be the penalty.' He followed the examples of his predecessors and he divided the lands among the chiefs and followers, retaining the portion of which were to be cultivated by his own servants. He recognized the benefits of trading."

CHAIRMAN: One more minute.

KAUHANE: One more minute, we'll be finished. Again we find that the words of Kamehameha, sacred to the Hawaiian people, people of his race, should be made a part of the preamble of this Constitution. If we today have adhered to the old rule that was laid down by him, the tabu of fishing, that certain fishes around the seashore when caught should be left to the rights of the property owner, then if we respect that right of tabu, then we should certainly respect all of the rights and the laws of Kamehameha and his words should be made a part of the preamble. I, therefore, am in favor of the resolution that has been submitted by Dr. Larsen without any further adoption of any amendment.

CHAIRMAN: The Chair would like to call for the question of the amendment as offered by Delegate Anthony, specifically whether or not to delete the words in the second line, quote, "words of Kamehameha that the"; and on the third line the deletion of the word "shall" and substituted in lieu thereof the words "which"; and change the word "apply" to "applied," so that the amendment would read, starting on the second line, "mindful of the ancient law of the land, which applied equally, etc." All those in favor --

KAUHANE: I move that we table the amendment.

CHAIRMAN: Is there a second?

DELEGATE: I second it.

CHAIRMAN: I understood that we had agreed not to table. I believe that the Chair will declare that motion out of order. All those in favor - -

MAU: Just one question. Did the delegate who proposed the amendment believe that his words meant to carry out the intent of the words that are quoted? Because it does say "mindful of the ancient law of the land, which applied equally to all of the people." That ancient law is the law as stated by King Kamehameha the First? Is that his intent?

ANTHONY: That is correct; I would leave in the quotes.

LARSEN: Could I ask Delegate Anthony, in place of "mindful of the ancient law of the land," would he be willing to substitute "mindful of the first Hawaiian Bill of Rights"?

ANTHONY: No, I don't accept that. That wasn't the first Hawaiian Bill of Rights.

CHAIRMAN: The Chair will call for the question. All those in favor of the amendment as proposed by Delegate Anthony, say "aye." Opposed. The noes have it.

The amendment as submitted by Delegate Larsen now stands before the committee. Are you ready for the question? All those in favor of the amendment as offered by Delegate Larsen without amendment, please say "aye." Opposed. The Chair calls for a show of hands.

DELEGATES: Roll call.

CHAIRMAN: There is a demand for roll call. All those in favor. Roll call is in order. The ayes vote in favor of the amendment, the noes defeat it.

ROBERTS: Will the Chair please read the amendment, what we're voting on.

CHAIRMAN: The amendment reads as follows.

J. TRASK: I find that the so-called Dr. Larsen's amendment is under the caption of Judge Heen's name.

CHAIRMAN: That is correct, but Dr. Larsen made the motion and that is the reason the Chair has given him the credit. The amendment reads as follows:

> We, the people of Hawaii, grateful for Divine Guidance, and mindful of the ancient words of Kamehameha, that the law of the land which shall apply equally to all the people so that "the aged man and the women and children may ever walk the highways or sleep by the wayside without fear," and with an understanding heart toward all the peoples of this earth, do reaffirm our belief in a government of the people, by the people, and for the people, and do hereby ordain and establish this Constitution of the State of Hawaii.

The Clerk will please call the roll.

WOOLAWAY: I would like to state my reasons for my voting no. It doesn't include young men, that's why.

CHAIRMAN: The Clerk will please call the roll.

Ayes, 25. Noes, 30 (Akau, Anthony, Apoliona, Arashiro, Doi, Dowson, Fong, Fukushima, Ihara, Kage, Kam, Kanemaru, Kawahara, Kawakami, Kido, Lai, Luiz, Mau, Nielsen, Noda, Okino, C. Rice, H. Rice, Sakakihara, Shimamura, Silva, Smith, Woolaway, Yamamoto, Yamauchi). Not voting, 8 (Kometani, Lee, Phillips, Porteus, Sakai, Serizawa, White, Wist).

CHAIRMAN: The noes have it. The amendment is defeated.

LARSEN: I move that we now pass the recommendation by the committee.

CHAIRMAN: That one motion is already before the committee.

ROBERTS: I'd like to amend the proposal in the second line instead of "with pride in" the words, "and mindful of our Hawaiian heritage," and in line four, after the words "people" comma and, "with an understanding heart toward all the peoples of this earth, do hereby ordain."

CHAIRMAN: Is there a second?

APOLIONA: The committee accepts the amendment.

CHAIRMAN: The committee accepts the amendment.

SAKAKIHARA: Will Delegate Roberts accept an amendment? On the third line, "of the people, by the people, and for the people, and with an understanding heart toward all the peoples of the earth."

ROBERTS: Yes, I accepted that before as a matter of style, but we'll accept it now.

APOLIONA: The committee also accepts it.

HAYES: May I have the whole amendment, so I will know what I am voting for?

CHAIRMAN: Will the Clerk please read the amendment?

LYMAN: May I add another amendment?

CHAIRMAN: There has been a request for the reading of the amendments so far. I believe the Chair can read it.

> We, the people of the State of Hawaii, grateful for Divine Guidance, and mindful of our Hawaiian heritage, reaffirm our belief in a government of the people, for the people, and by the people, and with an understanding heart toward all the peoples of this earth, do hereby ordain and establish this Constitution for the State of Hawaii.

SAKAKIHARA: Mr. Chairman, a correction. My amendment was "of the people, by the people and for the people."

CHAIRMAN: "Of the people, by the people and for the people." Can someone inform the Chair is that the correct quotation from Mr. Lincoln?

ANTHONY: That is the correct quotation.

CHAIRMAN: Thank you. "Of the people, by the people and for the people."

BRYAN: I wanted to ask the movant a question. I'd like to know the reason for changing the words, "pride in our Hawaiian heritage." Is it that we should indicate that we do not have pride in our Hawaiian heritage, or what is the reason for changing that?

ROBERTS: I merely inserted the language which the Committee of the Whole had previously adopted on the floor.

ANTHONY: The reason for that is, it seemed a little presumptuous on the part of some of us to have the word "pride." It seems more fitting and dignified and with more humility if we had the word "mindful."

TAVARES: I agree with Delegate Anthony. When I was a boy, I memorized a verse which said, "Pride goeth before destruction and a haughty spirit before a fall." I think it is acting a little bit hookano for us to say we take pride. It's all right when we're here to do it, but to put it in a constitution, I really believe it presumptuous.

CHAIRMAN: Are we ready for the question?

HAYES: Point of information. I feel that - - well, I've been trying to catch your eye so I can speak before the amendment was adopted, but I wasn't recognized by the Chair, because I feel that we owe some respect to King Kamehameha and that was defeated before I was recognized. Therefore, I feel that it is a great mistake for us to ignore

Kamehameha when we in the legislature appropriate money and make Kamehameha Day a legal holiday and do decorate the statue of Kamehameha, and everything about Hawaii has been surrounded about Kamehameha. Therefore, I feel that I didn't have an opportunity to speak at the right time for me to further my remarks on the preservation of that great man.

CHAIRMAN: The Chair apologizes to the good delegate from the fourth district, and is very much in sympathy with her feelings, but I didn't see you, and in view of the fact that so many others were clamoring for attention, I think it explains itself.

Are you ready for the question? All those in favor of the Committee Proposal No. 20 as amended, please say "aye." Opposed, "no." Carried.

Please turn your attention to Committee Proposal No. 14.

ROBERTS: I don't think we have adopted the proposal as amended. May I therefore move that the proposal as amended be adopted.

SMITH: I second the motion.

CHAIRMAN: That was the question that the Chair put to the committee because of the fact that the amendments had been accepted by the committee, so the amendment is adopted as amended.

KING: If I am correct, the committee accepted the amendments, which made them part of the original proposal.

TAVARES: Point of order.

CHAIRMAN: Delegate Tavares, state your point.

TAVARES: The written proposal presented at this Convention is the proposal and until you adopt the amendment, the committee can't change it by simply accepting it under the rules of this Convention.

KING: If that is correct, I move now for acceptance of Proposal No. 20 as amended.

SMITH: I'll second that.

CHAIRMAN: Thank you. Delegate Crossley.

CROSSLEY: That was what I was going to do so the Chair will be in order.

CHAIRMAN: Thank you very much. All those in favor of the motion please say "aye." Opposed. Carried.

Now, if you will please turn your attention to Committee Proposal No. 14 which has been deferred, and I think a motion would be in order to adopt the committee proposal to get it before the committee.

YAMAUCHI: I move that Committee Proposal No. 14 be adopted.

CHAIRMAN: Is there a second?

DELEGATE: I second the motion.

CHAIRMAN: It is moved and seconded to adopt Committee Proposal No. 14. Now, as the Chair recalls, the reason for deferring action this morning was that Delegate Hayes had a drawing of the seal to present to the committee. Delegate Hayes, are you ready with that seal?

HAYES: I made my suggestions to Dr. Larsen, which he has accepted. Both Miss Ashford and I feel that some part of the old seal of Hawaii should be preserved, in that the old seal has the great feather cloak in the back of the seal. That is the only change we have recommended and Dr. Larsen has accepted that.

APOLIONA: Your subcommittee on the seal is in accord with some of the amendments that Dr. Larsen has proposed, and at this time I would like to have the honorable doctor stand up and fight for his seal.

LARSEN: Thank you, Mr. Apoliona. Mr. Chairman, may I have the floor?

CHAIRMAN: Delegate Larsen, proceed.

LARSEN: I feel you don't have to fight for this. It's so evident that of course you will be all for it. There are two things here, it seems to me, first—and it seems to me that if we could do this perhaps we could speed it up. One, the first proposition I think is, shall we accept a certain change. Now, may I again call to your attention, it isn't a change in the coat of arms of Hawaii, it's merely a change in the drawing of the old coat of arms to bring it up to date in today's style of drawing and prepared by an artist, which the first one was not. I compared it with all the seals of all the other states and there is no question at all. I'm not claiming this as anything original. I am merely having one of our very best artists draw the seal in today's method. That's what is on the wall over there. Now the suggestion made by Delegate Hayes was that when we use the coat of arms—not the seal— when we use the coat of arms we use the old cape which is behind the coat of arms. When the coat of arms are used, you don't use this lei around it. Also, a small crown was suggested on top of the shield. My suggestion is, first, if we could have the motion, do we want to change to leave out the unnecessary details which is not good taste today any more than the bathing suits of 1896 aren't good taste today on the beach. That's purely a question of style. So my first suggestion is let's take a vote on, do we want to change it.

The second question is, and that should have another motion, do we want to put it as part of our Constitution? I will call your attention to the fact that although some 37 states have it in their constitutions, in Hawaii the seal of '96, the seal of 1900 were all adopted by the legislature in joint resolution. I have a copy of that joint resolution here and I have it translated into heraldic symbols in this here.

So, may I suggest we first vote, shall we make these minor changes; and, second, shall we refer it over to the legislature to let them adopt it as properly drawn by an artist.

CHAIRMAN: Then, Delegate Larsen, would you make a motion that it is the sense of this Convention that there be a change in the great seal of Hawaii.

LARSEN: I so move.

CHAIRMAN: Is there a second?

HAYES: I second that motion.

CHAIRMAN: The motion before the committee is that the sense of this committee is that there be a change in the great seal of Hawaii. All those in favor please say "aye." Opposed say "no." The motion is carried.

The next motion, Delegate Larsen, if you would make, it is that it is the sense of this Convention that the provisions regarding the seal be in the Constitution.

LARSEN: I so move.

CHAIRMAN: Is there a second?

HAYES: I second it.

CHAIRMAN: Delegate Heen. The Chair is about to be corrected.

HEEN: If it's going to be in the Constitution, then the description of the seal should be spelled out. When the legislature adopted the great seal for the Territory of Hawaii it spelled out the form of that seal by Section 12941.

I might read some of this to you to show how difficult it will be to have it spelled out in the Constitution. "The great seal of the Territory shall be circular in shape, two and three-quarters inches in diameter, and of the design in this chapter represented; being more particularly described, with the tinctures added as the basis for the coat of arms, as follows: Arms. An heraldic shield which is quarterly; first and fourth, stripes of the national banner," and so forth and so on. It is a very difficult matter to spell out.

CHAIRMAN: You're talking then against the motion?

HEEN: I am talking against the motion because I don't think we can spell it out within the short time that we have on hand. However, if it's going to be left to the legislature, there will have to be provided in the schedule or in an ordinance for a temporary seal so that between the adoption of the Constitution and action by the legislature, the State of Hawaii will have a seal. That might be in the form of the article that is written now, until adopted or changed by the legislature. "The seal of the Territory of Hawaii, modified to bear the legend, 'The State of Hawaii' followed by the year," etc. That could be put into the - -

LARSEN: Point of order.

HEEN: So that the State of Hawaii will always have a seal.

CHAIRMAN: You're speaking against the motion?

HEEN: I'm speaking against the motion.

CHAIRMAN: Correct. Are you ready for the question?

LARSEN: Point of order.

CHAIRMAN: Delegate Larsen, would you state the point of order.

LARSEN: It has already been carried that the changes that we are to pass on will be those that were suggested. May I call the Senator Heen's attention that the present seal remains the seal until changed by the legislature if we pass on the suggestion.

CHAIRMAN: The question before the committee is that it is the sense of the committee that the provisions regarding the seal of Hawaii should be in the Constitution. All those in favor please say "aye." Opposed say "no." Noes have it.

Now, we have before us Committee Proposal No. 14. What is the pleasure of the committee?

CROSSLEY: We have just voted that this would - - that the seal would not be in the Constitution.

CHAIRMAN: No, we voted as to the sense of the committee. Now, I would like to dispose of Committee Proposal No. 14.

CROSSLEY: Well, the sense of the committee was that there should be no seal in the Constitution. Therefore, what we did in effect was vote to delete Committee Proposal No. 14.

CHAIRMAN: I'm sorry, Delegate Crossley, but I think that the proper motion at this time is to delete the committee proposal. The motion was not as to the committee proposal. The motion was as to the sense of the committee.

CROSSLEY: Well, it was as to the substance of this. Therefore, if you want to vote on it again, I move that Committee Proposal No. 14 be filed.

CHAIRMAN: Is there a second?

SMITH: I'll second it.

TAVARES: In connection with such filing I move that there be included in the committee report a recommendation to the legislature to adopt the suggestions proposed by Dr. Larsen.

CROSSLEY: I accept that, with the further statement that it was the consensus of this Convention that the seal be changed.

CHAIRMAN: That is correct. Are you ready for the question?

YAMAUCHI: Before any action be taken, the committee got together and felt that they would like to withdraw the committee proposal.

CHAIRMAN: You withdraw the committee proposal? The Chair is in doubt as to whether the committee proposal can be withdrawn at this time.

KING: I don't think that the. . .[inaudible] be filed and disposed of that way. It's a little difficult to withdraw after it has been submitted to the Convention.

CHAIRMAN: I believe the sense of the committee is pretty well - - I believe that a vote on the motion would accomplish the same thing.

KING: I would like to inquire whether. . .[inaudible]

CHAIRMAN: I'm sorry, your mike is off.

KING: That if it's sufficent to vote in Committee of the Whole that it is the sense of the Committee of the Whole the legislature shall adopt the seal along the line designated by Delegate Larsen, it seems to me a resolution might be presented to that effect by the Committee on Miscellaneous Matters at some later date. So I think that the Committee of the Whole might well take the action directing or instructing the Committee on Miscellaneous Matters to bring in the resolution to that effect and I so move.

CHAIRMAN: There is a motion before the house, Delegate King. I question whether your motion - -

KING: I withdraw my motion.

CHAIRMAN: All those in favor - -

ROBERTS: Would you please state the motion.

CHAIRMAN: The motion is that the Committee Proposal No. 14 regarding the provision for a state seal be filed with the understanding that the report of the Committee of the Whole will indicate a recommendation to the legislature to adopt the changes as proposed by Delegate Larsen. All those in favor please say "aye." Opposed, "no." Carried.

Now, before we move to rise I'd like to quote to Delegate Larsen from an old and ancient proverb that says, "When at last to seals they come, some turn to animals, some turn to documents and some turn to rum."

There is a motion in order to rise and report progress.

J. TRASK: I move that the committee rise and report progress and beg leave to sit again, and direct the chairman to prepare his report.

DELEGATE: I second the motion.

[Motion carried.]

JUNE 28, 1950 • Afternoon Session

CHAIRMAN: Committee of the Whole come to order.

SILVA: I see quite a few of the delegates leaving this Convention. I don't know whether they have been excused or not; and if they have not been excused, surely their names should be mentioned as leaving this Convention without the authorization of the President.

CHAIRMAN: That is correct, but I think we still have a quorum, Delegate Silva.

SILVA: Irregardless, I think it's much fairer to the other delegates' names, who have been mentioned this morning as being absent; in good faith to those that were absent this morning, those that are picking up their hats and moving out of this Convention, their names should be called out, too, as leaving the Convention without the authorization of the President.

CHAIRMAN: Well, we'll ask the Sergeant at Arms to corral any delegates that are outside the Convention Hall.

Yesterday and the day before in the meeting of the Committee of the Whole as relates to Miscellaneous Matters there were four committee proposals which met with no debate and were adopted. The purpose of bringing the report relating to those four before the committee now is to move this along, and those which were subject to discussion will be treated in a separate report. If you'll bear with me, I'll ask the Clerk to read the Committee of the Whole Report relating to Proposals No. 13, 15, 16 and 21. If it meets with your approval, we can adopt the report and have it printed and sent to the Committee on Style. Will the Clerk please read the report.

CLERK:

Your Committee of the Whole to which was referred Standing Committee Reports Nos. 54, 56, 57 and 65 of the Committee on Miscellaneous Matters and Committee Proposals Nos. 13, 15, 16 and 21, respectively, accompanying said reports relating to miscellaneous matters detailed below, having held meetings on June 26 and 27, 1950, and having fully considered said reports and committee proposals, begs leave to report as follows:

Committee Proposal No. 13, providing for a state flag, reads as follows:

> Section _____. State Flag. The emblem of the Territory of Hawaii, known as the Hawaiian flag, shall be the flag of the State of Hawaii.

Recommendation: Your committee recommends that this proposal be adopted.

Committee Proposal No. 15, relating to state boundaries, reads as follows:

> Section _____. The islands and territorial waters heretofore constituting the Territory of Hawaii shall be known as the State of Hawaii.

Recommendation: Your committee recommends that this proposal be adopted.

Committee Proposal No. 16 relating to civil service, reads as follows:

> Section _____. The employment of persons in the state civil service, as defined by law, shall be governed by the merit principle.

Recommendation: Your committee recommends that this proposal be adopted.

Committee Proposal No. 21, relating to equal rights, reads as follows:

> Section _____. Whenever in this Constitution the term "person," "persons," "people," or any personal pronoun is used, the same shall be interpreted to include persons of both sexes.

Recommendation: Your committee recommends that this proposal be adopted.

Respectfully submitted,
Alexander H. F. Castro, Chairman

LARSEN: May I ask, I have here—and I don't want to read it, I realize everybody is tired—but a history of the Hawaiian flag which most people don't know. It's gotten from 1880, 1886 and 1898. If we could incorporate it into the committee report under flag, because I feel as we get this for publication, we should include the history of this flag.

CHAIRMAN: You wish the - -

SILVA: At this time, I would suggest or I move that the explanation of the flag and of the origination of the flag be embodied in the report.

A. TRASK: Second the motion.

CHAIRMAN: It's been moved and seconded that the history of the Hawaiian flag be incorporated into the report of the Committee of the Whole. All those in favor please say "aye." Opposed say "no." Carried.

Now you have heard the reading of the Committee of the Whole Report.

H. RICE: I move the report be adopted.

SAKAKIHARA: Second it.

CHAIRMAN: Moved and seconded that the report be adopted. All those in favor please say "aye." Opposed, "no." Carried.

Is there a motion to rise and report progress?

SAKAKIHARA: I move that the Committee of the Whole rise and report progress and beg leave to sit again, and that the written report be filed.

DELEGATE: Second the motion.

ASHFORD: I move that the committee report out this report and move its adoption carrying the second reading.

CHAIRMAN: I believe that's the correct motion. Is there a second?

WOOLAWAY: I'll second the motion.

CHAIRMAN: All those in favor. [Carried.]

JULY 3, 1950 • Morning Session

CHAIRMAN: Committee of the Whole, please come to order. Turn your attention to Committee of the Whole Report No. 13. These are very brief reports, and your chairman has made each different item a subject of a separate report for the sake of handling.

This first one relates to the wording of the section on the seat of government, and the language, but not the sense, of the article was changed and it was adopted to read:

> Honolulu, on the island of Oahu, shall be the capital of the state unless otherwise provided by law.

Under the recommendations there is an indication that this is a change in language.

J. TRASK: I move for the adoption of Committee of the Whole Report No. 13.

DOWSON: I second the motion.

CHAIRMAN: Moved and seconded. Any discussion?

ROBERTS: I have a question on this section. When the language which we have adopted reads, "unless otherwise provided by law," would that permit the legislature to change the seat of the capital? As I recall, the purpose of the change when we were in Committee of the Whole previously was to take care in this section for the action which we've provided in the legislative article, which provides for the moving of the seat of government only in case of an emergency. As I understood it, this was to be a constitutional provision and not be subject to change by the legis-

lature except insofar as provided in this Constitution. If I'm not correct on that, I'd like to be corrected.

CHAIRMAN: The report on page two was, if I may answer that, taken from the transcript in which the two points on the moving of the capital were discussed. The transcripts indicate that it was the sense of this committee that the words "unless otherwise provided by law" covered, 1) movement of the capital in the event of an emergency; and 2) the idea that the placing of the capital would not be a constitutional provision, that is, it could be changed by statute. The transcript bore that out. Now, as far as the delegate didn't get that understanding from the - -

ROBERTS: That certainly was not my understanding in the Committee of the Whole. I was of the impression that the capital was to be in Honolulu; that provision was made in the legislative article that in case of an emergency, it could be relocated; but that the change of the site of the capital could not be made merely by statutory law, it had to be by constitutional amendment except insofar as provided in the legislative article.

CHAIRMAN: I wonder if the chairman of the Committee on Miscellaneous Matters has anything to add to that.

YAMAUCHI: In regard to the proviso here "provided by law," it was brought up in Committee of the Whole, it was discussed that in the event that the legislature feels that the capital should be moved elsewhere, that the methods - - I mean that the provision be made that the legislature be allowed to do so, and the Committee on Miscellaneous Matters agreed that in a later period, maybe in a period of 10 or 20 years, if the people feel that the capital should be moved elsewhere, that it could either be done by constitutional amendment or by the legislature.

HOLROYDE: My interpretation was the same as given by Delegate Roberts, that Honolulu shall be the capital. However, under situations covered by the first line on page two of the Committee of the Whole report, this wording, "as otherwise provided by law" would allow the legislature to transfer it. I do not agree with the last sentence of the Committee of the Whole report.

TAVARES: It seems to me that the only reasonable interpretation of that language is that the legislature does have power to change. If it is the intention to limit that language, it should be made very specific. As I interpret that, without any committee report, it can mean only one thing, that the legislature does have power to change it by law; and that was my understanding when I voted for it.

CHAIRMAN: The Chair might add that the transcript of the proceedings of this committee in consideration of this particular section indicates a rather lengthy discussion on whether or not the legislature would have the right to move the capital of the state for reasons other than emergencies. And the transcript indicates that the sense of the committee was that it would, that the phrase "unless otherwise provided by law," could not mean one thing and mean another. So that I think the only thing this committee can do now is, if there are those who feel that they are not willing to accept that particular wording, then we will have to reconsider our action because - -

ANTHONY: I move that we do reconsider our action.

CHAIRMAN: Is there a second to that motion?

ARASHIRO: Yes, I second that motion.

ASHFORD: I move that the matter be deferred until many of the delegates return.

SAKAKIHARA: I second the motion to defer.

CHAIRMAN: Moved and seconded to defer. All those in favor please say "aye." Opposed. Carried.

Now if you'll turn your attention to Committee of the Whole Report No. 15, having to do with intergovernmental relations, you'll find that the section was amended in the second line, which is the last line on the first page of the report, with the addition of the words "on the part of this State and its political subdivisions"; and in the fourth line of the section, substitution of the word "their" for the word "its"; and also in the fourth line of the section, the deletion of the word "all" as it appeared before the word "matters." This was merely rounding out of the sense of the section. We are now prepared for a motion to - -

DOWSON: I move that we adopt Committee of the Whole Report No. 15 and recommend its passage on second reading.

KANEMARU: I second it.

SAKAKIHARA: I rise to a point of information. What committee report are we deliberating?

CHAIRMAN: It's Committee of the Whole Report No. 15.

SAKAKIHARA: We don't have any Committee Report No. 15.

CHAIRMAN: You have no 15?

SAKAKIHARA: No 14, no 15.

CHAIRMAN: Fourteen has not been distributed. Relating to intergovernmental relations, do you all have a copy on your desk? It's been moved and seconded that the committee report be accepted by the committee and that it recommend adoption to the Convention. Is there any discussion? All those in favor please say "aye." Opposed, "no." Carried.

If you will turn your attention to Committee of the Whole Report No. 16. The only change, after considerable discussion on the oath of office, the only amendment was in the seventh line. You'll find the change noted on page two. The words "my duties as" inserted in lieu of the words "the duties of the office of," and for the reasons stated there.

SAKAKIHARA: I move the adoption of the committee report.

ARASHIRO: I second that motion.

CHAIRMAN: It has been moved and seconded to adopt the committee report.

KELLERMAN: A matter of information. In the last paragraph on the second page of the report where the committee is expressing the sense of the Committee of the Whole with regard to commissioners of deeds outside the United States, what exactly does the committee mean by the words "not an appointed citizen of the United States"? That isn't clear to me at all.

CHAIRMAN: I'm afraid that is a typographical error.

KELLERMAN: Is that intended to be just "not a citizen of the United States"?

CHAIRMAN: Yes, that sentence should read, "The example was given of a person appointed outside the Territory not a citizen of the United States." I don't know how it got this way in between the typewritten page and the making of the stencil. That should read "The example was given of a person appointed outside the Territory, not a citizen of the United States."

KELLERMAN: Oh, then the word "appointed" goes up after person.

CHAIRMAN: That's correct.

KELLERMAN: "Of a person appointed outside the Territory."

CHAIRMAN: That's correct.

KELLERMAN: Well, you mean a person outside the Territory being appointed, do you not? You don't appoint outside the Territory.

CHAIRMAN: "The example of - -" now I'm mixed up.

TAVARES: As the one who is to blame for having injected this thought into the situation, may I move to defer, and I will try to assist the committee in putting into words the idea I had in mind which apparently is not clear to some here. I, therefore, move to defer till Wednesday.

CHAIRMAN: I don't - - Delegate Tavares, I really don't think it's necessary in the interest of expediting. It's really merely a misplacement of a word.

ASHFORD: Isn't that a point that's taken care of perfectly, in - - at the tail end of the sentence, "The example of a person outside the Territory, not a citizen of the United States, who might be appointed as a commissioner of deeds."

CHAIRMAN: That would handle it. If you just cross out "an appointed," "the example of a person outside the Territory, not a citizen of the United States."

ANTHONY: I move the report be amended by deletion of the words "an appointed."

SAKAKIHARA: Second it.

CHAIRMAN: All those in favor please say "aye."

ASHFORD: You can't cut off "an" without substituting "a." Substitute for the words "an appointed," the word "a."

ANTHONY: That's correct, that's what I had written.

CHAIRMAN: You agree to the amendment, Delegate Anthony? All those in favor of the amendment please say "aye." Opposed, "no."

KELLERMAN: As the sentence reads, you have no verb in it at all. Now that may be purely a matter of - - maybe it's entirely immaterial, but there is no verb in the sentence. Don't you mean - -

CHAIRMAN: As I indicated to you, that sentence originally read in the typewritten report, "The example was given."

KELLERMAN: Yes, well, that's omitted.

CHAIRMAN: I'm afraid in the rush to get this printed, we have ended up - -

KING: I move that after the word "example," the words "was given" be inserted.

ROBERTS: Second.

CHAIRMAN: All those in favor please say "aye." Opposed. Carried.

It now reads, "The example was given of a person outside the Territory, not a citizen of the United States, who might be appointed as a commissioner of deeds."

Delegate Tavares.

TAVARES: I'll wait till after the adoption of the amendment.

CHAIRMAN: All right. Is there any further question on the motion?

CORBETT: This is a very minor matter, but as long as this section has to be amended anyway, could we please do something about the split infinitive in the first line of that paragraph?

CHAIRMAN: "Also to show," is that the way you'd like to have it read? That will be taken care of. Is there any - -

ANTHONY: I move the adoption of the committee's report together with the chastisement of the body to the Chairman.

HOLROYDE: Second, as amended, I guess, he means.

CHAIRMAN: All those in favor please say "aye." Opposed.

Now I think there is a motion in order that we rise and report a certain amount of progress.

TAVARES: I didn't know that the amendment had been adopted. I thought we were just adopting the amendment because I wanted to speak on the amended section.

CHAIRMAN: Well, as a matter of fact - -

TAVARES: I should like the record to show that this is only an example, and I take it that's what it means. There may be other situations where, from the necessities of the occasion, we are unable to find an officer who is a citizen and we, therefore, have to appoint someone who is not a citizen. And in those cases, where it is otherwise legal under our laws, I take it this would mean that the prescription of the oath in this manner would not necessitate our asking an alien then to perform an act of disloyalty to his country. I think that is the general intent of the report, is it not?

CHAIRMAN: Correct.

DOWSON: I move that the committee rise, report progress, recommend passage of Committee of the Whole Reports No. 13 and No. 15 and No. 16 as amended, and to beg leave to sit again.

CHAIRMAN: Is there a second?

HOLROYDE: Second the motion.

CHAIRMAN: All those in favor please say "aye."
[Carried.]

JULY 5, 1950 • Afternoon Session

CHAIRMAN: Committee of the Whole please come to order. May I ask the committee to turn its attention to Committee of the Whole Report No. 14. Number 14 deals with Committee Proposal No. 14 and Resolution No. 29, and I think if we turn our attention to the proposal first relating to a state seal. The proposal on the state seal, according to recommendation of this committee, is to be filed with a proper resolution drawing the attention of the first legislature of the State regarding the design of that seal.

The resolution is outlined on page one and the beginning of page two and a copy of the resolution has been circulated. You all have copies of that resolution. It's circulated and is with the title, Resolution No. 45. It is not Resolution No. 29, which is found in the latter part of the report.

LARSEN: Could I make one comment? During our discussion—I just want to make this clear so the members will remember—during our discussion, we suggested that in drawing the coat of arms to which this has no real relation, except that it goes with it and the coat of arms is always developed from the seal, we suggested—and I'm merely saying this so we get it in the record—that the coat of arms use, as the old coat of arms did, the royal cloak and the small crown above, which from the standpoint of decorative things, like skins and so on, is more colorful. And the idea is that I want the delegates to realize we did discuss this and it makes a colorful thing that will be made in color, but will carry this seal on as the coat of arms.

CHAIRMAN: Thank you, Delegate Larsen.

Now, I think a motion is in order to adopt Proposal No. 14.

WOOLAWAY: I so move.

DELEGATE: Second the motion.

CHAIRMAN: Is there any discussion on the first half of Committee of the Whole Report No. 14, as to the adoption of Proposal No. 14?

WIRTZ: Proposal 14? Point of information. Committee Report No. 14 - -

CHAIRMAN: Pardon me. As to the resolution covered by Committee of the Whole Report No. 14.

WIRTZ: Which is supposed to be Resolution 45?

CHAIRMAN: Which is Resolution 45.

WIRTZ: I would like to move to amend the previous motion, not to adopt Committee Proposal No. 14, but Committee of the Whole Report No. 14.

DELEGATE: Second.

CHAIRMAN: That is correct. Now, Resolution No. 45 is before the committee, as the first half of Committee of the Whole Report No. 14, relating to the enactment by the legislature of a law to provide a great seal for the State of Hawaii.

LARSEN: I move we adopt this resolution.

CHAIRMAN: That has been moved. Is there any discussion? Chair will put the question? All those in favor, please say "aye." Opposed, "no." Carried.
Now, as to Resolution No. 29, which is embodied in Committee of the Whole Report No. 14, relating to certain heraldic symbols, is there a motion to adopt the resolution?

YAMAUCHI: I move the Resolution No. 29 be adopted.

LARSEN: I second the motion.

CHAIRMAN: It has been moved and seconded to adopt Resolution No. 29. Is there any discussion? All those in favor please say "aye." Opposed. Carried.

HAYES: I'm sorry, I wasn't on my feet, but I wanted to - - on page three, it says "Maluna a'e o na lahui apau, ke ola ke kanaka." The translation there says, "Above all nations is humanity." I wondered, it's just a suggestion, I wondered if, instead of "Above all nations," we would say, "Above all things is life," instead of "humanity." Then it would go with the translation that we have there in Hawaiian.

CHAIRMAN: You are - - you want to make an amendment to that translation, Delegate Hayes?

WOOLAWAY: I move for reconsideration so she can do it.

CHAIRMAN: Is there a second?

COCKETT: Second.

CHAIRMAN: There's a motion to reconsider Resolution No. 29 to allow Delegate Hayes to enlighten us on the proper translation of the Hawaiian words found at the top of page three.

HAYES: The Hawaiian words, the interpretation there, in Hawaiian is correct, but the interpretation, "Above all nations is humanity" does not go with the translation in Hawaiian; and the word "life"; "life" would go with the translation we have here in Hawaiian. It's a point I wanted to bring up. It's just a point I was just reminded of.

CHAIRMAN: So your amendment would make the translation read, how?

HAYES: "Above all things is life."

CHAIRMAN: "Above all things"?

HAYES: "Things is life." L-I-F-E, life, person, life of a person, life of a human being.

HEEN: I don't think that is correct.

HAYES: Well, I've been - -

HEEN: "Maluna a'e o na lahui apau." What's "lahui"?

HAYES: "Lahui" means - -

CHAIRMAN: I'm sorry. Would you please address the Chair.

WOOLAWAY: I'll second the motion.

CHAIRMAN: Delegate Heen, I couldn't get your remark.

HEEN: I'm asking the last speaker what the word "lahui" meant.

HAYES: "Lahui" means the different races.

HEEN: So you left that out in your translation into English.

KAWAHARA: I thought there was a motion before the house to reconsider - -

HAYES: There is a motion before the house, but it's been reconsidered.

WOOLAWAY: Point of order. That vote was already taken. Delegate Hayes made a motion for amendment and I seconded it so that it could be discussed on the floor.

HAYES: It's just a suggestion and I've taken it up with those who are well informed on the translation of Hawaiian and English. I just wanted to correct it because this is a report of the committee and we want it correct. Just a suggestion, unless you - - most of you feel that "Above all nations is humanity" would be all right to stay in the report. It's all right with me. I just offered this.

CHAIRMAN: I beg your pardon, Delegate Hayes. I understood that you were making an amendment to the translation. Is that correct, or are you merely making a suggestion?

HAYES: Well, I think the translation from Hawaiian, "Above all nations is humanity," doesn't go with your Hawaiian translation.

CHAIRMAN: Well, would you enlighten the Chair whether or not you are making an amendment, because if you are not making an amendment, then there is nothing before the house.

HAYES: Well, then, I should like to amend it by putting the word, after "all," instead of "nation," put in "things is life." "Above all things is life." Unless that's not correct. I see many heads are shaking.

CHAIRMAN: Is there a second - -

LARSEN: I think Senator Heen is right. As with all these Hawaiian expressions, they do have different meanings, but this was a translation that is considered authoritative and I think the - - it's not necessary, really, to make an amendment here, but to carry and get a double check on Delegate Hayes' suggestion.

ARASHIRO: May I defer this matter for a day or so that Delegate - - lady delegate from the fourth district may check this matter up?

HAYES: I've checked it already and if it's going to delay this report, I withdraw my amendment.

CHAIRMAN: The amendment has been withdrawn. I believe, then, the question - -

ASHFORD: I wish to offer another amendment.

CHAIRMAN: Proceed.

ASHFORD: Substitute for the word "the" in front of the "translation," the word "a," because there is very apparently a possibility of more than one translation.

CHAIRMAN: Is there a second to that amendment?

BRYAN: Second it.

CHAIRMAN: It's been moved and seconded that on the fourth line of page three, the word "the" be deleted and the word "a" be substituted in lieu thereof. All those in favor please say "aye." Opposed, "no." Carried.
Now, I think a motion to adopt the - -

KAUHANE: I'd like to take up the question raised by Mrs. Hayes and ask that we take and move for a deferment for about 15 minutes to get the clarification of the Hawaiian translation into English. It certainly doesn't sound right when you use the word "humanity," when the Hawaiian word means "man," and when you use Hawaiian words "Maluna a'e o na lahui apau," which means, "Above all people the life of man is predominant." Here, "Above all nations is humanity" doesn't rhyme with the Hawaiian wording. I think if we can defer action on this matter and we call the Hawaiian translator from the Archives to come on up, I think we will be able to settle this matter today.

CHAIRMAN: There has been a motion to defer. Is there a second?

SAKAKIHARA: I second the motion to defer.

CHAIRMAN: Moved and seconded to defer attention to the Resolution No. 29. All those in favor please say "aye." "No." Carried.

KAUHANE: I ask that you instruct the Sergeant at Arms to call the Hawaiian translator from the Archives to come up so that we can get the English translation of this Hawaiian phrase.

CHAIRMAN: The Sergeant at Arms will please do so. I believe he is on his way.
Now, if we can get along here on Committee of the Whole Report No. 19.

DOWSON: I move for the adoption of the Committee of the Whole Report No. 19.

CHAIRMAN: And Committee Proposal No. 20, would you include that? Include in your motion Committee Proposal No. 20.

DOWSON: And Committee Proposal No. 20.

CHAIRMAN: Is there a second?

J. TRASK: Second the motion.

CHAIRMAN: Dealing with the preamble, which preamble has been amended, the amendment to Committee Proposal No. 20 and the preamble that is before the committee would read as follows:

> We, the people of the State of Hawaii, grateful for Divine Guidance, and mindful of our Hawaiian heritage, reaffirm our belief in a government of the people, by the people and for the people, and with an understanding heart toward all the peoples of the earth, do hereby ordain and establish this Constitution for the State of Hawaii.

Is there any discussion on the amended proposal or the report? All those in favor please say "aye." Opposed, "no." Carried.
I ask you now to turn your attention to Committee of the Whole Report No. 20.

WOOLAWAY: I move the adoption of Committee Report 20.

LAI: I second the motion.

CHAIRMAN: Would you include in that, Committee Proposal No. 18, Delegate Woolaway?

WOOLAWAY: O. K.

WIRTZ: Point of information. As I read the report, Committee Proposal No. 18 is to be filed.

CHAIRMAN: Committee of the Whole Report No. 20 is to be adopted and Committee Proposal No. 18 is to be filed. Isn't that the way the motion should read? Is there a second?

LAI: Second the motion.

CHAIRMAN: Is there any discussion? All those in favor please say "aye." Opposed. Carried.
For the information of the committee, Committee of the Whole Report No. 13, which dealt with the seat of government, there was a question as to whether or not the phrase —I don't have it before me, but I believe it's "unless otherwise provided by law"—had passed this committee. In going further back from the transcript but going into the recording, it was discovered that the motion to change the wording had not carried, although the transcript showed that it had, so there is a redraft of that Committee of the Whole report being prepared at the present time, and I think that we'll have to hold on discussion until then.
I think now we're ready to rise and report progress.

DOWSON: I move that we rise, report progress and recommend adoption of the Committee of the Whole Report on Proposal No. 14 and Resolution No. 45; and the adoption of Committee of the Whole Report No. 19 and Committee Proposal No. 20 as amended; and for the adoption of Committee of the Whole Report No. 20 for the filing of Committee Proposal No. 18.

CHAIRMAN: Is there a second?

PORTEUS: I understood that they had - - that action had been deferred on Committee of the Whole Report No. 14, so I don't think that would be appropriate to include in the motion that we rise, report progress and recommend the adoption.

CHAIRMAN: Yes, Resolution No. 45.

PORTEUS: You could leave Resolution No. 45 to accompany the Committee of the Whole Report No. 14, because that handles not only the state seal, but it also handles this section with respect to the Hawaiian translation of the phrase, "Above all nations is humanity." Now, if you postpone a portion of the Committee of the Whole report, it seems to me, therefore, that you would postpone the whole committee report.

LARSEN: To speed up, I wonder if we could get Kauhane and Mrs. Hayes to accept the fact that this is a broad translation. It's true it says the life of all humans and so on, but that is humanity.

CHAIRMAN: Delegate Larsen, we have a motion here. I'm trying to get the motion straight before we can - -

LARSEN: What is the motion, may I ask?

CHAIRMAN: The motion is as to what this Committee of the Whole shall report. We have already sent for the translator from the Archives and we have some other business here. This Committee of the Whole will have to meet once again, so I don't think that there would be anything gained by rushing it through at the present time, if you're willing to withdraw.

BRYAN: I'd like to ask the movant if he would accept the amendment that we rise, report progress and ask leave to sit again.

CHAIRMAN: Delegate Bryan, I think we can get some of these things out of the way.

BRYAN: In reporting progress, it's up to the chairman to name what we have recommended.

CHAIRMAN: All right. Fine. Will you second the motion? All those in favor please say "aye." "No." Carried.

JULY 6, 1950 • Afternoon Session

CHAIRMAN: Will the Committee of the Whole come to order, please.

KAUHANE: May we deviate from your schedule and take up Committee Proposal -- Committee of the Whole Report No. 14?

CHAIRMAN: You want to take Committee of the Whole Report No. 14 first?

KAUHANE: That's right.

CHAIRMAN: I believe the chairman of the Miscellany Committee had a different schedule.

KAUHANE: May I be given permission to state my reasons why?

CHAIRMAN: Yes, please.

KAUHANE: I think when we deferred action on that it was on the translation of the Hawaiian words that appear in the Committee Proposal No. 14. The fact is that I'd like to be excused immediately upon consideration of this matter. I beg an indulgence that we take up this matter now and settle it, the translation.

CHAIRMAN: Request is granted. The committee will turn its attention to Committee of the Whole Report No. 14.

KING: I think it's Committee Proposal No. 14, is it not?

CHAIRMAN: It's Committee Proposal No. 14, which is embodied in Committee of the Whole Report No. 14, by coincidence, the subject of Standing Committee Report No. 55 of the Committee on Miscellany. You will recall that we deferred action on the latter half of that report, which is Resolution No. 29, and the reason for deferring the action is to be found on page three of the Committee of the Whole report in the first section appearing there, which is Section 2, as to the translation of the Hawaiian words. Now, there was one amendment on the fourth line. The word "the" appearing before "translation" was deleted, and inserted in lieu thereof the word "a" to read "a translation." But there is still some difference of opinion as to what the translation in English should be. Now, has that been resolved?

KAUHANE: Yes, the translation is "Above all nations is the life or existence of man," whichever word you want to use, "life" or "existence" of man. That will be correct with the Hawaiian word that is now being used in this committee resolution. "Above all nations is the life of man." I would like to offer this.

CHAIRMAN: "Above all nations is the life of men" or "man"?

KAUHANE: "Man," M-A-N.

CHAIRMAN: Is there a second to that amendment?

APOLIONA: I second it.

CHAIRMAN: It's been moved and seconded that the English quotation of the translation read, "Above all nations is the life of man."

AKAU: I realize that is the literal translation, but I fail to see where "humanity" differs from the "life of man." Humanity, human, you have the first word, human, which means life and I wonder, would it be heresy to say "Above all nations is humanity," as was originally put in the report, since it actually means the same thing, I think?

HAYES: I believe I was responsible for this yesterday because my attention had been called by an authority that I thought was worthwhile considering, Mr. George Mossman; but since then the chairman of the committee, Dr. Larsen, did contact Mr. Mossman and they both have agreed that we should leave it alone and not amend it at all.

CHAIRMAN: You are speaking against the amendment?

KAUHANE: I'd like to differ with the delegate's question. Certainly if we are going to use the Hawaiian words and we are to translate its meaning in English, we should translate it correctly. We can't be saying things that don't rhyme with the Hawaiian words that are being used. If we want to leave the thing as it is, although some may say the word "humanity" means "the existence of man," then the Hawaiian words should be changed to take care of that. When we read the Hawaiian motto, "Ua mau ke ea o ka aina i ka pono," there is only one meaning, one translation in Hawaiian -- in English. We can't say, because we use one word which embodies a general meaning that it's perfect. I'd like to, as much as possible, if we are not following the wording of the Hawaiian language, to leave out any mention of Hawaiian words in the Constitution, so that we will not take the position to have Hawaiian words put in here that don't mean anything. If we really want to carry out its full intent, then the full intent is submitted here which has been translated by the expert that holds the position of Hawaiian translator in the Archives, and I think he is qualified under any jurisdiction in the interpretation of Hawaiian into English, English into Hawaiian.

HEEN: I don't think this Convention should have too much concern about this matter. It is only a resolution asking the legislature to enact appropriate legislation covering these various symbols or emblems of heraldry. Now, this is not binding upon the legislature, and the legislature can take time off to find out what the proper translation should be.

COCKETT: I think the translation here is correct. You know, sometimes Hawaiian words have many translations, many meanings. But here, it says "ke ola o ke kanaka," "is humanity," it means the same thing as "existence" or "life." So I think it's correct, this translation is correct.

YAMAUCHI: I think there's quite a bit of difference of opinion in regard to the interpretation of that word, the phrase over there. I would like to suggest, rather make a motion that the resolution pertaining to Section 2 be amended by putting a period after the word "kanaka," and delete the rest of the section and leave it up to the legislature to interpret as it is.

CHAIRMAN: You further amend the amendment. Is there a second?

IHARA: Second the motion.

CHAIRMAN: The amendment was to place a period after the word "kanaka," quote, period, and delete the balance of the section. Any further discussion on the amendment? All those in favor please say "aye." Opposed. The Chair is in doubt. All those in favor, please raise their right hand. Opposed. The ayes have it.

Now, then, the motion would be in order to adopt the resolution as amended.

YAMAUCHI: I move that Committee of the Whole Report No. 14 including Resolution No. 29, and Committee Report [sic] No. 14 be adopted.

APOLIONA: I second that motion.

CHAIRMAN: It's been moved and seconded to adopt Committee of the Whole Report No. 14, which includes Proposal No. 14 and Resolution No. 29. Any discussion? All those in favor please say "aye." Opposed. Carried.

Now, if we can turn our attention to Committee of the Whole Report No. 13, regarding the seat of government. There was some difference of opinion as to what the record held on this particular report and the Chair might state that I took the original report from the transcript, but we discovered in listening to the tape that there were some changes. So in Redraft 1, we have a substantially different report. I'll ask the Clerk to read the report, please.

CLERK:

Your Committee of the Whole, to which was referred Standing Committee Report No. 53 of the Committee on Miscellaneous Matters and Committee Proposal No. 12 accompanying the same, having held meetings on June 26 and 27, 1950, and having fully considered said report and proposal, begs leave to report as follows:

The proposal relates to the seat of government and reads as follows:

> Section _____. The seat of government of this State shall be located at the city of Honolulu on the island of Oahu, unless otherwise provided by law.

Recommendation: Your committee recommends that the proposal be adopted.

The phrase, "unless otherwise provided by law," enables the legislature to move the seat of government to a temporary location in the event of insurrection, invasion, conflagration, epidemic, or for other emergency conditions resulting from an act of God. This phrase also authorizes the legislature to establish methods to be employed in determining the location of the seat of government. The intent of the Committee on Miscellaneous Matters was explained further to mean that the seat of government should not be permamently set in the city of Honolulu by constitutional direction, but it could be relocated by statute.

That Standing Committee Report No. 53 recommending the adoption of Committee Proposal No. 12 be adopted; and that said Committee of the Whole accordingly recommends that said Committee Proposal No. 12 pass second reading.

YAMAUCHI: I move the Committee of the Whole Report No. 13 be adopted.

YAMAMOTO: I second the motion.

CHAIRMAN: It's been moved and seconded to adopt the report as read. Any discussion? All those in favor please say "aye." Opposed.

ANTHONY: You called for discussion and I was trying to get recognition.

CHAIRMAN: I beg your pardon.

ANTHONY: I don't think it was the intention of this body to permit the legislature to otherwise provide by law for the seat of government in all cases. That's what this proposal does. Notwithstanding the nice language of the report, for any reason the legislature could move the capital. I think it was the intention of those that voted on this proposal that, in case of an emergency, where it was necessary to move the capital, that could be done. I, therefore, think that what we should do is to amend this proposal to state what was in the minds of the delegates here when they voted on it.

SILVA: I thought we voted on it, but anyway I was going to say I approve the committee report, because it meets my objection. I wanted it in Hilo, but since they've gone this far to allow the legislature to place the capital where it sees fit, it meets with my objection and I approve the report.

CHAIRMAN: The Chair might state, in response to Delegate Anthony's point, that I was also of the opinion that it was not the concensus of this committee, but in listening to the tape, we find that there was a question specifically asked as to what the provision meant and the explanation of members of the committee that it was not only for emergency purposes but at any time by statute, went unchallenged. The Chair asked Delegate Harold Rice of Maui, "Delegate Rice, does that answer your question?" And he said, "Yes," and there was no further objection. Hearing none, the Chair could only gather that it was the concensus of the committee. Now, if the delegate from the fourth district wishes to have that changed, I suggest that he - -

ANTHONY: I move an amendment.

CHAIRMAN: Proceed.

TAVARES: Reconsideration. We can't amend; we've already adopted.

CHAIRMAN: That's correct.

WOOLAWAY: We did not adopt - -

ANTHONY: You have not adopted, that's why I rose.

CHAIRMAN: We have not announced the vote.

ANTHONY: Do I have the floor, Mr. Chairman?

CHAIRMAN: Delegate Anthony, you have.

TAVARES: My point of order still stands. We have - -

ANTHONY: The Chair ruled I had the floor.

ROBERTS: On the point of order, the Chair did not announce the vote.

CHAIRMAN: That is correct.

ROBERTS: The delegate from the fourth is properly presenting an amendment.

CHAIRMAN: That is correct. I ruled him in order and said that he had the floor. Proceed, Delegate Anthony.

ANTHONY: I move an amendment. Delete the period after the word "law" and the quotes and add the words "in cases of emergency."

HAYES: Second the motion.

CHAIRMAN: Thank you. The motion has been made to delete the period and the quotes after the word "law" in the section and add the words "in cases of emergency," period, quotes. Any discussion on this?

TAVARES: In the first place, I still don't agree with the ruling of the Chair; and, in the second place, I think we're giving pretty poor consideration to the judgment of the legislators from Oahu who are going to control the House, when we think that this thing endangers Oahu at all. I think we're wasting time on this proposed amendment. We're looking - - we're forgetting to look facts in the face. This thing was discussed before, was amply discussed. It was voted here, and just because the Chair hadn't yet announced the vote, we're going through this whole rigmarole again. I think the amendment ought to be killed.

PORTEUS: I am inclined to believe that after the Chair has put a question, regardless of whether or not the Chair has announced the vote, that anyone is foreclosed from gaining the floor. However, let's not be too technical. Let's move along. I think that for the convenience of anyone who wishes to make an amendment, though I don't agree with it, I'll move to reconsider in order that the amendment may be put before us. We'll either vote it down or - -

ANTHONY: Point of order. The speaker is out of order. Question now is on the amendment, not on any question of reconsideration.

CHAIRMAN: Delegate Anthony, the Chair might reconsider the ruling here. This section, actually, was passed upon previous to the writing of the Committee of the Whole report, so Delegate Porteus is correct. In order to allow your amendment, there should be a motion for reconsideration.

PORTEUS: In spite of the refusal to accept my proffered help, I'll proffer it once more. I move we reconsider our action on this matter.

CHAIRMAN: Is there a second?

NIELSEN: I second that in order not to waste time.

CHAIRMAN: It's been moved and seconded to reconsider Standing Committee Proposal No. 12. All those in favor please say "aye." Opposed. The motion to reconsideration is lost.

KING: We seem to be getting into a stymied position and the only question in issue is whether the right to change the capital shall be limited to times of emergency or not. Now, the chairman of the Committee of the Whole has already stated the tape shows it was definitely the desire of the Committee of the Whole to leave the right to move the capital unlimited. I have no fear as a resident of Oahu that the delegates from the other islands are going to move the capital to Hilo or to Kawaihao or to Wailuku. They may move parts of it, but they can't change the terrific investment that's already been made in the capital. I don't think the amendment is particularly necessary. But the Chair did recognize Delegate Anthony to make the amendment and it has been seconded. The motion to reconsider came after he had been recognized and the second has been recognized. I would like to suggest that we vote on this amendment and if we vote it down, then that's the end of it. Then vote on the other proposals unamended.

CHAIRMAN: Well, the Chair admits to being stymied. However, in view of the rather vehement vote against reconsideration, I assume that the amendment will also be voted down, correctly or incorrectly. However, if Delegate Anthony wishes to correct the sense of this Committee of the Whole report, the chairman would be willing to be instructed by the committee to correct the report, although I would invite any of those who feel that the report misstates the sense of the committee, to listen to the tape in one of your spare moments because it very definitely indicates that there was no argument with this point.

ANTHONY: The trouble with the report of the chairman is it doesn't conform to the language of the section. The report says it is the intent of the section to remove the capital in cases of an emergency. The section doesn't say any such thing. That's the only point. It's a small matter. I don't care. If you want to have that inconsistency between the actual thing that you are passing and what you say you are passing, that's all right with me.

CHAIRMAN: I suggest the delegate reread the report.

SILVA: I rise to a point of order.

KING: I would like to call attention to the fact that the report is correct. It says in an emergency - -

SILVA: Point of order.

KING: - - and later it says - - The Chairman recognized me, just let me finish. "This phrase also authorizes the legislature to establish methods to be employed - -"

SILVA: Point of order. There is nothing before the Convention - - before the committee.

CHAIRMAN: You're not recognized, Delegate Silva. Would you state your point please?

SILVA: I said there is nothing before this committee.

CHAIRMAN: Thank you. Delegate Bryan.

BRYAN: Is it the Chair's ruling that there is nothing before the committee?

CHAIRMAN: The Chair thinks that there is something before this committee and I would like to state that the Chair has asked whether or not any member of the committee would like to have the sense of the report changed.

BRYAN: Mr. Chairman.

SILVA: The Chair is out of order and I appeal to this Convention.

BRYAN: I'd like to speak to that something which is apparently before the body. I think it is the sense of the Convention, or I move that it be the sense of this committee that the seat of the capital shall not be changed by the legislature except in case of emergency. If I get a second to that, I'd like to speak on it.

ROBERTS: Second.

CHAIRMAN: Moved and seconded. Proceed.

TAVARES: I rise to a point of order. It's utterly inconsistent with the language of the section which clearly shows that there is a right of the legislature by law to provide for the change.

CHAIRMAN: Then you are speaking against the motion?

TAVARES: Yes, I consider it entirely out of order.

CHAIRMAN: I do not. Proceed, Delegate Bryan.

SAKAKIHARA: Point of order. I believe the Committee report of the Whole is the property of the Committee of the Whole and. . .[inaudible]

CHAIRMAN: I couldn't hear you.

SAKAKIHARA: I rise to a point of order.

CHAIRMAN: Would you speak a little slower, please?

SAKAKIHARA: The Chair is in error. The Committee of the Whole report is the property of the Committee of the Whole. You are merely the presiding officer and I believe that the Chair should inquire as to desire of the Committee of the Whole.

CHAIRMAN: That in effect is what the Chair has done and there seems to be some question as to whether or not the Chair - - the chairman of the Committee of the Whole had correctly stated the intent of the committee. The motion now is to get to that point, Delegate Sakakihara.

BRYAN: Mr. Chairman, I think I have the floor.

CHAIRMAN: Delegate Bryan has the floor, unless you are rising to another point of order. Delegate Bryan.

BRYAN: My reason for making that motion, the reason I want to speak on it is that I believe that a state capital is just about as permanent as a constitution and, therefore,

I think it should be stated in the Constitution, unless, in a case of emergency, it shall be moved temporarily elsewhere. Now there has been some talk on this floor that the increase in the Senate and House is going to cause us millions of dollars to build a large capitol building. I don't think we want to build one on each island. I think if we have one, that would be permanent, at least until the Constitution - -

SILVA: Point of order.

BRYAN: I haven't spoken more than five minutes. I still have the floor.

SILVA: You're out of order.

BRYAN: I'd like to say one other thing. I would advise the chairman of the committee, unless he can get the delegates to refrain from using the microphone in voting, to call for a standing vote for the rest of this committee meeting. Also, to call attention to the delegates that when we have a roll call, it's very hard to hear them, but they use the microphone when they don't need it.

CHAIRMAN: The Chair is in sympathy with those last remarks. Delegate Trask.

SILVA: Is that a motion? I don't know, is anything before the Convention?

CHAIRMAN: You're out of order, Delegate Silva. Sit down.

A. TRASK: I think the motion - - the expression by Delegate Anthony is a very earnest consideration. What I'm thinking about is this. Does any quality or kind of expression in a Committee of the Whole report, how far does that language go to change the intent of plain words in a proposal?

SILVA: I rise to a point of information.

CHAIRMAN: State your point of information.

SILVA: What is before this Convention?

CHAIRMAN: A motion by Delegate Bryan.

SILVA: What is the motion?

CHAIRMAN: That it is the sense of this committee that those words, "unless otherwise provided by law," relate only to emergencies and not to ordinary statutes.

SILVA: Then the motion is out of order.

CHAIRMAN: The Chair has declared that it is in order. Delegate Trask, proceed.

A. TRASK: I'm concerned about the earnest effort here to determine whether or not the words "unless otherwise provided by law" are to be restricted in their judicial interpretation to the words "simply emergency," and that's why it seems to me clearly that if the court just looked at this plain expression, I'm sure the legislature would not be limited merely to emergencies. I think it's worthwhile to put it in.

SILVA: I move that the committee rise, report progress and beg leave to sit again.

CHAIRMAN: I don't recognize the motion. I think you are obstructing everything, Delegate Silva. Will you sit down and relax.

KING: Let me ask if Delegate Bryan would withdraw his motion to embody a restriction as to the sense of the committee and allow Delegate Anthony make his amendment. Let's vote on it. If it's adopted, then that's the sense of the committee. If it's voted down, then we'll have the proposal as originally reported. I ask Delegate Bryan if he will withdraw his motion and let Delegate Anthony present his amendment. I say, let's vote on the amendment. If this Committee of the Whole prefers the amendment, then that would be binding on the Committee of the Whole and would be an amendment to the proposal on second reading.

BRYAN: I'd be very glad to withdraw my amendment if the Chair - - my motion if the Chair feels that he can put the motion without being out of order.

CHAIRMAN: I think that possibly if Delegate Anthony wishes to put his amendment, he can call for suspension of the rules, so that we can proceed with the amendment.

WOOLAWAY: I move for the suspension of rules so that we can expedite matters here.

ROBERTS: I'd like to suggest that there is an honest difference of opinion as to what the thinking of the Committee of the Whole was prior to the report. I think that the chairman of the Committee of the Whole properly reported on the basis of the tape and the records that he had. I think, however, that there wasn't full understanding and agreement among the delegates as to what the intent of that was. I know that I, for one, felt that the language as we adopted it applied only to the emergency provisions in the legislative article. I think there can be an honest basis of difference of opinion with regard to the report. If we did not reflect our opinion, I think it's perfectly proper in the Committee of the Whole to refer to the chairman and to indicate to him that it was not the sense of the Committee of the Whole.

I don't think we ought to get excited about this problem. We can take it up tomorrow morning; I think we're all pretty tired; I think we ought to get a good night's sleep. Therefore, I move that we rise and report progress and beg leave to sit again tomorrow morning.

NIELSEN: Second the motion.

KING: Let me ask Delegate Roberts if the procedure I suggested wouldn't be equally applicable. We can vote on the amendment Delegate Anthony had suggested, vote it up or vote it down, and that moves the proposal out, and we'd be that much ahead. I don't think we're so tired we can't accept the amendment that the right to change the capital be limited to emergency or is unlimited. It is as simple a matter as that.

ROBERTS: I think that the reason I wouldn't like to get a vote now is that we're not thinking about the problem. We're all pretty tired and I think we're a little bit emotional. I think we can save it until tomorrow and give it a little bit of thought.

ARASHIRO: Mr. Chairman.

CHAIRMAN: There has been a motion - -

ARASHIRO: For the same reason, I second that motion.

CHAIRMAN: The motion's been seconded, Delegate Arashiro. There has been a motion to rise and report a certain amount of progress. The Chair feels that we're all big boys now and can probably stick it out, but if that's the wish of the - -

PORTEUS: May I suggest to the body that Standing Committee Report No. 66 has not yet been acted on. If the body will give the opportunity to the chairman of the Committee on Miscellaneous Matters to present that report and ask that you adopt the committee report. That report only places various matters on file that were submitted to that particular committee. I think that if you will give him that opportunity to do that, he is prepared to make the motion, and I think we can pretty well round up our work on this miscellaneous affairs.

ANTHONY: As the author of all this chaos, I have no particular feeling one way or other, but I did really believe that it was the sense of the body when it voted upon the pro-

posal that the capital could be moved as provided by law in cases of emergency. Now there's no need for anybody to get stirred up about it. I think that the suggestion of the President is a sensible one. I don't care whether the body votes for or against my amendment. I was just trying to clear up what I thought was an ambiguity among the delegates here. I suggest Delegate Roberts withdraw his motion. Let's take a vote on it and get rid of it.

ROBERTS: I withdraw the motion.

NIELSEN: I withdraw the second, and put everybody in order.

CHAIRMAN: Thank you. We have yet before us the approval of the report, as written. Is there any further discussion?

ANTHONY: I move an amendment to [Committee] Proposal No. 12. After the words, "unless otherwise provided by law," delete the period and the quotes and insert the words "in cases of emergency."

DELEGATE: Second the motion.

PORTEUS: I consider that entirely out of order. I made the motion to reconsider in order to give the gentleman the opportunity to present his amendment. He rejected my offer. I made another offer, made the motion to reconsider in order to put this thing properly before the body. The body voted on it and it was turned down. I don't see anything more before the body. All the chairman needs to do is rule that the matter was brought to a head on the motion to reconsider and was lost. The only way that anyone can get around that is by moving to suspend the rules.

KING: On the point of order raised by Delegate Porteus, I hate to differ with him but the motion to reconsider was out of order, as a matter of fact, because the Chair had already recognized Delegate Anthony and had already ruled that it was in order. So there wasn't any question of reconsideration. The Chair had legalized the amendment and the second to the amendment. Let's vote on the amendment.

CHAIRMAN: The Chair has recognized the amendment realizing we are in the Committee of the Whole, and I feel that there is an honest difference of opinion as to what the sense of this committee was. I feel that anyone who stands up on a formal parliamentary procedure is standing in the way of expediency. Now, the amendment reads to add the words after "law," "in case of emergency" period, quote. All those in favor of the amendment please - -

HEEN: I move an amendment to that amendment by striking out the words, "unless otherwise provided by law" and put a period after the word "Oahu." Leave the situation a fluid one. If Oahu becomes untenable, they are going to move out of Oahu anyway without waiting for the legislature to provide by law that you can move. That's what they are doing in South Korea. The government has moved two, three times from Seoul and they didn't need any legislation to do that. They'll move anyhow whenever the emergency arises.

CHAIRMAN: Is there a second?

AKAU: I second that.

CHAIRMAN: The motion has been seconded by Mrs. Akau.

YAMAUCHI: I'd like to speak in regards to the comment made by the previous speaker. If the speaker believes what he has spoken, why is it that the committee has that phrase about emergency location of the capital in the legislative article?

BRYAN: Would you read the pending amendment, please?

CHAIRMAN: The amendment is to delete the words "unless otherwise provided by law, in case of emergency," so that the section would read "The seat of government of this State shall be located in the City of Honolulu on the island of Oahu," period.

ANTHONY: I accept the amendment. So we needn't vote on the motion to amend my amendment.

CHAIRMAN: Delegate Anthony accepts the amendment. All those in favor of - -

SAKAKIHARA: I demand roll call.

ROBERTS: Before we take the vote, I think we have a provision in our legislative article which makes an exception of this. I think the proper amendment should be "except as otherwise provided in this Constitution," which takes care of the emergency situation. Is that acceptable to the movant?

HEEN: In the article on the legislature, there is a provision that the sessions of the legislature shall be held in Honolulu, that is held as the seat of government; and if the seat of government becomes unsafe, the governor may direct that the sessions be held elsewhere. But the seat of government would still remain in Honolulu, and if it becomes untenable, they are all going to move out anyway.

CHAIRMAN: Any further discussion on the amendment?

SAKAKIHARA: I ask for a division of votes.

CHAIRMAN: You want a division of the house? Call for the roll call. How many want a roll call?

PORTEUS: I think division of the house would only require the chairman of the committee to ask for a standing vote.

CHAIRMAN: Correct. All those in favor of the amendment, please stand. Opposed. The ayes have it. 26 to 22.

SILVA: I ask for a roll call.

CHAIRMAN: The Chair has already announced the results.

ANTHONY: Point of order. I move that the report be adopted as amended.

YAMAUCHI: Second the motion.

CHAIRMAN: Moved and seconded that the report be adopted as amended. All those in favor please say "aye." Opposed. The ayes have it.

There is before this committee the Standing Committee Report No. 66.

YAMAUCHI: I move that the Standing Committee Report No. 66 be adopted.

YAMAMOTO: I second the motion.

CHAIRMAN: Delegate Yamamoto seconds. Any discussion on Standing Committee Report No. 66? All those in favor of the motion please say "aye." Opposed. Carried.

Now I think we're ready to rise and report progress.

DOWSON: I move that we rise and report progress and recommend the adoption of Committee Report - -

DELEGATE: Can't hear the delegate, Mr. Chairman.

DOWSON: I move that we rise and report progress and recommend the adoption of the Committee of the Whole Report No. 14 as amended with Resolution No. 29 rendition, the second rendition; Committee of the Whole Report No. 13, and Committee Proposal No. 12, as amended, and Standing Committee Report No. 66.

SAKAKIHARA: Second the motion.

CHAIRMAN: All those in favor please say "aye." Opposed. Carried.

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CHAIRMAN: Committee of the Whole will come to order. Delegates may sit at their ease. The Chair recognizes Delegate Wirtz.

WIRTZ: In order that we start out clean and fresh in this matter, so that there will be no technicalities involved, I now move for the suspension of rules and the consideration of this particular proposal.

PORTEUS: I second that motion.

CHAIRMAN: There has been a motion to suspend the rules. All those in favor please say "aye." Opposed. Carried unanimously.

YAMAUCHI: I now move that we adopt Committee of the Whole Report No. 13.

YAMAMOTO: I second the motion.

CHAIRMAN: It has been moved and seconded that Committee of the Whole Report No. 13, Redraft 1, be adopted. Is there any discussion?

HEEN: I take it that if the committee report is adopted, it will contain the phrase "unless otherwise provided by law." Is that correct?

CHAIRMAN: That is correct.

HEEN: I have an amendment. Delete the phrase "unless otherwise provided by law," and place the period after the word "Oahu" on the third line, and add to that, "In case Honolulu shall be unsafe, the governor may direct temporary removal of the seat of government to some other place."

CHAIRMAN: No, this is where we went off the tract yesterday. The Chair would like to ask of our parliamentarian, Mr. Secretary, whether it would not be correct now to move for a reconsideration of the section.

PORTEUS: I think the point of Delegate Wirtz motion- -

CHAIRMAN: Takes care of the rules.

PORTEUS: - - takes care of it. Now, you have before you a motion to adopt with an amendment, which is in order, which deletes and substitutes in lieu thereof.

CHAIRMAN: The Chair just wanted to make sure of that. Now is there a second to the - -

J. TRASK: Second the motion.

CHAIRMAN: Now, Delegate Heen, would you restate your amendment so that we know exactly what it is?

HEEN: Line three, substitute a period for the comma following the word "Oahu" and delete the phrase "unless otherwise provided by law"; and substitute for that phrase the following sentence, "In case Honolulu shall be unsafe, the governor may direct the temporary removal of the seat of government to some other place." May direct the temporary removal of the seat of government to some other place." That follows somewhat the language used in the article on legislature powers and functions with reference to the holding of sessions in Honolulu and that, when Honolulu becomes unsafe the governor may direct that any session may be held at some other place.

CHAIRMAN: Is the amendment clear in the minds of all the delegates? The sentence should read, after Oahu, "In case Honolulu shall be unsafe, the governor may direct the temporary removal of the seat of government to some other place." Is there any discussion?

YAMAUCHI: I'd like to speak in opposition to the amendment. When the Committee on Miscellaneous Matters took up this matter about seat of government, we were in accord that the seat of government should not be permanently set in one place. We felt that a provision should be added that in case that the capital is in danger and that it would be necessary to move the capital temporarily, it should be relocated in some other area, whether it be in the City and County of Honolulu or to some other island. But also, that it should provide the means, the method that could be employed in selecting the capital. Also, that in the event of the future growth of some other areas of the State of Hawaii, that it should be given the opportunity to be a capital if it fulfills the requirement. We feel that in later years, in some other areas of the State of Hawaii—that is, if we become a state—that it may grow to the extent where it may be not necessary but it will be for the benefit of the State to move the capital to some other area. For that reason, we felt that we would not like to leave the seat of government to be permanently set in Honolulu.

APOLIONA: The chairman of your Miscellaneous Committee is quite right. The committee felt that because of Honolulu now having all opportunities, and it is the largest city in the Territory, that Honolulu now shall be the capital. But in future dates, when any political subdivision within this State shall grow and prosper and become bigger than Honolulu, then the legislature may remove the seat of government to that particular subdivision. And also, the members of the committee agreed that in case of disaster or any emergency, the governor can remove the temporary seat of government from Honolulu to any place he so desires. That is to give the opportunity for other political subdivisions of this State if they become bigger, more prosperous, and have the facilities to hold the seat of government, then that particular subdivision should be given the opportunity of becoming the seat of government.

CHAIRMAN: Ready for the question?

DOWSON: May I say a word against the amendment?

CHAIRMAN: Proceed.

DOWSON: Honolulu is now the logical capital, location for the capital of the State of Hawaii. It might still be the most fit place for the location of the seat of government for a long time. However, can we preclude that some pestilence or something that might happen due to warfare, can we preclude that the place Honolulu might not be rendered unfit for use? We may - - due to the development in the use of the atomic bomb or the H-bomb or other bombs that might come, can we preclude that we may not have to build a city underground or a place where we can keep the valuable documents from being destroyed? We can't go underground here in Honolulu due to the closeness of the water. Therefore, I think we should leave to the future legislature the prerogative to move the seat of the capital.

BRYAN: I understand the arguments made by the various members of the committee quite well. However, I'd like to ask the chairman of the committee if it isn't true that any permanent change would be probably accompanied by a great many changes in other factors, as he mentioned, and in that event, wouldn't it be sufficient change to warrant a revision of the Constitution? That was the point I tried to make yesterday. It's quite a large move to move permanently the seat of government of the Territory or of the State, and I think that that should be accompanied by a rather serious change which would change the Constitution. I quite agree that as far as temporary removal is concerned, it could be done by the governor or provided by law by the legislature, it could be taken care of very easily in that manner. But a permanent change, I think, should require a revision of the Constitution. I'd like to get the views of the committee chairman on that point, if I may, please.

YAMAUCHI: In the constitutions of the various states, in some of the constitutions, they provide that the permanent seat be at a certain city. The committee felt that if we make Honolulu the permanent seat, by constitutional measures, we wondered whether if in later years when the Constitutional Convention is called, whether it would be possible to make the amendment once the permanent seat has been set.

CHAIRMAN: The Chair feels that there has been sufficient discussion.

SILVA: I'm heartily in accord with the committee report, with the recommendation of the committee. May I cite that during the sessions that I've been in the territorial legislature, there have been several attempts, more as a joke than anything else, by my good friend Senator Capellas from Hawaii, calling Hilo God's country and so forth, to change the capital. Just an introduction of the bill, and it stays there and never got any further.

We realize that the House will be controlled by a vast majority of members from Oahu. Even with the outside islands, if Hilo would want to change it, then there would be the Maui or Kauai group to take it over to Maui, and then the Kauai group would like it over on Kauai. So that the chances are practically slim and impossible to change the capital to any locality unless there might be sufficient reason, and I wouldn't doubt that when that time does come in the legislature that the originators of the move to move the capital would probably come from Oahu because the island of Hawaii and the island of Maui or the other counties are less subject to attack. In all probability it would be the objectors rather than those that are being in accord to change the capital. The move would probably come from Oahu in the legislature to change the capital. So I see absolutely nothing wrong with the committee's report. Any talk to the contrary about how the outside island delegates are going to change the -- move the capital to Hawaii when Oahu has so much control over the House is, as the word goes in the Convention, facetious.

YAMAMOTO: I see that the amendment to this does not hold water because of the fact that it says "unsafe," because it is "unsafe" the capital should be moved temporarily to another locality. To me, at the present time in the present world situation, I feel that any city is always unsafe 365 days a year because of the fact we have in this atomic age the H-Bomb. You have seen on December 7, 1941, that your city was attacked and it was in a dangerous situation. You can see for yourself, because of the reason that we have our naval and army installations on this island concentrated, that means this city is most susceptible to attack from the air and sea and land. Now, therefore, because of the fact that we set our capital city in Honolulu, there is a possibility that you will not be able to move your capital to maybe Wahiawa or any other city on this island, and I therefore believe that this amendment should be defeated by all means. Thank you.

CHAIRMAN: Is the committee ready for the question? The question is on the amendment as offered by Delegate Heen. All those in favor please say "aye." Opposed. The Chair is in doubt.

DELEGATE: Show of hands.

CHAIRMAN: All those in favor please raise their right hand. Opposed. The Chair counts 21 for, 25 against. The amendment is lost.

PORTEUS: I suggest that the Chairman now put the motion to adopt the proposal and committee report.

A. TRASK: I move that a period be placed after the word "Oahu" and the balance of the words, "unless otherwise provided by law," be stricken.

J. TRASK: I second the motion.

A. TRASK: Just a brief word. I want to assure the outside islands that this is not Oahu thinking. It's just a question of strict law. The question we are concerned with is how far can a committee report go to torture the language and meaning of plain words that are to be judicially determined. Let us understand plainly that the only time the courts will review the reports to divine the intention of this Convention is when there is any ambiguity of language. Now the words "unless otherwise provided by law," is not ambiguous. With what is it ambiguous? It's plain that the court would say, for any reason that the legislature may determine by law, so that there would be no reason to refer to the committee report. So the intention that the capital would only be removed in case of emergency would not be considered by the court at all.

CHAIRMAN: There has been an amendment offered to place a period after "Oahu" and delete the balance of the section. Are you ready for the question?

DELEGATE: Roll call.

CHAIRMAN: I'll ask for show of hands. All those in favor please raise their right hand. Opposed. The Chair counts 27 ayes, 24 noes. The ayes have it.

J. TRASK: I move that Committee of the Whole Report No. 13 be adopted as amended.

NODA: I second the motion.

CHAIRMAN: Moved and seconded to adopt the committee report.

PORTEUS: I wonder whether the movant would mind making that to adopt the proposal as amended, and leave it to the chairman of the Committee of the Whole to rewrite the Committee of the Whole report.

CHAIRMAN: Correct. Will you so change your motion, Delegate Trask? It has been moved that the proposal be adopted as amended. All those in favor?

KANEMARU: Point of information, please. Did you say that was Committee Proposal No. 12, redraft 1?

CHAIRMAN: That's Committee Proposal No. 12 as found in Committee of the Whole Report No. 13, redraft 1.

KANEMARU: Then, if you put the period right back of "Honolulu, Oahu" it doesn't make sense at all as far as this redraft 1 is concerned.

CHAIRMAN: That is correct. We're adopting only the proposal and the new Committee of the Whole report must be written. In other words, we're not adopting the report, we're adopting the proposal. All those in favor vote --

YAMAUCHI: Am I to understand that this amended proposal means that the seat of government will be permanently set in the city of Honolulu?

CHAIRMAN: That's what it says.

YAMAUCHI: On the island of Oahu?

CHAIRMAN: That's the understanding of the Chair.

All those in favor of adopting the proposal as amended say "aye." Opposed. Ask for show of hands. All those in favor please raise their right hand.

DELEGATE: Roll call.

CHAIRMAN: Call for roll call. How many want a roll call? O.K. Roll call. The Clerk will please call the roll.

Ayes, 31. Noes, 27 (Apoliona, Arashiro, Ashford, Corbett, Doi, Dowson, Ihara, Kage, Kanemaru, Kawahara,

Kawakami, Kido, Luiz, Lyman, Nielsen, Okino, Porteus, Sakai, Sakakihara, Silva, St. Sure, Tavares, Wirtz, Woolaway, Yamamoto, Yamauchi, Castro). Not voting, 5 (Gilliland, Lee, Phillips, Richards, Smith).

CHAIRMAN: The ayes have it. I believe now it's in order to move that we rise and report progress.

PORTEUS: I so move. That will give the chairman time to change his report.

CHAIRMAN: That's correct. All those in favor --

HAYES: Second the motion.

CHAIRMAN: All those in favor please say "aye." Opposed. Carried.

JULY 11, 1950 • Afternoon Session

CHAIRMAN: Committee of the Whole come to order. I'll ask the Clerk to read the amended report.

CLERK: Re Seat of government.

Your Committee of the Whole to which was re-referred Standing Committee Report No. 53 of the Committee on Miscellaneous Matters and Committee Proposal No. 12 accompanying the same, having held a meeting on July 7, 1950, and having fully reconsidered said report and proposal, begs leave to report as follows:

The proposal relates to the seat of government and, as originally proposed, read as follows:

> Section _____. The seat of government of this State shall be located at the city of Honolulu on the island of Oahu, unless otherwise provided by law.

Recommendation: Your committee recommends that the proposal be amended to read as follows:

> Section _____. The seat of government of this State shall be located at the city of Honolulu on the island of Oahu.

Your Committee further recommends: (1) That this committee report be adopted; and (2) that Committee Proposal No. 12, as herein above amended, pass second reading.

Signed by the chairman.

CROSSLEY: I move the adoption of the committee report.

J. TRASK: Second the motion.

CHAIRMAN: Delegate Trask seconds. Any discussion? All those in favor please say "aye." Opposed. Carried.

CROSSLEY: I move the committee rise, recommending the adoption of the committee report.

J. TRASK: Second the motion.

CHAIRMAN: All those in favor please say "aye." Carried.

Debates in Committee of the Whole on

REVISION AND AMENDMENTS*

(Article XV)

Chairman: TOM T. OKINO

JUNE 15, 1950 • Morning Session

CHAIRMAN: Will the Committee of the Whole come to order, please. You may remove your coats, gentlemen.

There are three reports, I believe all of you are aware of that, filed by the committee members on revision, amendments, initiative, referendum and recall. There is the Committee Proposal No. 9 attached to Committee Report No. 48. The Chair feels that Committee Proposal No. 9 and Report No. 48 be considered first. What is your pleasure?

FUKUSHIMA: I'd like to make a brief statement, why I'd like to have Standing Committee Report No. 48 be considered first. We have before the Committee of the Whole now, three standing committee reports: Standing Committee Report No. 47, which has to do with the inclusion - - exclusion of the provisions of the initiative, referendum and recall; and we have Standing Committee Report 48, which deals with the method and manner of revising and amending our Constitution; Standing Committee Report No. 49 is a minority report filed on opposition to Standing Committee Report No. 47. Proposal No. 9 is a complete article on the method and manner of revising and amending our Constitution, and that is attached to Standing Committee Report No. 48. In order to avoid any confusion, I would like to have the permission of the Chair and the committee now to take into consideration first, Standing Committee Report No. 48 and Committee Proposal No. 9.

CHAIRMAN: If there is no objection from the floor or this assembly, the Chair will so rule that we shall proceed with the consideration of Committee Report No. 48 and the attached Committee Proposal No. 9.

FUKUSHIMA: Before proceeding, I'd like to make a very brief outline on the method and manner of revising and amending our Constitution. I shall labor under the presumption that the Standing Committee Report No. 48 has been read by the delegates, and laboring under that presumption, I will not go into the report or the proposal at any great length.

In drafting Committee Proposal No. 9, the committee took into consideration that there was an absolute need of a reasonable, workable means of amending and revising our Constitution. It also had in mind that the Constitution should not be easily amended and yet, at the same time, the procedure of amending the Constitution should not be rendered practically prohibitive or impossible.

Generally speaking, the constitutions of the states distinguish between two separate processes in the revision and amendment of such constitutions. The first process may properly be referred to as the initiation or proposal of amendments or revision, and the second process as the adoption or ratification of such proposed amendments or revisions. There are three methods of initiating or proposing amendments and they are (1) proposals by the legislature, (2) proposals by a constitutional convention; and (3) proposals by popular initiative. There are also three methods of adopting amendments. They are (1) adoption by the legislature; (2) adoption by a constitutional convention; and (3) adoption by direct popular vote.

Your committee was in general agreement that the method of adoption or ratification should be by a direct popular vote. However, with regard to the initiation or proposal of amendments, your committee firmly felt that there should be two prescribed methods; first, by the legislative method, and secondly, by a constitutional convention. There was, however, a minority which favored the proposal proposing a constitutional amendment or revision through the constitutional initiative. With the foregoing principles in mind, we drafted a complete article on revision and amendment which is Committee Proposal No. 9.

Section 1 of Committee Proposal No. 9 provides for the procedure of proposing amendments or revisions to the Constitution by the legislature or by constitutional convention, leaving out the popular initiative method.

Section 2 deals with, specifically, revision or amendment by constitutional convention. There it provides that the question, "Shall there be a convention to propose a revision of or amendments to the Constitution" be submitted to the people by the legislature at any time. If the legislature fails to do this, then, within a period of ten years, automatically the State officer whose duty it is to submit such questions will certify the question to the public. That same section also provides that if the majority of the ballots tallied upon the question favors the holding of a convention, the delegates shall be chosen at the next regular election, unless the legislature provides for a special election for the election of delegates. It also provides, among other things, the qualification of delegates, and the determination by the convention of its own organization and rules of procedure.

Upon the question of ratification, there are two methods proposed. If at a general election, the ratification must be by a majority of the votes tallied upon the question, but such a majority must also constitute at least 35 percent of the total votes cast at such election. In the event that a special election is had for the ratification, then that majority must equal at least 35 percent of the total registered voters for that special election.

There is also a further restriction, that if the constitutional provision, or the amendment, provides for the reapportionment of the Senate, that majority must be a majority of the votes tallied upon the question in each of a majority of the counties. Here I'd like to state that there is a minority of two, Delegates Ohrt and Fong, who oppose, or who do not concur with this particular portion of Section 2.

Section 3 provides for the revision or amendments by the legislature. Here two alternatives or methods are proposed. If it's at a single session, it requires a two-thirds vote of the total membership of each house, and at least 10 days' written notice must be given to the governor for his consideration. The second alternative is that if the proposal by the legislature is at two successive sessions,

*Original name—Committee of the Whole on Revision, Amendments, Initiative, Referendum and Recall—has been shortened here to include only those subjects included in the Constitution.

then it requires only a majority of each house. Now, as to the ratification phase of that particular method of amending the Constitution, it's the same as Section 2.

Section 4 deals with the veto power of the governor. We have drafted it in such a manner that the governor's veto is inapplicable in revising or amending the Constitution.

I would suggest, at this time, that we take up the committee proposal, section by section, starting from Section 1 which relates to procedure.

CHAIRMAN: Is there any objection to the suggestion made by the chairman of this particular committee? If not, the Chair will rule that we shall take up Committee Proposal No. 9, section by section.

LAI: I move that we adopt Section 1 of Proposal No. 9.

APOLIONA: I second that motion.

CHAIRMAN: Any discussion? Are you ready for the question?

HEEN: I'd like to submit this question. This section provides that amendments or revisions may be proposed by the legislature or may be proposed by constitutional convention. That implies, I take it, that somewhere else in this article or committee proposal that the final determination of any amendment or revision must be voted on by the people.

FUKUSHIMA: That is what I tried to explain in my very brief resume. Section 1 merely provides generally what -- how the proposals should be initiated, that is by the legislature or by constitutional convention. The second phase is the ratification phase, and under both methods of initiation, we have provided that ultimately the amendments or revisions will be voted by the people, by direct popular vote.

ASHFORD: May I ask a question?

CHAIRMAN: Just a moment, please. I believe the senator from the fourth district has still the floor.

FUKUSHIMA: To be more particular, I shall refer the delegate to page two of Committee Proposal No. 9, the last paragraph appearing on that page.

HEEN: That is in connection with a proposed amendment or provision submitted by the convention?

FUKUSHIMA: That is correct.

HEEN: Then later on, when the proposal is made by the legislature, you in effect use the same language?

FUKUSHIMA: That is correct.

HEEN: The ratification must be made by the people.

FUKUSHIMA: That's right.

ASHFORD: I would like to ask this question. If Section 1 of this article be adopted, will it not foreclose a consideration of the provision for initiative of constitutional amendments under the Minority Report No. 49?

CHAIRMAN: Will the chairman of the committee be willing to answer that question?

FUKUSHIMA: Yes, the delegate from Molokai is correct. If we adopt Section 1, that will foreclose the proposals of any revisions or amendments through the popular initiative method. The Standing Committee Report referred to, which is No. 49, has to do specifically with statutory initiative and referendum, and also constitutional initiative. However, if we do adopt Section 1, it will mean that the proponents of the constitutional initiative in proposing amendments or revision will be foreclosed.

NIELSEN: Will that mean that the Minority Report 48 will be out of order?

CHAIRMAN: If Section 1 is adopted, and no amendment is made to this section by Delegate Ashford --

NIELSEN: There will be no initiative or referendum by the people.

CHAIRMAN: If it is not made at this time, the Chair feels that it will estop you from making such an amendment, unless there will be reconsideration of this Section No. 1.

NIELSEN: Well, then, I think we ought to take up the other proposals, 48 and 49, and dispose of them before we go into this, or postpone this section until they have been taken up.

FUKUSHIMA: In that event, perhaps it may be proper that we proceed to Section 2 and Section 3, and defer action on Section 1 for the time being and take it up after considering the minority report which is Report No. 47, because there you have attached to the minority report an amendment to Proposal No. 9 including the provisions of the initiative and referendum.

PORTEUS: I wonder if it would facilitate the action of the Committee of the Whole if we could proceed to adopt, reject or amend any of the sections with the understanding that when we have finished we would then give full consideration to the chairman of this committee and his presentation of his minority report. At that time, we would then determine whether or not these other sections should be further amended by the inclusion of amendments with respect to initiative, referendum and so forth. In that way, I think that we could move along on this and then bring up the minority report and have a full disposition of that. Could we proceed with that understanding?

CHAIRMAN: What is your pleasure, Delegate Fukushima, with the suggestion now made?

FUKUSHIMA: I believe that's perfectly proper, and I believe I'll accede to that, because I feel otherwise there may be some confusion.

CHAIRMAN: The chairman of the committee having consented to the suggestion made by Delegate Porteus, the assembly will proceed with the discussion of Committee Proposal No. 9 with that specific understanding, namely that after Proposal No. 9 is adopted, it will be considered again in the light of the amendment to said Committee Proposal No. 9.

NIELSEN: Well, wouldn't it be better to just defer action on this first, because then we'll have to vote for reconsideration on it, and --

CHAIRMAN: There was no second to the motion to defer action on Section 1.

PORTEUS: Under this understanding, it would not be necessary to move for reconsideration. You just make your -- offer your amendment.

NIELSEN: Well, that's all right then, if I don't have to move for reconsideration.

PORTEUS: So it would be in order to move, second and adopt Section 1 with the understanding that when we're finished with this, that we'll then take up the minority report and proceed with initiative, etc.

CHAIRMAN: Are we ready to vote on the question that we adopt Section 1 of Proposal No. 9 before the assembly? All those in favor of the motion to adopt Section 1 please signify by saying "aye." Contrary minded say "nay." Carried.

Section 2.

ROBERTS: I suggest that the chairman of the committee go over this thing paragraph by paragraph so that we have a chance to get to the basic issues.

LAI: I move that we adopt Section 2 of this report.

APOLIONA: I second that motion.

CHAIRMAN: The adoption of Section 2 has been moved and duly seconded. Are you ready for discussion?

FUKUSHIMA: Now that we have something before the floor, I'd like to accede to the suggestion made by Delegate Roberts, and take it paragraph by paragraph. First paragraph provides—shall I read it, Dr. Roberts?

> The legislature may submit to the people at any time the question, "Shall there be a convention to propose the revision of or amendments to the Constitution?" If any ten-year period shall elapse during which the question shall not have been submitted, the State officer whose duty it is to certify statewide public questions for submission to the people shall certify the question, to be voted on at the first general election following the expiration of such period.

MAU: May I ask if there is some provision authorizing an officer to so certify the question elsewhere?

CHAIRMAN: Delegate Fukushima, will you be willing to answer that question?

TAVARES: Maybe I can answer it as far as it can be answered. At this stage, we do not know what the final organization of the executive department is going to be. I believe it would be a matter for the Committee on Style later, or for reconsideration, if no such officer is provided for, that we bring the matter up again and name some officer, such as the secretary of state or some other proper officer. I don't think at this stage we can -- we are in a position to know, at least I haven't studied the executive article yet.

FUKUSHIMA: I believe that is the reason why it was left as a State officer. It could be the lieutenant governor, under the recommendations to be submitted by the Committee on Executive Powers and Functions, who may have that duty. Or it may be the secretary of state. So we have left that by merely stating "the State officer whose duty it is to certify statewide public questions."

HEEN: In order to take care of this situation, that clause starting with the words "the State officer" might be changed to read as follows: "Such State officer authorized by law for such a purpose shall certify statewide public questions" -- no, "shall certify the question to be voted on." In other words, change the word "the" to "such," delete the words "whose duty it is to certify statewide public question for submission to the people," so that -- and insert after the word "officer" "authorized by law for such a purpose, shall certify the question." Then that clause will read: "Such officer, authorized by law for such a purpose, shall certify the question to be voted on at the first general election following the expiration of such period." I move that amendment.

CHAIRMAN: Is that a motion, Delegate Heen?

HEEN: Yes, I move that that clause be amended as stated.

ANTHONY: I second the motion, and I'd like to make a suggestion to see if it's acceptable to the movant.

CHAIRMAN: Is there a second to that motion?

ANTHONY: I seconded the delegate's motion, and I'm offering this suggestion. In the line that reads "the State officer whose duty it is to certify," if you would eliminate the word "the" and insert the word "a"; and then after "whose duty it," strike out the word "is" and insert the words "shall be," I think that's all the amendment that is necessary. That sentence would then read, "A State officer whose duty it shall be to certify," then right on to the rest of the sentence. It seems to me that will leave the way clear, either by constitutional provision or by statute, to make the appropriate designation either in the Constitution or in the statutes. I don't know whether the Clerk got the suggestion or not, or whether it's acceptable to the movant. I'll read it again. That line after the word "submitted" would read, if my suggestion is agreeable to the Convention, "A State officer whose duty shall be to certify statewide public questions for submission to the people shall certify the question."

CHAIRMAN: That is just a suggestion. Am I correct in so understanding, Delegate Anthony?

ANTHONY: That's correct. I was suggesting that to the Convention and to the movant.

HEEN: I don't think that is a desirable suggestion. To leave it that way, then you will have to provide elsewhere in the Constitution, a provision that a certain State officer shall have that duty. The way I stated it, of course, would require legislation. Instead of using the word "such," the word "a" might be used for the word "the." "A State officer, authorized by law for such a purpose, shall certify the question to be voted on at the first general election following the expiration of such period." Under that language, legislation, of course, will have to be enacted.

CHAIRMAN: Delegate Heen, the Chair understands you to amend your own motion so that the word "such" shall be --

HEEN: I withdraw my previous motion and make it this way. Commencing after the word "submitted," have the remainder of that paragraph read as follows, "A State officer, authorized by law for such a purpose, shall certify the question to be voted on at the first general election following the expiration of such period." I move that that amendment be adopted.

CHAIRMAN: Then the Chair takes it, Delegate Heen, that your amendment is an amendment to the first amendment.

HEEN: I withdrew the first amendment.

CHAIRMAN: With the approval of the second?

HEEN: This is a new amendment.

MAU: I second this new motion.

ASHFORD: Perhaps I'm being small minded about this, but it seems to me that we have a provision for certification but we have no provision for putting anything on the ballot.

LOPER: May I ask the maker of the motion for an amendment, if his amendment means that if the legislature should fail to designate someone to do this work, it would not be done? Will you ask the delegate from the fourth district to answer?

CHAIRMAN: Delegate Shimamura is requesting the floor. Perhaps he is willing to answer that question. If not, I shall recognize you later. Is there anyone, any delegate willing to answer?

LOPER: My question was directed to Delegate Heen.

ANTHONY: That is -- the statement of Delegate Loper is correct. In other words, it would have to be implementing legislation. It was for that reason I cast my suggestion

in a form in which it would be a constitutional mandate, rather than requiring any implementing legislation. If you provide for a State officer to certify the question and then elsewhere in the Constitution, presumably in the executive section, you designate that State officer, then you have a self-executing constitutional provision, and no requirement of legislation is necessary to carry it out, other than appropriation.

LOPER: It was my intention to follow up with this suggestion. If it is the desire of this Convention to make constitutional provision for this to take place automatically, then would it not be sufficient to refer this to the Style Committee to insert the words "secretary of state," or the "lieutenant governor," whichever is decided upon after we act on the committee report on executive and powers and functions? Undoubtedly there would be either a secretary of state or a lieutenant governor and if it is the intention of the Convention to provide for this, it would be merely a matter of editing by the Style Committee to write in the name of the officer whose duty it is our intention to - -

ROBERTS: I believe it was the original intention, in the preparation of this article, that the proviso for a constitutional convention be self-executing. The original purpose and the original language provided that the secretary of state shall, so that the thing is kept out of the hands of the legislature. Since we couldn't put in the secretary of state because we didn't know whether the Executive Committee was going to propose one, or a lieutenant governor, it was therefore put in in the form of a State officer, whoever that person be. The language ought to be mandatory. It should not be left to the legislature to authorize such State officer to act.

SHIMAMURA: I was going to suggest that this clause be made as self-executing as possible, and be made certain. As I understand Proposal No. 22, that is Committee Proposal No. 22, my cursory examination of that proposal indicates that a lieutenant governor shall be appointed, or elected, in place of a secretary of state - - rather than a secretary of state. Is that correct?

CHAIRMAN: There will be a lieutenant governor to be elected by the people.

SHIMAMURA: Therefore, I believe that we would be making this clause entirely self-executing if we name the definite State officer. Therefore, I move that the amendment - - proposed amendment be amended by striking out the words on the fifth line of Section 2, "State officer whose duty it is to certify statewide public questions for submission to the people," and insert in lieu thereof the words "lieutenant governor."

CHAIRMAN: Your amendment is to the effect that the officer whose official title shall be designated as lieutenant governor be inserted?

SHIMAMURA: Yes, lieutenant governor. Make it definite, and then if there should be no lieutenant governor but a secretary of state instead of a lieutenant governor, then it's up to the Style Committee to insert the secretary of state.

CHAIRMAN: Is there a second to that motion?

NIELSEN: I second the motion.

HEEN: I - -

CHAIRMAN: Just a moment, please. For the purpose of records, who seconded that motion?

HEEN: I was just going to propose that the State officer shall be the governor, whom we know will be one of the officers to be elected. In other words, as I understand the proposed amendment, that amendment will read, "The governor shall certify the question." I withdraw my motion in favor of the motion made by Delegate Shimamura.

FUKUSHIMA: I believe the intent of the committee was in line with the suggestion made by Doctor Loper, and I believe if it's the intent of this Convention to follow the intent of the committee, then Delegate Shimamura's motion is the proper one now.

CHAIRMAN: The motion before the table now is the amendment offered by Delegate Shimamura, that the officer namely, the lieutenant governor, shall be the person to thus certify, and so forth, as provided in the first paragraph of Section 2 of this proposal.

DELEGATE: Question.

CHAIRMAN: Are you ready for the question?

ANTHONY: Could I have that sentence read as we are now debating it?

CHAIRMAN: The Chair will request the mover of that motion to repeat his amendment for the benefit of the delegates.

SHIMAMURA: The second sentence of Section 2, under the proposed amendment, will read as follows:

> If any ten-year period shall elapse during which the question shall not have been submitted, the lieutenant governor shall certify the question, to be voted on at the first general election following the expiration of such period.

ANTHONY: I would like to make a suggestion to the movant. If he would accept the substitution of the word "governor" for "lieutenant governor," then at the appropriate time, after we've found out what the appropriate officer is going to be, we can insert the appropriate secretary of state or lieutenant governor, or whatever executive officer would have that function. It would be a little simpler, I think.

DOI: There seemed to be an expression of opinion on the floor that probably we're not definite as to what State officer should handle the job. In that case, why don't we leave it blank and leave it up to a Style Committee, or when we consider the executive branch, and make it an automatic filling of the blank when we decide so.

SHIMAMURA: I have no great objection to the suggestion made by the gentleman from the fourth district, Delegate Anthony. My only feeling is that the lieutenant governor or the secretary of state is usually the peculiar officer for this function.

CHAIRMAN: Then you refuse to accept the suggestion made by Delegate Anthony, is the Chair correct? Delegate Shimamura?

HEEN: As I understand it, the officer to be given this duty will be the lieutenant governor for the time being, so that last clause then will read, "The lieutenant governor shall certify the question."

CHAIRMAN: Are you ready for the question? All those in favor of the amendment offered by Delegate Shimamura will signify by saying "aye." Contrary minded say "nay." Carried.

FUKUSHIMA: The next paragraph reads:

> If a majority of the ballots cast upon such a question is in the affirmative, delegates shall be chosen at the next regular election, unless the legislature shall provide for election of the delegates at a special election.

Following paragraph:

Any qualified voter of the district concerned shall be eligible to membership in the Convention. The Convention may provide for the filling of any vacancy due to death, resignation or other cause not otherwise provided for by law. The persons selected for such vacant office shall have the qualifications required for the original incumbent.

AKAU: I was wondering, "The Convention," second line there, "The Convention may provide," if an amendment might be added "as soon as possible," if that's legal terminology appropriate to this type of thing. My reason being that "The Convention may provide," there may be a time lapse there which may take six months or whatever it may be, and by putting in "as soon as possible," it kind of ties it down.

CHAIRMAN: What is the amendment you offer, Delegate Akau?

AKAU: The words, "as soon as possible." "The Convention may provide," and insert "as soon as possible." I so move.

CHAIRMAN: Is there a second to that amendment?

HEEN: That second sentence, I don't think is the proper way of treating this matter. It should be that "The governor shall fill any vacancy due to death, resignation or other cause ," the same as we have it now in Act 334, which created this particular Convention. If you leave it to the Convention, that Convention may not reach any agreement as to who should be the succeeding delegate.

WOOLAWAY: I'd just like to ask why the word "may provide" is used instead of "shall provide"?

LEE: Well, there are many points raised on this paragraph. I think all are pertinent and I have another to raise from the discussion back here. The phrase, "Any qualified voter of the district concerned shall be eligible for membership in the Convention." If I recall, there is an article in the judiciary which would prevent the judges of the courts from sitting in or being eligible for the Convention. So that this whole paragraph, I believe, needs re-drafting.

CHAIRMAN: That does not disqualify, but a judge forfeits his right to serve as judge.

FUKUSHIMA: When we dealt with that paragraph—as you know, we have Delegate Wirtz who is a judge from the circuit court on Maui present—we didn't want to accentuate the fact that a judge should not sit as a delegate to the Convention, and if the judiciary felt that he shouldn't, then we thought we'd let the judiciary take care of it.

WIRTZ: On a point of personal privilege, I'd just like to state that this committee was much more considerate of my feelings than the Judiciary Committee.

MIZUHA: I rise to a point of information. When would it be the appropriate time to amend the entire Section 2?

CHAIRMAN: At any time any one of the delegates so desires, Jack Mizuha.

MIZUHA: I propose an amendment to the entire Section 2.

CHAIRMAN: Paragraph?

MIZUHA: "Constitutional conventions may be called as provided by law."

SERIZAWA: I second the motion.

MAU: Speaking on the motion, if this motion is carried and that provision is placed in the Constitution, we may find ourselves in the same position as we have found ourselves in the last 40 or more years on the question of reapportionment. The legislature may do nothing about it, and I think it should be mandatory that the constitutional convention be called every so often. I think that with all the changing times, it's necessary that the people review their Constitution every so often, and if we adopt that amendment, we won't have that opportunity if the legislature will conduct itself as it has in the past on the matter of reapportionment.

MIZUHA: I believe there is another section on amendments to be proposed by the legislature. I believe the question of reapportionment could be taken care of in the legislative article in the Constitution.

TAVARES: I oppose the amendment. The reason for placing this provision in here was, first, we are allowing the legislature to propose a question to any election at any time. Then, to be sure that at every reasonable interval, whether the legislature acts or not, there will be submitted to the people again the question as to whether they want a constitutional convention, we placed this provision in. All that it means is this, if the legislature during any ten-year period doesn't submit the question to the voters, not of amending the Constitution in any particular respect, but, "Do you want a constitutional convention," that's all the people vote on. If the legislature doesn't do that, then the people have an opportunity at ten-year intervals to say whether they want a constitutional convention or not. That's all this thing does, and since we have voted against the initiative method of proposing amendments to the Constitution, we felt that this was a good concession to the people in general, so that they would be sure that at every ten years they had a right to vote on whether they wanted a convention or not, to consider revisions to the Constitution. It seems to me that's a reasonable provision, and if you just leave it up to the legislature as it has been said, there is a possibility that the legislature may not act for 20, 30 or 40 years.

ROBERTS: I'd like to speak in opposition to the amendment proposed by the delegate. It seems to me that one of the basic purposes of a constitution is to make provision for the guarantee of certain rights and machinery for operation. It also ought to provide that as times change, the people have an opportunity in convention to decide whether or not the job that was done 10 or 20 or 30 years prior to that time is still the kind of constitution they want. It seems to me that providing language which merely authorizes the legislature to call for such a convention, completely misses the purpose of the original proposal. This proposal mandates, it requires that the people review periodically, in this section, every ten years, to examine their Constitution, to examine the interpretations, and find out whether or not the Constitution at that stage is still the kind of constitution they want. They have a chance to vote on it. If they find it satisfactory, then they vote "No," and the Constitution remains, no constitutional convention is held. But the people ought to have the opportunity, apart from the proviso based on whether the legislature wants it or not, to vote on that question periodically. I therefore hope that the delegates will vote against the amendment.

CHAIRMAN: Are you ready for the question?

RICHARDS: After the very simple explanation made by the last two delegates from the fourth district, I'd like to read an excerpt from the Essays of Montaigne. "How is it that our ordinary language, so simple for every other purpose, becomes obscure and unintelligible in a contract or a testament?"

MIZUHA: I believe I have the last say.

CHAIRMAN: You have the right to close on your motion.

MIZUHA: We've heard a lot of talk about a simple constitution, and right in this particular section we are writing in legislation for future State legislatures. Take, for instance, the method in which they will apportion the various delegates to the Constitutional Convention. They refer to Act 334 of the Session Laws of '49. It seems to me rather odd for a constitutional article to contain reference to a specific act of a territorial legislature. If you are not going to trust what our legislature is going to do in the future with reference to revisions, you have given them that power in Section 3 also for amendments to the Constitution. And yet you feel that -- we feel that every ten years that question must be settled by the people by a referendum. I believe that the legislature, if it feels that the question of revision or amendment to the Constitution is important enough, that they cannot handle by the regular sessions of the legislature under Section 3, then they will take it upon themselves to prescribe the method by which we will have a constitutional convention, just as it has taken it upon itself to call this Constitutional Convention for the future State of Hawaii.

So I submit to the delegates here assembled, that if we are going contrary to what we have believed our Constitution should contain by writing in specific legislation of this type with reference to the calling of a constitutional - -

ANTHONY: Point of order. We're not discussing that language at all, at this time. I object to that language also, but we're not discussing that particular language at this time, as I understand it.

TAVARES: Since the speaker in closing has done something unusual in bringing up some new points that he didn't bring up during the original argument, I believe that they should be answered.

In the first place, this provision is meant to be self-executing. We don't want any more situation where, as at present, for 50 years the legislature fails to do something that is supposed to be done. I don't agree with the method of reapportioning of the Organic Act, but I do say that for 50 years, almost, we didn't - - we weren't able to agree on anything. In this constitutional provision, as proposed, in order to make it self-executing, we say to the legislature, "You can provide for the method of apportioning the delegates, but if you don't, then what's going to happen?" Who's going to determine how many delegates are to be elected by the people from each district, if nothing is said in the Constitution about it? We say if the legislature doesn't do that, then you follow Act 334. That's a simple way of saying it. If you want to make it less simple, then you say - - you name the number of delegates from each district, and make it ten times as long.

MIZUHA: A point of order was raised. I asked the chairman whether it was the time for me to propose an amendment and I was informed that this was the time. That's why I introduced my amendment. But if it is felt that this amendment is proper when we reach the last sentence of Section 2, I shall propose it at that time. But if the delegates assembled here feel that they should tell the legislature how to have their constitutional convention every ten years and so forth, well, the question can be decided upon by the votes of the delegates here.

But my main reason for objecting to this detailed provision is the manner in which that constitutional convention should be called, when we have already the machinery written into Section 3 for the legislature to amend or revise our Constitution. I believe we should give the legislature leeway to provide for constitutional conventions by law, and not by constitutional writs here.

CHAIRMAN: Delegate Mizuha, for your benefit, the Chair will rule that the amendment is in order. The question before the assembly is Section 2 of this proposal. Are you now ready for the question? All those in favor of the amendment offered by Delegate Mizuha from Kauai. The amendment is, Section 2 shall read as follows, "Constitutional Convention may be called as provided by law." Shall the Chair put the question now? All those in favor of that amendment please signify by saying "aye." Contrary minded say "no." The noes have it.

HOLROYDE: Twelve o'clock. I move this Committee of the Whole rise, report very little progress and ask leave to sit again at 1:30.

NODA: I second that motion.

CHAIRMAN: All those in favor of the motion to recess -- no, to rise and report very little progress and beg leave to sit again please signify by saying "aye." Carried.

Afternoon Session

CHAIRMAN: Committee of the Whole will come to order. The last business matter disposed of by the committee is action taken on the amendment moved by Delegate Mizuha. That was an amendment of Section 2. The amendment was defeated. We are still on Section 2 of Proposal No. 9.

HEEN: We are particularly discussing the third sentence of Section 2. We took that up but did not complete our discussion upon it, when the amendment that was offered was -that was made by Delegate Mizuha was submitted. So we were then, at that time, discussing the third sentence of Section 2.

CHAIRMAN: There was an amendment which was carried, Delegate Heen.

HEEN: I don't recall whether that was carried or not.

CHAIRMAN: It was. That was the amendment moved by Delegate Shimamura providing, fourth sentence of first paragraph, Section 2, insertion of the words "lieutenant governor."

HEEN: That was the first sentence. Then we went on to - -

CHAIRMAN: Then the Committee of Revision and Amendments read paragraph two and paragraph three. Then there were several amendments made by you and Delegate Anthony. Amendments were withdrawn. Then there was next amendment by Delegate Mizuha from Kauai, and that amendment was disposed of. It was defeated.

HEEN: That's right, so that we are now, I think, on the third sentence, I mean the third paragraph.

FUKUSHIMA: Third paragraph, yes.

CHAIRMAN: Third paragraph.

HEEN: That's correct. I would suggest as one amendment the following, after the first sentence of that paragraph insert the following sentence: "No officer of the State shall be disqualified from being a member." That would take care of a situation affecting Delegate Wirtz of Maui. Is that all right? I'm waiting for Delegate Wirtz to second my motion.

CHAIRMAN: Will you address the Chair, please?

ROBERTS: Since the delegate is a little embarrassed, I will second the motion.

CHAIRMAN: Delegate Roberts seconded the motion.

APOLIONA: I'm speaking to the motion. It also includes that the honorable senator from the fourth district to have membership in that convention, too? Officer of the State?

HEEN: If a legislator is an officer of the State, using the term officer in a broad sense, in its broadest sense, then

that would also qualify a legislator to serve in a constitutional convention.

TAVARES: In the first place, I think we must remember that we have adopted a judiciary article. We are here indirectly amending it. Let us understand that clearly. If that's what we intend, we are going to have to reconsider and amend that judiciary article. In the second place, while I agree with my colleagues in this Convention that the delegate who is a member of the judiciary has been a most valuable one, I want to point out the other possibility, and that is, we have provided in suffrage and elections that contested elections shall be considered by a court. Now if too many judges run, or even if one judge runs, it may be from a jurisdiction that has a contested election. That isn't necessarily fatal, there will undoubtedly be other judges who will be qualified, but I think that ought to be borne in mind.

CHAIRMAN: Delegate Kellerman. Would you - -

KELLERMAN: I did not wish to speak to that amendment. I want to propose a different amendment, so I will wait until this is disposed of.

FUKUSHIMA: The amendment as proposed by the delegate from the fourth district seems to be included in the first sentence. "Any qualified voter of the district concerned shall be eligible to membership in the Convention." That is an all-inclusive sentence and our reports show that that was the intent of the committee. I don't believe that the insertion of the amendment will serve any greater purpose than the first sentence that we have in the third paragraph.

ANTHONY: The purpose of the amendment, as I understand it, is to take care of the single exception, which is the prohibition contained in the judiciary article, which says that "No persons shall be appointed to the judiciary who shall hold an office of profit under the State." In other words, they could hold an office which was not an office of profit. I don't think that we ought to make any special exception here for the judiciary as much as I - - high regard as I have of the members of the judiciary, and specifically the delegate from Maui. It seems to me we ought to leave the thing as it stands. We had this debate on the judiciary article, let's let it go at that.

CHAIRMAN: Then you are speaking against the amendment.

ANTHONY: Against the amendment proposed by the delegate, the senior elder statesman from the Senate.

LAI: Before we vote on the question, may I ask Delegate Wirtz a question? Does he intend to run for the next convention? If not, then we can overlook this matter.

CHAIRMAN: Delegate Wirtz, you may rise to a point of personal privilege.

WIRTZ: Personal privilege. I move to table the amendment.

H. RICE: Second that motion.

CHAIRMAN: Who seconded that motion, to table the amendment? Delegate Rice, Harold Rice.

RICHARDS: I rise to a point of order. I thought that was not the way we were going to handle amendments in this Committee of the Whole.

CHAIRMAN: State your order, please.

RICHARDS: The point was that this Committee of the Whole has already stated that when they can vote on a particular measure, they vote on it, and the motion to table is out of order.

H. RICE: I withdraw my second to the original motion, so there's nothing before the floor, I understand.

HEEN: Well, to make it much more simple than that, I withdraw the motion.

CHAIRMAN: Delegate Roberts, you seconded Delegate Heen's motion to amend.

ROBERTS: I seconded the motion of the able senator from Oahu. I will withdraw my second, if the original movant wants to withdraw it. I would like to state, however, that in the passage of the judiciary article, I did not construe the language of the "person holding an office of profit," that you'd regard a person who runs for the constitutional convention having an office of profit. It would seem to me that the judge in the future could run for the convention.

TAVARES: I think perhaps I've been in error. I think the chairman of my committee has probably stated the correct rule. As I recall now, I think that if this provision is allowed to stand, "Any qualified voter of the district shall be eligible," there will be a question of conflict, possible conflict, between this section and the judiciary article. I think our report should make it clear just which interpretation we wish to adopt. If we mean by this that any qualified voter includes a member of the judiciary, then I think that the report of the Committee of the Whole should so state, and that would probably clarify the situation.

HEEN: If it's limited to that, that a judicial officer may be eligible for election to the constitutional convention, then I think it doesn't go far enough, because members of the legislature should be eligible to election to a constitutional convention. As you all know, the members of the legislature, both those who are serving now and who have become ex-members of the legislature, have, I think, contributed quite a great deal towards the deliberations of this Convention.

RICHARDS: That was a point that I was wishing to raise. Why limit it to the legislature? Now, I do not know yet what the proposal of the Executive Powers and Functions Committee is regarding employees of the state and political subdivisions.

ANTHONY: The suggestion made by Delegate Heen, I don't think quite reaches the point, for the simple reason there is no prohibition in the Constitution that a legislator may not hold another office. We have to await the coming in of the legislative article before that is determined. There is a direct prohibition against a judge holding an office of profit, and no manner of words that we will incorporate in any report is going to change that direct prohibition. The way to get about it is - - go about it is to make an express exception for the judiciary, if that's what needs be done, that's what the will of the body is. So far as the legislature is concerned there is no prohibition, there is no problem. The problem only exists with the judiciary at this point.

TAVARES: One more clarifying thought, I hope, and that is this. It was my opinion before the delegates ran for this Convention, that a member of this Convention was not an officer within the meaning of the Organic Act and that, therefore, legislators were eligible, anyhow. But to play safe we asked Congress to pass a law specifically approving that. There is a real question as to whether this type of constitutional convention, which only proposes but does not enact finally any constitutional provision, is an office. The people do the adopting finally. If the Convention is going to adopt the amendment and make it effective by its own adoption, clearly they would be officers. But as it stands now, there's quite a good argument that they are simply an advisory body, and, therefore, are not officers; and, therefore, it would be perfectly proper to put a construction in

our Committee of the Whole report which would then indicate that they are not that kind of officers.

HEEN: The provision in the article on the judiciary with reference to this problem reads as follows, "The justices of the supreme court and the judges of the circuit courts shall hold no other office or position of profit under this State or the United States." Therefore, that particular judicial officer would be prohibited from becoming a member of the Constitutional Convention, if those members are going to be paid any compensation. Therefore, you must have a specific exception to take care of this situation. As to legislative officers or members of the legislature, as you all perhaps know, in every article of - - dealing with the legislative branch of government, there is a provision which prohibits a legislator from holding any other office under the State. And that's in the Organic Act, so far as the Territory is concerned.

TAVARES: I don't like to disagree with the senior statesman from the fourth district, but I, too, have been in government a long time, and I know that there were members of legislative committees or comissions created by law that went to Washington in the years of this Territory, and they were held by the attorney general not to be officers within the meaning of the Organic Act, although they had a function something like ours. They went to Congress under an act passed by the legislature, with expenses paid by law, and moved and asked Congress to pass certain legislation for us. And the attorney general of that time held that they were not officers within the meaning of the Organic Act. That exactly is a parallel that I submit between that situation and this, because the members of this Convention are performing no sovereign function. They are performing an advisory function which does not become final until a ratification by the voters of this State.

LEE: I don't care what the attorney generals in the past have ruled. The matter of a thousand dollars is compensation for profit, as far as I can see or read the English language.

ASHFORD: I'm in accord with Representative Lee. I also have served—Delegate Lee—I also have served in the attorney general's office and my experience there is that one attorney general very often overrules the opinions of an earlier attorney general.

TAVARES: I'd like it to be known that I was not quoting my own opinions.

MAU: Why don't the lawyers take a recess. Maybe we can get further.

DELEGATE: Second the motion to recess.

CHAIRMAN: It has been moved and seconded that we recess, until called by the Chair. All those in favor of that motion please signify by saying "aye." Contrary minded. The noes have it.

ROBERTS: It seems to me that the problem which is really before us is whether or not we want, in future constitutional conventions, to have all individuals in the community run for office, and not discriminate against individuals merely because they are members of the judiciary or members of the legislature. It seems to me that we can state in the Constitution that we do not regard a delegateship to a constitutional convention as an office for profit, and it seems to me that as long as our intent is clear, we can make such a provision. I personally can see no objection to having members of the judiciary run, I can see no objection to having members of the legislature run, as long as we get delegates who represent the community at large, to write a constitution or to revise one. I, therefore, would like to suggest that in the report of our Committee of the Whole there be the sense of the committee that it is not the intent to deprive individuals who want to run for delegate to a constitutional convention, that we do not deny them that right merely because they hold an office, elected office, or an office for profit.

ANTHONY: You can't put any words in the report that are going to change the expressed language of the article. If it is the will of the Convention that judges shall sit in future constitutional conventions, it can be done very simply, simply by prefacing before this sentence, "Notwithstanding any other provision in this Constitution, any qualified voter shall," etc. If that's the will of the body, it's very simple, and that will include all officers of government.

ROBERTS: If the delegate will make that motion, I will second it.

ANTHONY: I will make the motion that the sentence reading "Any qualified voter" in Section 2, page two of the proposal be amended by inserting the words, before the word "any" "Notwithstanding any other provision in this Constitution to the contrary."

ROBERTS: I'll second that.

ASHFORD: May I speak very briefly on that? It seems to me that that is a very dangerous provision. We are setting up a new Constitution here with new courts, new everything, but when we have an established court and have a constitutional convention to amend the Constitution, the delegates will see what can happen. Suppose there are a lot of judges who are members of this Convention, and they were overridden in some particular, the construction of that Constitution and its amendments would be entirely in their hands and they might very well proceed with a background of bias in the construction of those particular provisions.

CHAIRMAN: For the benefit of - - Delegate Roberts, were you the one who seconded that amendment?

ROBERTS: Yes, I'd like to speak in support of the motion, if we're going to discuss it.

CHAIRMAN: You may proceed.

ROBERTS: It seems to me that the job of writing a constitution was a job which required the best that we could get in the community, of individuals who ran for office even though they might personally have liked not to run; people who normally don't run for office, who might be called in to do a job. The same limitations, it seems to me, which apply to the people who ran for this office will apply to individuals in the future. It seems to me that any person who has something to contribute and wants to spend the time and energy to run for office, to engage in such a project, it seems to me ought to be given opportunity to do so. I don't think, for example, that people who do run are going to hold grudges subsequently because they didn't happen to get the kind of thing they wanted, but might have a different notion or idea as to what should have gone into the Constitution. I, therefore, suggest that we get the best qualified people to run in the future, and that should permit any qualified voter who feels that he has something to contribute to run for that office. I'd like to get a show of support in favor of that amendment.

CHAIRMAN: Are you ready for the question? The amendment offered is the addition of the following words, "Notwithstanding any other provision in this Constitution to the contrary," before the first sentence of the third paragraph of Section 2, which begins as follows, "Any qualified voter."

KELLERMAN: Could I ask a question before we vote on that amendment? What would this do to the provision that

House Bill 49 as amended now requires concerning the Communist oath? Is that to go in the Constitution? And if so, does the phrase "Notwithstanding any other provision in this Constitution to the contrary, any qualified voter is eligible for this Convention"? They certainly are eligible, they are qualified voters.

CHAIRMAN: Have you completed?

KELLERMAN: Yes, I'm asking the question of whomever will answer that point?

CHAIRMAN: Delegate Anthony has offered to answer the question.

ANTHONY: It seems to me that if we're going to have that incorporated in the Constitution, which we apparently are, there should be added to the qualifications of officers, including persons who will be members of any future State constitutional convention, the requirement that they take the oath. Then, reading House Bill 49 as amended, together with any qualification of officers and this section, it would be perfectly clear, then, I think, that any delegate would have to take the oath prescribed, and no person who couldn't take the oath would be eligible.

CHAIRMAN: Has the explanation, Delegate Kellerman, answered your question?

KELLERMAN: I gather from Mr. Anthony's statement that we will need a further amendment to this provision, to write in a further qualification, then.

CHAIRMAN: It so appears from his explanation.

KELLERMAN: Well, on the basis of that, then I think we could go ahead on this.

ROBERTS: I suggest that perhaps the language of the article itself provides a partial answer to the question previously raised. The two paragraphs below in this section, there's a proviso that the convention shall determine its own organization and rules of procedure. "It shall be the sole judge of the qualifications of its members." It seems to me that if the convention decides that one of the qualifications of membership is not being a member of the Communist Party, then the convention can so act. Or, if it requires that an affadavit be filed, the conventions shall so specify. It doesn't seem to me that we need any further qualifications.

KELLERMAN: It seems to me that that would run the future convention into the same embarrassing and difficult situation which we've had to face. It would be far better to have a person who could not take that oath disqualified before he becomes a member of the convention than force the convention to adopt a rule to - - along that line, and then take action accordingly.

TAVARES: I think there's enough confusion now that's instigated by some of us so that we ought to postpone this for a little while. I move to defer it till the end of the calendar, unless sooner moved on, this particular sentence.

CHAIRMAN: Is there a second to that motion to defer?

HEEN: Second it.

CHAIRMAN: Will the second be recognized by Chair?

HEEN: Yes, I seconded that motion.

KAM: Before we take action on this, I just want to find out, as it now stands, who is eligible to become a delegate in any convention, in this constitutional convention.

CHAIRMAN: You are out of order, Delegate Kam. There is a motion to defer.

KAM: I was wondering - - I was just asking a simple question.

CHAIRMAN: Would you care to reply to that question, Delegate Tavares?

TAVARES: As I understand it, as it reads now, any qualified voter of the district which is going to elect the particular delegate would be eligible to run for membership in the convention.

KAM: I was just worrying about those judges. I was wondering, wouldn't it be much simpler to reconsider Section 7 of the judiciary report, and add a clause to that?

TAVARES: I think that's a matter now which is out of order. I think we can take it up with the delegate off the record, and perhaps work that out together.

CHAIRMAN: The Chair had ruled that Delegate Kam was out of order, but the Chair did extend him special privilege.

KAM: Personal privilege, thank you.

CHAIRMAN: Are you all ready for the motion to defer action on this particular paragraph three of Section 2? All those in favor of that motion to defer please signify by saying "aye." Contrary minded say "no." The ayes have it.

HEEN: We are now discussing the second sentence of this same paragraph. I move to amend that second sentence to read as follows, "The governor shall fill any vacancy in such membership."

LEE: For the purposes of giving the elder statesman an opportunity to explain the amendment, I second the motion.

HEEN: You don't have to say whether that vacancy occurred by death, resignation or any other cause. If a vacancy exists, it exists, and that vacancy should be filled by the governor. It's the same as we have now in the present act which created this Convention.

CHAIRMAN: Delegate Lee, do you now second that motion?

LEE: I already seconded the motion.

CHAIRMAN: You qualified that statement by saying if there was an explanation or something to that effect.

LEE: No, no, no.

CHAIRMAN: I wasn't sure whether you were satisfied with it.

LEE: I beg to correct you. The second was made and then there was a condition subsequent.

NIELSEN: I'd like to further amend that to indicate that it shall be from the same elective district, so the governor has to appoint the - - fill the vacancy from the very same district in which it occurred.

FUKUSHIMA: That is taken care of by the next sentence, the following sentence, Delegate Nielsen.

WOOLAWAY: I'd like to make a simple amendment, change the word "may" to "shall."

CHAIRMAN: Are you moving an amendment to the amendment made by Delegate Heen?

WOOLAWAY: "The governor shall." Yes.

CHAIRMAN: The amendment reads, "The governor shall fill any vacancy."

DELEGATE: Second the motion.

CHAIRMAN: That is the first amendment. That has already been seconded by Delegate Lee. The Chair understood the word to be "shall." There's only one amendment at this present time, that amendment was moved by Delegate Heen, "The governor shall fill any vacancy."

H. RICE: Question, please.

CHAIRMAN: Are you ready for the question? All those in favor of that amendment please signify by saying "aye." Contrary minded say "no." Carried. The ayes have it.

WIST: In the next sentence, there is one qualification that cannot be met, and that is the qualification of election.

CHAIRMAN: That is the last sentence of paragraph three. Is that correct, Delegate Wist?

WIST: That is correct. In other words, one qualification for the person who is to be a delegate to a convention is election; that is a qualification that cannot be made when the person is appointed by the governor.

TAVARES: I think, carried to its extreme, that is correct, but I believe that is the kind of a provision that can be explained in our committee report to mean the qualifications preceding election. Otherwise, you're going to get into a much more lengthy discourse about just what those qualifications are. This is a simpler method, and I would suggest that we leave that to the Committee of the Whole report to explain that that's what we mean.

WIST: The reason I raised that question is that that became quite an issue in connection with the Silva case. That question was raised. They said that he was qualified and that his successor was not qualified, and that has been an issue. That's why I raised it. I think it could be cleared up in the language here.

ASHFORD: I'd like to amend the amendment before the house by adding to it the amendment of the last sentence to read as follows, "Only a person eligible for election in the first instance shall be selected."

TAVARES: Then you run into the question as to whether, if he became a voter afterwards, he is eligible. You see, you're running into all kinds of if's and and's when you get into details.

SHIMAMURA: May I suggest this amendment which shall take in the last two sentences of the third paragraph of Section 2.

CHAIRMAN: Last two sentences, did you say?

SHIMAMURA: Yes. In other words, the one under discussion and the prior one. I think the delegate from the fourth district, Judge Heen, amended by stating that, "The governor shall fill any vacancy." Add on to that "by appointment of an elector of the same representative district, precinct, or combination of precincts." Then you've got everything, the qualifications of the man, he must be an elector, and he must be of the same district or precinct from which the prior member was elected. You have both qualifications filled in then.

NIELSEN: Was that a motion?

SHIMAMURA: I make it in form of a motion. I so move.

NIELSEN: I'll second it.

CHAIRMAN: Will you, for the benefit of the delegates, restate that amendment, Delegate Shimamura? And slowly, please.

SHIMAMURA: Yes. Add at the end of the previous section as amended by Judge Heen the following, "by appointment of an elector of the same representative district, precinct, or combination of precincts." The reason I add on "precinct or combination of precincts" is this. As I look down further, Act 334 of the Session Laws of 1949 is embodied in the next paragraph; therefore, it contemplates the election of convention delegates from a representative district or a precinct or a combination of precincts. You don't just elect delegates from the representative district merely. That's the reason.

LEE: Wouldn't the exclusion of the word "representative district" and just the word "district" include those three sets of circumstances that can be caused?

SHIMAMURA: I think the report should show that in the word "district" is included representative district, precinct, combination of precincts or any other such designated subdivisions.

ASHFORD: Does not that language that I suggested, will it not cover that? One eligible for election in the first instance?

LEE: In other words, Mr. Shimamura's motion would have the second sentence in that paragraph read as follows, "The governor shall fill any vacancy by appointment of an elector of the same district." Is that right?

CHAIRMAN: "The same representative district."

LEE: No, "representative" has been excluded from this motion.

CHAIRMAN: That was the original amendment offered by Delegate Shimamura.

SHIMAMURA: I'm willing to accept that change.

CHAIRMAN: In other words, deleting the word "representative."

SHIMAMURA: That's right.

CHAIRMAN: So that it would read, "of the same district."

LEE: "From the same district."

CHAIRMAN: "From the same district."

TAVARES: Now, we have an illustration. It's necessary, now, to explain this in a report. That's all right for the new amendment, but it's not all right to explain the original committee's amendment in a report. The difference between twiddle-dee-dee and twiddle-dee-dum.

LEE: Has that motion been seconded?

CHAIRMAN: Yes, that motion has been duly seconded by Delegate Nielsen.

HEEN: I would suggest this, "The governor shall fill any vacancy in such membership by the appointment of a qualified voter of the district concerned."

CHAIRMAN: Will you restate that suggestion again?

HEEN: You will note in the first sentence it says, "Any qualified voter of the district concerned shall be eligible to membership in the convention." Using the same phrase, "The governor shall fill any vacancy in such membership by the appointment of a qualified voter of the district concerned."

TAVARES: I think that's satisfactory.

HEEN: I'm glad to hear the distinguished ex-attorney general say that.

NIELSEN: Question. Would that be a representative district?

CHAIRMAN: The word "representative" has been left out. It should mean any district.

WIST: I'll second that motion.

CHAIRMAN: Now, the Chair would like to clarify the matter before the assembly. I understood that there was a motion first made by Delegate Heen to the effect that the governor shall fill any vacancy. In restating your motion

at this time, you repeated that statement. I have been wondering - -

HEEN: With the consent of those who seconded my previous motion, I withdraw that motion and I now make a new motion altogether. That the second sentence - -

LEE: Point of order. I think the record will show that the previous amendment proposed by Senator Heen was passed, so the proper action would be to reconsider the action of the Convention, so that the new motion could be made, and I so move that we reconsider our action.

HEEN: And I so second.

CHAIRMAN: Is there a second to that?

HEEN: Yes.

CHAIRMAN: All those in favor of the motion to reconsider the previous action taken in connection with sentence two of paragraph three will signify by saying "aye." All those opposed say "no." The ayes have it.

HEEN: I now withdraw that motion which is now up for reconsideration, with the consent of Delegate Lee who seconded it. The delegate approves of the withdrawal of that motion. Now, a new motion altogether. I move that the second sentence of paragraph three be amended to read as follows: "The governor shall fill any vacancy in such membership by the appointment of a qualified voter of the district concerned."

WIST: I second the motion for amendment.

TAVARES: I move to amend the motion further by adding "and that the next sentence be deleted."

CHAIRMAN: Which is the last sentence of paragraph three?

HEEN: That's correct.

CHAIRMAN: Am I correct, Delegate Tavares? You are referring to the last sentence of paragraph three?

HEEN: You can combine it in this section, or you - - I mean in this motion that I made, or you can make a separate motion later on.

TAVARES: Well, that's two motions. Let's save one motion, anyway. It's the same paragraph in which the other amendment occurs.

HEEN: O.K., I accept the amendment.

CHAIRMAN: You ready for the question? All those in favor of that amendment moved by Delegate Heen and duly seconded please signify by saying "aye." Contrary minded say "no." Carried.

ANTHONY: I have an amendment to the first sentence of that section, that paragraph. It presently reads, "Any qualified voter of the district concerned." I would amend that to read as follows - -

CHAIRMAN: Just a moment, please. That has been already amended.

ANTHONY: No, it hasn't. It was deferred.

CHAIRMAN: Oh, yes, that has been deferred.

ANTHONY: I suggest this, "Notwithstanding any other provision of this Constitution to the contrary, any qualified voter of the district concerned who takes the oath prescribed by this Constitution shall be eligible." Now that does two things. First, it takes care of our friend the judge; and second, it makes a condition procedent that any person who is going to run for the office of delegate will have to take the requisite oath. I think that would cure the difficulty other than the difficulty of the delegate from Molokai.

ASHFORD: Is there any required oath?

TAVARES: I'd like to answer that, Mr. Chairman.

CHAIRMAN: One moment. Delegate Anthony.

ANTHONY: The debate has proceeded upon the basis that this Constitution will incorporate in it the oath that has been referred to in the newspapers as required by H.R. 49, and that was the purpose of Delegate Kellerman's question, and, therefore, that is the purpose of the suggested amendment.

ASHFORD: I did not understand that H.R. 49 required an oath.

TAVARES: I think I can explain this. If the members will look at Committee Proposal No. 24, which is proposed by the Committee on Ordinances and Continuity of Law, we have incorporated what H.R. 49 requires, and Section 1 provides that, "No person who advocates or who belongs to any party, organization or association which advocates the overthrow by force or violence of the government of this State or of the United States of America shall be qualified to hold any public office of trust or profit or any public employment under this Constitution." There's no oath mentioned there. It's a question of fact. I, therefore, still think we ought to defer this matter a little further.

HEEN: I rise to a point of information. What was that committee proposal or report?

TAVARES: Committee Proposal No. 24.

HEEN: Attached to what report, if I may ask?

TAVARES: I don't have it at the moment, but it's in the list of proposals. It's easy to find it there.

H. RICE: The "Supreme Court" is all out of order.

CHAIRMAN: That is correct.

H. RICE: In the first place, he should have moved for reconsideration.

CHAIRMAN: That is correct. Your point is well taken. Unless there is a motion to reconsider action taken on the first sentence of paragraph three, Section 2, we shall proceed with the next paragraph of Section 2. That would bring us up to paragraph four on page two of Proposal 9.

KELLERMAN: When I arose a few moments ago, at the same time as Senator Heen arose to discuss paragraph three, I had wanted to bring to the attention of the body a proposed amendment to Section 2, which we had passed. The second line of Section 2, "The legislature may submit to the people at any time the question," is the way it reads now. I would propose to amend that to read, "The legislature may submit to the people at any general or special election."

CHAIRMAN: That is the first sentence, is it not?

KELLERMAN: That's the second - - the first sentence of Section 2. "The legislature may submit to the people at any general or special election the question."

HEEN: I rise to a point of order. I thought we were discussing another paragraph altogether. It would seem to me that we ought to complete our discussion on that particular paragraph which is now under discussion.

KELLERMAN: I understood we had finished discussing paragraph three except for the deferred sentence, and were going to take up four. We had not yet taken up four, so I thought it would be in order to suggest an amendment in the preceding paragraph. If it should be done at the end of this section, I'm perfectly willing to do so.

CHAIRMAN: The explanation given by Delegate Kellerman meets with the approval of the Chair, unless the amendment or discussion which you, Delegate Heen, will pertain directly to paragraph three.

HEEN: What is the status of paragraph three at the present time?

CHAIRMAN: That has already been amended by the motion which you have made, seconded by Delegate Lee.

HEEN: No, I mean as to the first sentence of paragraph three.

CHAIRMAN: The action was deferred on that, and the motion to reconsider failed. No, a point of order was raised by Delegate Rice that unless there was a motion to reconsider the first sentence of paragraph three, we should not take action on that. The committee has already voted to defer action on the first sentence of that paragraph, and Delegate Kellerman is now referring to the first sentence of Section 2, which sentence has never been amended. The amendment offered is, as the Chair understands the addition, deletion of the word "time" and, in lieu thereof, the addition of the word "general or special election."

TAVARES: Since the delegate is out of order, since we've already approved this paragraph, I move to reconsider the first paragraph so that the delegate may present her proposed amendment.

DELEGATE: I second the motion.

CHAIRMAN: All those in favor of the motion to reconsider - -

BRYAN: I don't believe that we've approved that paragraph. We're still working on Section 2. One part of Section 2 was deferred. The rest of it is all under consideration in proper order.

CHAIRMAN: I think the question raised by Delegate Bryan is correct. We were not taking said Section 2 by paragraphs. There has been no formal action on the first paragraph. The only amendment made was to the second sentence of paragraph one, Section 2, and so the amendment moved by Delegate Kellerman, is in order without the necessity of reconsideration.

TAVARES: We amended a sentence of the first paragraph - -

CHAIRMAN: Second sentence.

TAVARES: Of the first paragraph.

CHAIRMAN: Yes, but not the first sentence of the second paragraph.

FUKUSHIMA: I believe I suggested at the very beginning this morning that we take it paragraph by paragraph, and I believe the first paragraph was approved as amended. We can certainly come back and take the whole section at one time, but I think we are confusing the thing. Delegate Kellerman could have amended the first sentence when we took up the first paragraph. We'll go along for anything that will speed up this matter. I think we are just confusing it by bringing up points of order.

KELLERMAN: I offered, if the Convention preferred, to take up the proposed amendment after having gone through the entire section. That's perfectly acceptable to me. My question was whether to bring it up now or bring it up at the end.

FUKUSHIMA: A motion to reconsider has been put and seconded. We should reconsider it without any other interruptions.

CHAIRMAN: For your information, Delegate Fukushima, the Chair is of the understanding that the first paragraph was not adopted as amended.

NIELSEN: That's right.

CHAIRMAN: And so it would be in order for Delegate Kellerman to make that amendment to the first sentence of the first paragraph, Section 2.

LAI: I second her motion.

CHAIRMAN: Is there any discussion to the amendment offered to the first sentence of Section 2?

DELEGATE: Question.

CHAIRMAN: All those in favor of the amendment, please signify by saying "aye." Contrary minded say "no." The ayes have it.

Now is there further amendment to paragraph three of Section 2?

SHIMAMURA: I wonder if the word "people" on the second line of Section 2, in other words, "The legislature may submit to the people," should not read "to the qualified voters." I raise that query to bring it to a discussion. I move that the word "people" on the second line of Section 2 be deleted, and the words "qualified voters" be inserted in its stead.

KAM: I second that motion.

BRYAN: I'd like to ask the learned judge if he would accept the word "electorate"?

SHIMAMURA: I certainly will, Mr. Bryan.

CHAIRMAN: Electorate?

LEE: Is that in place of "qualified voters"?

CHAIRMAN: Yes, Delegate Lee.

FUKUSHIMA: I think we're wasting a lot of time on style alone. That doesn't go to the substance. We all know in this Committee of the Whole that "people" means "voters." If the Committee on Style wants to change it to "electorate" or "voters," let them do it. We're just wasting a lot of time.

KELLERMAN: May I ask a question? Just what is the language of the proposed amendment now?

CHAIRMAN: As the Chair understands it, Delegate Kellerman, the first sentence will read as follows:

> The legislature may submit to the electorate at any general or special election the question, "Shall there be a convention to propose a revision of or amendment to the Constitution."

KELLERMAN: I will accept that amendment to my amendment but it's been called to my attention that in my language that I suggested, that "any general or special election," that I am indirectly authorizing a special election for the purpose of presenting the question. That was what I was trying to get away from in the use of the language "at any time." I therefore would like to change my amendment to read just "at any general election."

CHAIRMAN: You'll have to ask for reconsideration. A vote has been taken on your first amendment.

LEE: I think if Delegate Kellerman would wait until we act on the amendment proposed and seconded by Delegate Shimamura, then we can take it up. You'll have two amendments on the same sentence to be voted on.

CHAIRMAN: The first amendment moved by Delegate Kellerman has been voted on favorably already.

TAVARES: We are running into the pilikia we find when we try to take a matter up piece-meal without reading the rest of the section. Now this section was provided with very great care to provide for both special and general elections. If the delegates will read further down, they will find that we have a different proportionate vote, or different kind of a vote for a special election than for a general one, which is designed to discourage special elections. Now, without taking up that section, we are going to indirectly knock it out. I think it's dangerous to take it up that way. Let's wait till we get there, and then decide whether we want to eliminate special elections entirely.

WIRTZ: I move for a five-minute recess, so the boys can get together.

CHAIRMAN: Five-minute recess.

(RECESS)

CHAIRMAN: Now that you had the opportunity of conferring with each other, the Chair would appreciate it very much if someone would state in a compendious manner, the problem before the assembly. The amendment before the assembly is, the word "people" be deleted and in lieu thereof, the word "electorate" be inserted.

DELEGATE: Question.

CHAIRMAN: Are you all ready for the question? All those in favor of that amendment please signify by saying "aye." Contrary minded say "no." The ayes have it.

FUKUSHIMA: Shall we proceed with paragraph four?

CHAIRMAN: We shall now proceed with paragraph four.

LOPER: I'd like to ask a member of the committee whether this next paragraph is necessary in view of the last paragraph of this Section 2, which reads: "The provisions of this section shall be self-executing, but the legislature shall appropriate money and may enact legislation to facilitate its operation." My question, to repeat, is this, is the reason for paragraph four to make it truly self-executing? Is there danger that it might not be so without paragraph four?

FUKUSHIMA: I'll attempt to answer the question. We included paragraph four to be sure that if a convention is called by the people, and if the legislature fails to act, then we will have at least something to go by. We have certainly in the last paragraph stated that the provisions of this section shall be self-executing. However, if the legislature fails to do anything, and fails to provide what sort of a convention we will have, what sort of - - how the delegates are to be elected, that in the absence of that, we will have Act 334 to go by. That's the reason why that's included, I believe.

HOLROYDE: I'd like to ask the chairman of the committee. I note in that paragraph that he just read, "the legislature shall appropriate the money." So that if the legislature refuses to act at all, as seems to be the reason for this previous section, where's the money going to come from to have the election anyway?

FUKUSHIMA: There you have in your last paragraph, "Provisions of this section shall be self-executing, but the legislature shall appropriate money and may enact legislation to facilitate its operation." The legislature is mandated to put up the money for the convention. That's self-executing.

ANTHONY: That's not an adequate answer of the question. You may mandate the legislature, but how are you going to make them dish out the money? That's the question. The answer is you can't do it.

FUKUSHIMA: Maybe that's why we need the initiative here.

CHAIRMAN: What is your pleasure as to paragraph number four of this Section 2?

LOPER: I move for the adoption of paragraph four.

APOLIONA: Second.

CHAIRMAN: Delegate Apoliona seconded the motion.

BRYAN: I wonder if that motion is in order. Since we moved the adoption of this section in order to discuss it, can't we move on to paragraph five, and move the adoption of the whole section? That's the way we have been doing. Isn't that correct?

CHAIRMAN: That is correct.

BRYAN: I would ask the delegate to withdraw his motion.

CHAIRMAN: Would you be willing to withdraw that motion? Delegate Loper, would you be willing?

LOPER: I'm willing, but I don't understand the reason.

ROBERTS: May I suggest that in other articles that we take up, as in this section that has a number of paragraphs, that as we move from the first to the last paragraph and make amendments, that we tentatively agree to those paragraphs without adopting them, and then when we complete all the paragraphs, then we act on the entire section. It seems to me that there's no need to adopt each paragraph separately if we understand that we tentatively agree to them until we've gone through all of the paragraphs in each of the sections. I think if we follow that procedure, then we can move along pretty easily.

CHAIRMAN: The Chair felt that the procedure was slightly changed in discussing this Proposal No. 9 in view of the fact that Delegate Porteus made the suggestion to the effect that the amendment to this Proposal No. 9 was to be considered after having adopted the whole Proposal No. 9.

LOPER: In order to get this matter rolling, and in view of the fact that there is no amendment offered to paragraph four, I would like to withdraw my motion to adopt paragraph four and move that we tentatively agree to paragraph four.

ROBERTS: Second that.

CHAIRMAN: All those in favor of that motion please signify by saying "aye." Contrary minded say "no." Carried.

HEEN: While it is the understanding that this agreement is only tentative, I think we ought to have some discussion on that paragraph four. I don't like to see in any constitution of a sovereign state that any reference should be made to a statute of the territory, any session laws, statutes contained in the session laws of the Territory of Hawaii. Some other more general language might be employed in that particular paragraph.

FUKUSHIMA: As far as the chairman of the committee is concerned, and the committee itself, I believe we will not object to any other language being placed in there, but we felt there should be something specific; and in order to be specific, unless we referred to some specific act, we may have to draw an entire set of rules which will make the Constitution longer than we want to. I believe Mr. Tavares has an adequate argument for specifying Act 334 in the proposal. That was, I believe, his idea.

SHIMAMURA: I think the chairman of the committee is correct on that. Otherwise, you'll be having a very lengthy provision.

ANTHONY: The objection is referring to session laws in the Constitution, and the purpose, of course, of referring to session laws was to get certainty. Now, we can get the same certainty without referring to the session laws by simply referring to the Convention that is ordaining and adopting this Constitution. I think if the committee will take that under consideration and bring us back a revision of this section, the language can be found that will accomplish their purpose, namely, have certainty as to the delegation, and not refer to any session laws in here.

PORTEUS: Do I understand that the idea is that they can have the same certainty without any change really in substance? If so, then Style Committee can handle it. Let's leave it to Style if we agree that there is no change in substance.

WOOLAWAY: In light of this confusion, I would appreciate very much if Delegate St. Sure from Maui will escort the Honorable Senator Ansai from Maui to the rostrum.

KING: There have been several suggestions from the floor, but no one has made a motion that the Committee of the Whole can act on. The last suggestion was that the Committee on Style might change the language. Well, I think it would be in order to make some suggestions that the Committee on Style could act on. I would suggest for the committee report, rather than as an amendment at this time, that the language, "as specified by Act 334 of the Session Laws of Hawaii, 1949," be expressed in terms of this existing Convention; in other words, "as nearly as practicable, in accordance with the organization of the Constitutional Convention of Hawaii of 1950." That seems to fit. That can be made as an amendment or could be adopted as instructions to the Committee on Style, whichever the Committee of the Whole desires.

HEEN: Whatever is done in amending this particular paragraph will have to be done very carefully, because if Oahu is going to be divided into nine districts where they have now only two representative districts, what are you going to do about electing delegates-at-large? How many to run at large and how many from combination precincts and so on down the line? How are you going to apply that law which created this Constitutional Convention? It would be very difficult to handle.

KING: If I may answer that query. The first clause answers that, "unless the legislature shall otherwise provide." The matter is open to the legislature in any case. We're arguing about something that doesn't really amount to a great deal, except that I do agree where the statement was made that no reference should be made to a specific act of the legislature of the Territory of Hawaii. But it says "unless the legislature shall. . . provide, the delegates to such convention shall consist of the same number, and be elected from the same area, as nearly as practicable, as the Constitutional Convention of Hawaii of 1950."

CHAIRMAN: Is that a motion, Delegate King?

KING: Well, several of the delegates have suggested it be a motion, so I do move that the last phrase of this paragraph be changed to read—I can't get the exact words to tie it in, but—"Unless the legislature shall otherwise provide, the delegates to such convention shall consist of the same number and be elected from the same area, as nearly as practicable, as the Constitutional Convention of Hawaii of 1950."

CHAIRMAN: You ready for the question?

KAM: I second that motion.

CHAIRMAN: All those in favor of the motion please - -

LOPER: I have a suggestion, and I don't know, perhaps it should be an amendment to the amendment just made. It might be preferable to say that "Unless the legislature shall provide otherwise, the delegates to such convention shall consist of the same number as the number of representatives and senators in the State legislature and shall be elected in a similar manner."

ROBERTS: We discussed that problem, but since that question is going to be a pretty difficult one when we get to it, we just thought it would be better if we held off on the question of reapportionment at this stage.

LEE: I second the motion made by Delegate Loper.

KING: I didn't hear Delegate Loper make it as a motion, but if he has offered it as a motion, I'm perfectly willing to accept it in order to combine the two into one motion, if Delegate Loper will restate the language.

LOPER: I move for an amendment, that, "The delegates to such convention shall consist of a number equal to the representatives and senators in the State legislature and shall be elected in a similar manner."

FUKUSHIMA: If you want the 76 delegate convention, it's perfectly all right with the committee.

TAVARES: There's one other thing. Does that eliminate the provision, "Unless the legislature shall otherwise provide"?

CHAIRMAN: That is retained.

TAVARES: I see.

CHAIRMAN: Now, Delegate King, did you accept that amendment which was to be offered by Delegate Loper?

KING: Yes, but I would like the whole paragraph reread, so that we'll all understand just what it is. As I understand it, it cuts out any reference to the Constitutional Convention then. May the Clerk read the whole paragraph, Mr. Chairman?

CHAIRMAN: Will the Clerk read the - -

CLERK:

> Unless the legislature shall otherwise provide, the delegates to such convention shall consist of the same number and be elected from the same areas, as nearly as practicable, as the Constitutional Convention of Hawaii of 1950.

CHAIRMAN: No, there was a subsequent amendment.

CLERK: Oh, then Delegate Loper's amendment was:

> Unless the legislature shall provide otherwise, the delegates to such convention shall consist of the same number as the number of representatives and senators in the State legislature and shall be elected in a similar manner.

KING: The language should be "shall otherwise provide" instead of "otherwise shall provide." I withdraw my motion to give precedence to Delegate Loper's motion and second his motion.

CHAIRMAN: Just a moment, please.

KING: I feel that language is better.

CHAIRMAN: But you would like to retain the expression "as the Constitutional Convention of Hawaii of 1950"?

KING: No, I believe that the language offered by Delegate Loper is even better than that, and the reference then will be based on the organization of the legislature of the State of Hawaii.

KELLERMAN: May I ask a question? "And shall be elected in the same manner," it seems to me would mean

a bipartisan election. It would mean a political election with primaries and general election with delegates running from - - representing Democratic and Republican parties. It seems to me that that is not what we would want for the next constitutional convention, and perhaps that language should be "from the same areas" or some such language as is used in the existing paragraph, but not "elected in the same manner."

ANTHONY: I move we defer this section. Let the committee work on this and bring us back a new draft.

CASTRO: Second the motion.

HEEN: I think the matter should be deferred so that the technicians can work on it.

CHAIRMAN: Who seconded that motion to defer?

CASTRO: I did. In seconding that, I might point out that the proposed amendment completely changes the sense of the paragraph as brought in by this committee with unanimous consent, with unanimous agreement. The thought of the committee was to pattern the representation of the constitutional convention upon the pattern set down very successfully by this Convention, and patterning after whatever the State legislature may develop into is not our idea. So in deferring this thing, I'd like to remind those who are working on this draft, that the unanimous agreement of the committee was that we should pattern the representation in future constitutional conventions after this present Convention, and reference to whatever State legislature you set up is going to defeat that idea.

KING: That might be very true, but nonetheless, the opening clause controls the whole paragraph. "Unless the legislature shall otherwise provide," which leaves it wide open. The committee may want to have tied it down a little bit, but the opening paragraph left the door wide open.

CHAIRMAN: Are you all - -

KING: I am completely in favor of deferring action until the committee may have an opportunity to bring in new language following the sense of this committee discussion.

CHAIRMAN: All those in favor of the motion to defer action on paragraph four of this Section 2, will please signify by saying "aye." Contrary minded say "no." The ayes have it. Paragraph four is deferred to the committee for improvement in language.

FUKUSHIMA: Is my understanding this, that this has been deferred so that the committee, which committee do you mean, this committee here sitting as a whole or the Committee on Revision and Amendments?

CHAIRMAN: Will the mover of the motion clarify that?

ANTHONY: I intended to have the standing committee that brought in this proposal. That was my intention.

CHAIRMAN: The Chair has so understood.

FUKUSHIMA: As far as the committee is concerned, we feel that this is the language. The Committee of the Whole wants to change it, they can properly amend it. The language is clear enough; the substance is clear enough; the intent is clear enough. If they want something else, let the Committee of the Whole do it. They have proper machinery for it.

CHAIRMAN: I think since the question has been specifically raised by the chairman of the Committee on Revision, Amendments, etc., there should be a specific motion with reference to this deferment.

H. RICE: I should recommend that the chairman of the Committee of the Whole appoint a committee of five, a sub-committee of five, to bring an amended paragraph to take the place of section - - paragraph four.

CHAIRMAN: Is that a motion?

J. TRASK: Point of order, there is nothing on the floor at present. We've already deferred the matter.

CHAIRMAN: Yes, but the point was not too clear what it was to be - -

J. TRASK: Well, a proper motion was to reconsider the action.

CHAIRMAN: No, the motion to defer carried with it direction that it be referred to a committee. The mover of the motion explained that by saying that he intended the same to go to the committee which proposed this Committee Proposal No. 9. Question has been - - Issue has been taken by the chairman of this particular committee. The Chair feels that a specific motion clarifying that would be in order.

TAVARES: I think the proper thing to do is to simply take the sense of this Convention. Now on the point - - and there are some of us who will volunteer to draw the amendment, but not as a committee. I don't think this group should instruct our committee, which came out with the unanimous report, to do something it didn't want to do. If some of us want to volunteer to help somebody else draw an amendment, even if we don't agree with it, that's all right. If we can have the sense of this Convention so we're not doing a useless act, and if that's what the Convention wants, it wants to put in this idea, I think we should take a vote on it and then there'll be some of us willing to volunteer to put it into language. Now I therefore move to reconsider our action to defer for the purpose of taking that concensus so we'll know where we're going.

HOLROYDE: Second the motion.

CHAIRMAN: Who seconded that motion?

CLERK: Holroyde.

LARSEN: Second the motion.

CHAIRMAN: It was duly seconded.

PORTEUS: Has the motion to reconsider been put?

CHAIRMAN: It will be put unless you have - - All those in favor of the motion to reconsider action taken on this paragraph four will please signify by saying "aye." Contrary minded say "nay." Carried by two-thirds.

KING: If the paragraph is still before the Convention, I move now that we merely defer action on it. I quite agree it should not be returned to the Committee on Amendments and Revision. That's practically shelving it, but the point is that it needs to be redrawn. We simply defer action on it, and proceed to the next paragraph. Is that correct?

TAVARES: No, my idea was in order - - to enable those of us who want to draw an amendment to know what this Convention wants, we ought to take a concensus, an informal vote to see whether a majority of this Convention prefers the distribution of this Convention or prefers the distribution of the total of the members of the legislature appointed. Then when we know that point, we'll know what kind of an amendment to draw. I move, therefore, that it is the concensus of this Convention that we adopt the Convention pattern, just for the sake of bringing this to a head.

CHAIRMAN: When you say "Convention pattern" do you mean the Constitutional Convention of 1950?

TAVARES: Yes. That's to bring it to a head.

WIRTZ: I second the motion.

HEEN: I move an amendment to that. I move that it's the sense of this Convention that the number of delegates to the convention shall be the same number as the number of senators and representatives in the State legislature, and that the candidates for election to the convention shall run on a nonpartisan ticket - - a nonpartisan ballot.

CHAIRMAN: Is there a second to that amendment?

APOLIONA: I'm not going to second that motion. I don't think it's fair to the outside islands, when Oahu has about 33 members of the House and the outside islands only have a lesser number. I think it should follow the pattern of this present Constitutional Convention of Hawaii of 1950. Let it stand as such. Mahalo.

DELEGATES: Question.

CHAIRMAN: There is no second to that amendment proposed by Delegate Heen. There is only one motion before the assembly and that is the motion to defer action on paragraph four. You ready for the question?

ANTHONY: I second Delegate Heen's motion.

CASTRO: As long as there has been a second, may I state that this is very unfair to ask that the delegates vote upon this thing when we do not really know what this Convention will decide is the representation in the legislature. Now I believe that the number of representatives from Oahu in comparison with the total number is the thing that separates the two patterns, and I don't see how we can intelligently vote on this particular pattern until we know exactly what the make-up of the legislature is going to be.

ANTHONY: I think possibly the delegate that last spoke has overlooked the fact that in any legislature, Oahu, for instance, will have the majority of both houses, and - - I mean of the two; they would have the majority of the human beings that are in the Senate and the House of Representatives. So one delegate, whether he's elected from a senatorial district or not, would have the same vote as any other delegate. Therefore in any future convention, Oahu would have the control.

BRYAN: I think that this Convention has hit a new high in going low on its subject today. I really do, and I think it's time we got down to work. Now if the delegate from the fourth district wants to question whether it's wise to have the representation in the convention on the basis of the legislature, vote against the amendment, but for gosh sakes, let's vote on something and get going.

CASTRO: I'm speaking against the amendment.

CHAIRMAN: Just a moment, the Chair doesn't recall whether there was a second to that amendment made by - -

CASTRO: There was a second by Delegate Anthony. The point I'm trying to make is that we have in our minds two different patterns of representation at the constitutional convention. One is definite as is borne out by the 63 delegates in their representation here. The other is indefinite and not known, and I say that I feel that the amendment should be defeated because it is unfair to ask us to pass upon a representation pattern that we have not yet arrived at.

LOPER: I'm speaking to the amendment and questioning the remarks of the previous speaker when he refers to the Convention pattern as being definite. If you tie it up with Act 334 or the Constitutional Convention of Hawaii of 1950, and then come up with a new set of precincts, reapportionment, a different combination, how can you apply the 1950 - - 1949 law to those new precincts? It was for that reason that I thought that it might be well to tie it to the legislature of the new State.

NIELSEN: I think that first part of the sentence, "Unless the legislature shall otherwise provide," will take care of anything like that.

CHAIRMAN: Are you all ready to vote on the amendment? The amendment is to the motion made by Delegate Tavares. All those in favor of the amendment will signify by saying "aye." Contrary minded say "no." The noes have it.

Then we shall come back to the original motion that was made by Delegate Tavares. The motion in substance is that the concensus of this committee is that we adopt the Constitutional Convention of 1950 pattern. You ready for the question?

DELEGATES: Question.

CHAIRMAN: All those in favor of that motion please signify by saying "aye." Contrary minded say "no." Carried. Ayes have it.

FUKUSHIMA: Shall we now proceed to the fifth paragraph? Fifth paragraph reads - -

CHAIRMAN: Before we proceed, the Chair should like to clarify this point. Now that we have acted upon the motion made by Delegate Tavares, is the matter to be left with the Style Committee?

TAVARES: I move to defer action now on Section 4 so that we can - - on paragraph four so that we can, if possible, try to devise a more acceptable wording to the Convention.

CHAIRMAN: Is there a second to that motion?

LOPER: Second the motion.

CHAIRMAN: Seconded by Dr. Loper, Delegate Loper. Are you all ready for the question to defer action on paragraph four? All those in favor of that motion, signify by saying "aye." Contrary minded say "no." Carried. The ayes have it. Action of paragraph four is deferred.

We shall proceed with paragraph five.

FUKUSHIMA: Paragraph five reads,

> The Convention shall determine its own organization and rules of procedure. It shall be the sole judge of the qualifications of its members and, by a two-thirds vote, may suspend or remove any member for cause.

SHIMAMURA: I wish to move to amend paragraph five by inserting after the words "the sole judge of the," the words "elections, returns and," so that it shall read - - that clause shall read, "It shall be the sole judge of the elections, returns and qualifications of its members." That is the same expression used in the Federal Constitution and in practically all state constitutions and it has been judicially construed.

MAU: I second for the purposes of discussion.

FUKUSHIMA: If we include the word "election," we will be determining something before the Convention is even convened. I don't see how we can do it. I think all election results should be provided by the legislature or by the supreme court, whichever way we decided on the proposal on committee - - as put out by the Committee on Suffrage and Elections.

CHAIRMAN: Was there a second to that amendment?

FUKUSHIMA: Yes.

CLERK: Yes, Delegate Mau.

TAVARES: Again I should like to point out that I think this will, by implication, affect the article we have already approved on suffrage and elections which says that "Contested elections shall be determined by a court of competent jurisdiction as provided by law." It seems to me that the main

trouble will be taken care of by the language as the provision now stands.

CHAIRMAN: Are you ready to vote on the amendment? All those in favor of the amendment please signify by saying "aye." Contrary minded. Noes have it.

ROBERTS: I move we tentatively agree on paragraph five.

LOPER: I second the motion.

CHAIRMAN: Are you ready for the question? All those in favor of that motion please signify by saying "aye." Contrary minded say "no." Carried.

FUKUSHIMA: Paragraph six reads:

> The convention shall provide for the time and manner in which the proposed constitutional provisions shall be submitted to a vote of the electors of the state, but no such proposal shall be effective unless approved (a) at a general election, by a majority of all of the votes tallied upon the question, constituting at least 35 per cent of the total votes cast at such election, or (b) at a special election, by a majority of the total votes tallied upon such question, constituting at least 35 per cent of the total number of registered voters; provided, that no constitutional provision altering this proviso or the representation from any senatorial district in the senate shall become effective, unless it shall also be approved by a majority of the votes tallied upon the question in each of a majority of the counties.

I'd like to call the Chair's attention that this proviso was the one that did not meet with unanimous approval, and Delegate Ohrt and Delegate Fong signed a non-concurrence proviso.

WIRTZ: I move that the -- Is this carried by general motion on the section or do we have to move on each paragraph?

CHAIRMAN: I presume the former.

LEE: Let's get some action here. I move that we delete the proviso at the end of the paragraph.

AKAU: I second the motion.

FUKUSHIMA: To bring this back to order, I shall now move that the sixth paragraph be adopted as read.

WIRTZ: I'll second the motion. That's why I asked the Chair whether this was covered by the general motion to adopt Section 2, which was seconded.

CHAIRMAN: I thought each paragraph would tentatively be agreed upon until we went through the entire section.

WIRTZ: Well, the only thing we're trying to do is to get this in order for discussion on the floor. What is the ruling of the Chair? Is it necessary to have a separate motion for each paragraph and second it before it can be discussed? Or is that covered by the general motion to adopt the entire section, which I understood the Chair so indicated a minute ago.

CHAIRMAN: That is the understanding the Chair has, and all action taken would be tentative until the entire section is fully discussed.

WIRTZ: I believe there is now a motion that has been seconded to amend this paragraph by deleting the last proviso therefrom.

CHAIRMAN: That is correct.

WIRTZ: The concensus, as I gather, of this Convention and of the Legislative Committee is that we should have two bases of representation in a bicameral legislature, one of the houses to be on the basis of a population as indicated by means of registered votes; the other to be on the basis of a combination of geographical and political subdivisions, more or less patterned after our present existing Senate, keeping insofar as possible the same ratio and proportion. Now the idea of having the two bases of reapportionment is to provide a truly bicameral legislature with balances and checks. The Senate is designed so that no county, no one county or no one senatorial district has control over that house; whereas, based upon population, obviously, in the House of Representatives the control will be at present in the County of Oahu. Now in order -- if we believe that this is a fair basis of reapportionment, and if we believe in a true bicameral legislature with proper checks and balances, I believe that this proviso is essential, because without it the whole work of this Convention in adopting that basis of reapportionment can be destroyed in one amendment.

I want to point out that this ratification procedure that applies to this section is the same procedure that is incorporated by reference for all constitutional amendments that are introduced in the legislature and submitted to referendum of the people. And it seems to me that to avoid the problem of getting in actuality a unicameral legislature with two houses, and by that I mean two houses based upon the same principle of representation, we have to put in this proviso so that—and this refers only to senatorial representation—it requires a majority of the counties whose representation is being affected to approve of such amendment.

TAVARES: Although I am a delegate from Oahu, I agree with the delegate from Maui. I have sensed, I believe, a feeling in this Convention that some amount of geographical representation for the outer counties is proper in the Senate and popular representation is desirable in the House. Now we've got to remember that the last census, contrary to what our reports -- one of our reports said on initiative and referendum, instead of 65 per cent, Oahu now has 70 per cent of all of the people in this territory, a condition that does not exist in any other state of the Union. Now if the principle of apportionment geographically in one house and according to population in the other is sound, unless you put in a stop like this, you are allowing the next constitutional convention, which will be controlled entirely by Oahu, to propose, and the people of Oahu almost by their own vote alone, to vote out that type of representation entirely from the Constitution. Now if the principle is sound, I think it's worth keeping, and I believe that in fairness and by way of reassurance to the outer counties that they are going to get fair treatment in the future, this is not an unjust and improper provision. I therefore hope that it will be sustained and that it will not be removed from this proviso.

HEEN: That is exactly the situation that exists now. The delegation from Oahu has the majority of the membership in this present Convention, and they have been dealing with this question on that basis.

HOLROYDE: Another point that I have in question on voting on this at the present time, until we know how many senators and what the district is going to be, how can we intelligently vote whether to keep that forevermore or not?

ANTHONY: I agree with the last speaker. This is a pig in the poke until we know what the redistricting is going to be. However, on the general proposition, the Oahu delegates, as Senator Heen has said, have the majority vote in this Convention, and I think that members of the -- delegates from the neighboring islands, before we get finished, will realize that we from Oahu want to be fair. I, for one, am in favor of recognizing the outside islands in the Senate, but I see no reason for binding in perpetuity future conventions. I think that they should be satisfied that their fellow delegates

in the future will be just as fair as we're going to be here. Now I for one am going to vote in favor of a control of the Senate in the outside islands because I think that's a good balance, but I see no reason for freezing that thing once it is accomplished in the Constitution.

TAVARES: Something has been made about how fair we are being at this Convention. I would like to remind the delegates that in order to get this bill through our legislature, which I attended not as a legislator, but as a very interested observer and lobbyist, I received a very distinct impression that in order to get Act 334 through, definite statements were made by the members from Oahu that if Oahu was given control of this Convention as provided in that act, the outer islands would be treated fairly. That assurance was given, and I think it should be lived up to.

Furthermore, we must remember we haven't become a state yet, and the outer islands could kick up quite a fuss with Congress if they thought they were not being fairly treated. We are not going to have that stop or that protection in the future. From what I observed of some of the people who think it's politically popular to appeal to the voters of Oahu on the question of giving Oahu control of both houses, I'm pretty sure that it's going to be a very burning issue in the future elections, and that the people for the time can be inflamed over some trivial incident where Oahu may not have gotten quite what they considered a fair break, to the point they will be quite willing to be unfair to the outer islands on the principle of geographic distribution.

I want to say one more thing. The very fact that we on Oahu here are willing now, in this new Constitution, to give the outer islands in the Constitution control of the Senate, shows a certain amount of distrust, if that's what we're going to call it. In other words, instead of leaving it to the legislature to reapportion, which will be controlled even in one house only by the Oahu delegation, we are saying in the Constitution that until it's amended by the Constitution, Oahu shall not have control of one house. I say that if that principle is sound, it should be continued.

ANTHONY: The statement of the last speaker is a mathematical demonstration of the error of his position. He says that we on Oahu say that we are going to be fair. The very fact that we are saying we're going to be fair shows that we are distrusting the outside islands in the legislature, a complete non-sequitur.

WIRTZ: Apparently some of the delegates feel that this proposition of freezing representation in one house is something new. It isn't, and the Senate representation in the United States Congress is so frozen. It was done because at the time that the United States government was formed the 13 original states were sovereign states, and it became a compact between the states. We are not in a position to enter into a compact. However, this principle of reapportionment on two different bases has been recognized, and I believe if the concensus of this Convention is that it is fair, this amendment does do no harm - - I mean this proviso does do no harm. On the other hand, if we don't agree in this matter of reapportionment, then this proviso has no place in this section.

ANTHONY: The argument, the analogy of sovereignty, has nothing to do with the question. The County of Maui is not a sovereignty, but the original 13 states were sovereign. Now I think the members from the outside islands ought to be satisfield if we leave this Convention and we give control of the Senate to the outside islands. And they ought to be satisfied that the future revision of this State Constitution will likewise be fair.

WIRTZ: I rise to a point of personal privilege. I did not say that we were in the position of sovereignty, and that is the reason for this, approaching it this way. There was no contention on my part that Maui or any other counties were in the position of sovereignty.

LEE: I have a lot of respect for the opinions of the learned judge from Maui. I'd like to ask him this question, though. The reason I made the motion to delete this is because there was a feeling on my part—and I may be corrected, in which case I may withdraw the motion—the only thing is, isn't what you are trying to do in this proviso is to make a compact between Oahu and the outside islands, is that it, the neighbor islands?

WIRTZ: In substance, yes.

LEE: Because I don't see how this Convention can bind any future constitutional convention, and that's my whole question on this matter. Even if we agree with you in the principle, there shouldn't be any changes. When there is the next constitutional convention, what is there to prevent that convention from modifying this, from deleting this clause?

WIRTZ: I might answer that question. I'll invite the speaker to examine the proviso. It says, "provided, that no constitutional provision altering this proviso, or the representation of any senatorial district. . . shall become effective," unless it's passed by a majority of the votes of a majority of the counties. Now that does have that affect, Mr. Lee.

CHAIRMAN: The Chair will now recognize Delegate Mau.

MAU: Part of the argument made by those who agree, even tentatively, to give control of one of the houses, assuming we have a bicameral legislature, and also to support this provision as being fair and sound, I think that their arguments are unsound. If they want to have a truly representative government, if they want to follow representative government based upon population, there's no question but that both houses and this proviso - - both houses should be controlled by Oahu and this proviso should go out. But if, on the other hand, they argue that if we want this Constitution to be supported by members of the legislature from the outside islands, if they argue that they want the people from the outside islands, the neighbor islands, to support the Constitution which we will send to the people for ratification, if they argue that from a matter of tradition, not soundness, not representative government, not fairness, but from tradition, then it's a different thing.

I am willing, of course, to support the proposition that one of the houses should be controlled by the neighbor islands in the way of representation. Otherwise, you will have a turmoil here, we'll never get home, and we will never get past the legislature. I would like to move now that the neighbor islands secede.

NIELSEN: I'll second that motion.

CHAIRMAN: Delegate Mau, will you clearly state your motion?

MAU: I withdraw my motion.

NEILSEN: I'll withdraw my second.

ROBERTS: I'd like to speak to the merits of the question. It seems to me that the purpose of writing a Constitution has been pretty clearly stated in our discussions. If we write something in the Constitution now which says that from here on in we can never change, under any circumstances, certain provisions of the Constitution, it seems to me we are not permitting changes when changes are needed. Now I think that the Bill of Rights one of the most important things in the Constitution. But I didn't stick a proviso in there saying that there can be no amendment to the

Constitution with regard to certain articles in it. It might be a good idea, but it seems to me that you have to make provision for changes in the Constitution. This proviso says you can change everything in the Constitution except a provision dealing with certain procedures with regard to amendments on percentages and with regard to representation in the Senate. It seems to me that every provision in the Constitution is subject to change at such time when change is found necessary. Therefore, I believe we ought not to include any limitation in the Constitution which would deny change later on.

Now I'm in complete sympathy with the problem of reapportionment. It certainly isn't my intention, when I suggest its deletion, that we deny adequate representation to the outside islands. I think we should, and I think we will. But we can't bind ourselves and the future down on any subsequent constitutional changes. Thank you.

TAVARES: There is a great deal of force to what the last speaker just said. In the ultimate, we may not be able to prevent a Convention from forcing its will on the outer islands. That is possible. However, it seemed to me that a reassuring provision like that, at least pointing the way to a policy adopted at the outset, amounting to a moral assurance to the outer islands that they would always have representation, a control in one house, would be the kind of thing that would reassure the voters enough so that when a constitutional convention is voted on, or when other provisions come up, they will be more willing to vote for such a convention. I think it must be remembered, and of course we realize that too, that not always, maybe not necessarily will all the people of any one county vote the same way. To some extent that is a protection. But if they want an amendment to the Constitution and they don't have an overwhelming majority on Oahu, your outer island people are going to feel a lot more comfortable about voting for a constitutional convention if they feel that there is at least a moral obligation, a moral assurance, that those delegates will come to that convention without the idea of changing that reapportionment unless a majority of the counties approve. I think you will facilitate getting your constitutional conventions voted for, or amendments that come very close to the situation being authorized if you give that assurance to the outer islands.

One more thing, I think that the outer -- the islands of this territory are the nearest analogy to the relationship between the states that there is in this whole country. We have here counties that are separated by many, many miles of water. There is a county consciousness in this territory and a difference, it seems to me, in needs and requirements and conditions that is not found, in my opinion, in any other state. There is much more ground for having two houses of the legislature in this territory than in any state of the Union, in my humble opinion. The people on Oahu who are essentially an urban community, have very, very different problems from those on the outer islands, and they are so overshadowing to them that they are likely to overlook the needs of the outer islands, unless they have control of one house where they can bring that to the attention of the legislature and get adequate consideration. I submit that the history of this territory has shown that the influence of the outer islands has been beneficial upon Oahu. There have been a number of times when, because they were far away and could look at the matter objectively, they have voted reforms or voted against provisions which the people of Oahu at the time, because they were too close to the problem, could not see as objectively, and in so doing, have been a healthy influence on Oahu and vice versa. Oahu at times has been able to see objectively some of the problems of the outer islands, and with its -- even though it doesn't control with its large delegation here, has helped keep the outer islands straight. It seems to me that a counteracting influence of checks and balances ought to be maintained, and that we ought to give at least moral assurance in this Constitution that we intend to maintain it.

ANTHONY: I agree with everything the delegate has said in regard to the morality of the present proposition. I agree that we ought to have representation of the outer islands in the Senate. They would have control. I do not agree that we can sit here in our present wisdom to see in perpetuity that there should never be a time in which that situation should be changed. Jefferson said a good many years ago, "A revolution every twenty years is a good thing," and that's still good political philosophy.

Now what we're trying -- what we're talking about here is not a question of policy, not a question of good faith. We expect to settle that question of policy, we expect to exhibit our good faith to our friends in the counties by giving them the majority in the Senate, but I do not think that we should be thereupon called to -- called upon to freeze in this Constitution in perpetuity that control in the outside islands in the Senate, and that's what this is going to do. If it were only a matter of policy, only a matter of morality, I'd agree with it, but this is a matter of legal power, and we will get into the same morass that the State of Illinois is in. Those fellows there can't even amend their Constitution by reason of a phony provision in the section relating to amendments.

NIELSEN: I want to say that this Constitutional Convention would not be in session if it wasn't due to the lobbying and assurance of the people of Oahu that the outside islands would be well taken care of, because we had the vote in both the House and the Senate when the Constitutional Act 334 was drawn, and it was with the confidence that Oahu would treat the outside islands properly. If we delete this provision, then we will be losing the confidence that we placed in Oahu. I, therefore, am going to vote against this amendment.

WIRTZ: I just want to say one more word and that is to dispel this erroneous impression of freezing anything into perpetuity or preventing us from ever amending our Constitution. This proviso specifically refers only to one phase, and that is senatorial representation. And I'd like to point out further it is not an absolute freeze. It requires, in addition to the other restrictions that have been imposed for the passage of any amendment, on this particular one question, it has an additional restriction but not an impossibility like Illinois, as the delegate from the fourth district stated. It requires a majority vote in a majority of the counties.

BRYAN: There are two things I'd like to point out with respect to this last sentence. One is, we don't know how happy the territory is going to be with a Senate that may be provided by this Constitution. The second is, they refer to counties. We don't know how many counties there may be ten years from now. At the present moment, with four counties, it means that a majority would be 75 per cent rather than 51 per cent. And I think that, as was expressed by the delegate from the fourth, we are buying a pig in a poke when we take this. Now I would like to ask Delegate Tavares if this is actually as it is written, in his opinion no more than a moral obligation. If that's all it expresses, I might go along with it, but if it is legally binding forevermore, there is a serious question in my mind.

TAVARES: The reason I said that was to be intellectually honest. Before our committee, we had a witness who is writing a thesis in the University of Hawaii on constitutional amendments, and he pointed out to us a number of situations where, in spite of constitutional provisions like this, they had been disregarded and somehow or other the courts had refused to alter the result. His argument was that you

can't tie down the people if they want to kick over the traces anyhow. We still felt that up to a certain point, the courts might enforce this, and certainly we would be in a position, those of us who were for it, of arguing with the electorate and with the delegates that this provision should not be violated. But I wanted to be honest in saying moral obligation, because that witness had pointed out that provisions like this have actually been violated, and they had gotten away with it in certain jurisdictions.

CHAIRMAN: The Chair is willing to recognize Delegate Fong.

FONG: Delegate Fred Ohrt and myself signed the minority report opposing this proviso in this Constitution. If this was just a moral obligation, as Mr. Tavares says, I would go along with it, but this is not just a moral obligation. It is a contractual obligation, and if we pass this proviso, we'll be stuck in perpetuity. Now if you realize that we have now four counties, the County of Hawaii, the County of Maui, the County of Honolulu, and the County of Kauai, the majority of the four counties means three counties.

HEEN: May I point out an error there, if you don't mind. We have five counties. There's a County of Kalawao.

FONG: I presume this Convention probably will not recognize the County of Kalawao.

To me this proviso means that we're going to be stuck in perpetuity, and what Delegate Anthony says is correct. I don't think any constitutional convention that will be convened will be able to strike this proviso, even if the whole convention went ahead and said that this proviso shall be stricken, because when it goes back to the counties, one county will at least vote against it, and they will have the support of the other counties, I presume. As Delegate Roberts says, we felt in the committee that we are living in changing times that there is no assurance that what we do today will be done tomorrow; no assurance that what we think is correct today, will be correct tomorrow.

But we will like to say to the members from the outside islands that at the present time we are willing to concede them the supremacy in the upper house, and having that supremacy, I think they should be satisfied. They will have the supremacy in the upper house, and having that supremacy, I don't think that the Senate will pass on any constitutional amendment and have it go before the people if it were to take away from them the votes that they are now having. I think that we should leave it up to the members of the next constitutional convention, to future constitutional conventions, the question as to whether they will like to change the representation in the Senate. I feel that at the present time, I'm willing to go with the outside islands as far as the representation in the Senate is concerned, but to say that we should insert this proviso is like putting a clause in the will saying that we can't change our will. Never mind what we want to do. Our thinking at the present time is such and such, and we should not change it. I think that this is going to be a compact, a compact that will stand forever, and I for one certainly do not want this compact in this Constitution.

LOPER: I'd like to speak for the elimination of that last sentence, because I think we should have as much confidence in the Constitutional Revision Convention of 1960, '70 and '80 as the legislature had in us. We had a legislature, one house of which drew most of its members from the outer islands, and this Bill 334 providing for this Convention which provides for a majority of the members to be from Oahu, and this Convention is, I am convinced, going to provide for a legislature, one house of which will draw a majority of its members from the other islands. So it seems to me that there is already established a relationship of confidence that the other islands will be taken care of.

Furthermore, in one of the paragraphs that we considered earlier today, I believe it was voted to pattern the new conventions for revision of the Constitution after this particular Convention unless the legislature should provide otherwise. And that legislature, as it has been indicated, would have one house controlled by the other islands. I don't think we need to try to pin down the constitutional conventions of 10, 20, and 30 years from now.

ANTHONY: In order to exhibit our good faith in this, I think what the outside islands would like to know is, are we coming through with supremacy in the Senate, and, therefore, it might be a good idea to defer this until the matter of apportionment is thrashed out. Possibly that'll satisfy them.

SHIMAMURA: Some of the speakers, I think, have given an erroneous impression of the power of the legislature with respect to the adoption and ratification of this Constitution by the legislature. The legislature under Act 334 has no power of ratification or change of the Constitution. The only power the legislature has under that act, as I think some of the lawyers realize, is merely the submission of alternative or other provisions, but it certainly has not the power to disapprove of the Constitution.

ASHFORD: We haven't yet passed upon the Local Government Committee's report. We don't know what the situation is going to be as to counties. It may be that the power will rest in the legislature to create counties and also to provide that there shall be no counties; and if that power shall rest in the legislature as it now does, and counties are done -- counties could be done away with entirely and get away from the effects of this.

WHITE: It seems to me that this thing has almost the effect of freezing the county status as well. It will have that practical effect. Now as far as I'm concerned, I'm sympathetic with the viewpoint of the outside islanders, but I can't understand why any of the outside islanders should take something that the legislators happened to say as committing this Convention. They certainly had no power to commit this Convention for all time. I agree with Delegate Roberts that in changing times like this, who are we to know what the conditions are going to be 10 or 20 years from now, and whether even the representation that may be proposed by this Convention may not 20 years from now be unfair to the outside islands. I think it's very presumptuous on our part to take it upon ourselves to try to commit and limit the freedom of future conventions, and I'm definitely opposed to this.

KING: Without trying to close off debate, I think the two points of view have been pretty thoroughly explained. I suggest that we vote on the amendment, without making a motion to that effect.

CHAIRMAN: The amendment before the assembly is to delete the proviso contained in paragraph six of Section 2. Are you ready for the question?

DELEGATE: Roll call.

CHAIRMAN: All those in favor of the amendment will signify by saying "aye." Contrary minded say "no." I think the Chair - -

DELEGATES: Roll call, roll call.

CHAIRMAN: All those in favor of a roll call, signify by - - There's more than ten. Roll call.

Ayes, 24. Noes, 33 (Apoliona, Ashford, Castro, Cockett, Corbett, Crossley, Doi, Fukushima, Ihara, Kage, Kanemaru, Kauhane, Kawahara, Kawakami, Kido, Lai, Luiz, Lyman,

Nielsen, Okino, C. Rice, H. Rice, Sakai, Sakakihara, Serizawa, Silva, Smith, St. Sure, Tavares, Wirtz, Woolaway, Yamamoto, Yamauchi). Absent and not voting, 6 (Arashiro, Gilliland, Kometani, Mizuha, Phillips, A. Trask).

ROBERTS: Point of information. The language which is still in reads, "provided that no constitutional provision altering this proviso or the representation from," and so on. Am I correct in construing that language that the proviso has reference to the words "provided that" and does not have reference to the previous paragraph? To the rest of the paragraph preceding.

WIRTZ: Does the delegate wish me to answer that question?

CHAIRMAN: Yes, will you?

WIRTZ: It was clearly the intention of the committee that that word "altering" -- the word "proviso" as used after the word "provided" referred only to what followed the word "provided" and had nothing to do with the percentages or anything that's before.

NIELSEN: I now move that the paragraph be tentatively agreed to.

CHAIRMAN: Is there a second?

SAKAKIHARA: Second it.

ROBERTS: I'd like to raise a question and then propose an amendment, if I may. We have provided in this paragraph that it would require 35 per cent of the total votes cast to be cast in the affirmative on any question which would provide for a constitutional change. There have been two states, the State of Tennessee and the State of Illinois, that have had a tremendous amount of difficulty bringing about a constitutional change. Part of the reason in those states deals with the fact that it requires a majority, but it's not a majority of those voting on the proposition, but a majority of those voting in the total election. Now this provides for a majority of those voting on the proposal, but requires a 35 per cent vote in the affirmative. I'd like to suggest to the delegates that that percentage might be reduced somewhat. You have this situation, you have a general election, and you have a total popular vote, let's say of 100,000. When it comes to questions on constitutional amendment, you find that people either are not interested or don't quite understand the proposition and don't specifically cast their votes either for or against, and the experience of other states with the amendment procedure has been that it is extremely difficult to get in excess of 50 per cent of those who are eligible to vote. This, in fact, then would require 35 per cent of approximately 50, which would require close to 70 per cent of those total voting. If our experience turns out to be the contrary, that we have more people voting on these amendments, then we have a different proposition. But in other states, the experience has been that you cannot get in excess of 50 per cent of the total people who go to vote on individuals in general elections but don't cast their votes on constitutional amendments.

Therefore, I suggest that we reduce that 35 per cent to either 25 or 30. I'd like to hear from -- Suppose I move for 25.

MAU: Second the motion.

CHAIRMAN: The motion has been duly seconded by Delegate Mau.

I think it's time for a short recess for the benefit of the clerks who have been --

SAKAKIHARA: I so move.

DELEGATE: Second the motion.

CHAIRMAN: Carried.

(RECESS)

FUKUSHIMA: I move that the committee rise and report progress and ask leave to sit again.

HEEN: I second the motion.

CHAIRMAN: It has been moved and seconded that the committee rise, report progress and ask leave to sit again. All those in favor say "aye." Opposed. Carried.

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CHAIRMAN: Committee of the Whole will now come to order. Before recessing yesterday afternoon, there was an amendment moved by Delegate Roberts pending before the assembly. Now the amendment offered was to paragraph six of Section 2. The amendment offered was that the number 35 per cent be deleted and in lieu thereof the percentage 25 be inserted. That motion to amend was seconded by Delegate Mau. Immediately after moving the amendment, the Chair requested a recess for the benefit of the clerks. When the committee was called to order, there was a motion to rise and make a report of progress and beg leave to sit again this morning. Delegate Roberts, would you like to speak to the amendment which you had offered?

ROBERTS: Prior to offering the amendment to change the word "35" to "25," I spoke at some length on the reason for offering the amendment. The experience of the other states has been that it is extremely difficult to get a large vote on constitutional amendments or on constitutional changes. Most of the states actually provide a majority of those voting on the proposal. We are making that tighter in our Constitution by requiring an actual number voting, and by requiring a percentage of votes in the affirmative. That in itself indicates that we regard a constitutional amendment as quite serious, and properly so. There ought to be a substantial showing of votes. I do believe, however, we ought not to make it impossible to modify or change our Constitution as the times and needs change.

I'd like to call the attention of the delegates to the fact that our Constitution, the one that we are drafting now, is going to be submitted to the people on the basis of a majority, a simple majority of those voting on the Constitution. It seems to me that if we are going to provide that our first Constitution is going to be submitted to the people on a simple majority vote, regardless of the number of people voting, that to make subsequent amendments and revisions based on a 35 per cent vote, which I indicated yesterday in most situations will mean a 70 per cent vote because of the number of a turn out, that we ought not to make it so difficult in the future to change or amend our Constitution. I recognize that we all think we're doing a wonderful job. I think we are, but we also ought to recognize that perhaps future generations may not think quite the same way that we do, and we ought to give them the opportunity as times change to make amendments and revisions to the Constitution.

PORTEUS: It isn't often that I differ with my brother from the same combination of precincts, but I do to a certain degree this morning. If you will just check these figures for the moment, you will see the point I want to make. You will put down 100,000, 100,000 voters in an election throughout the territory at a general election. Now if 100,000 voters go to the polls and vote, under the scheme as proposed now, if 35,001 vote affirmatively for an amendment to the Constitution, that amendment carries, 35,001, that's what it means. Now 100,000 people go to the polls, and 35,001 affirmatively for a matter can carry so long as not more than 70,000 have voted on the constitutional amendment. Now the amendment that is proposed would mean

this, that so long as there was a majority vote of those voting on the constitutional amendment, that they would have to have at least 25,001. Now I think if 100,000 people go to the polls, if the people don't want to vote on the constitutional amendment, if they are not interested in having it, I don't think that 25,001 out of 100,000 should be able to put the idea over. I think there should be more affirmative support built up for a proposition than is advocated under the last amendment. I think the proposition as submitted by the committee to be a liberal one. You need only a majority of the votes cast on the constitutional amendment in a general election so long as that majority is equal to 35 per cent of the total votes cast. It seems to me a very liberal provision, and I don't agree with the 25 per cent figure which has been advocated in the amendment.

ROBERTS: May I ask the previous speaker a question, Mr. Chairman?

CHAIRMAN: You may, Delegate Roberts.

ROBERTS: When you say 35 per cent of the votes cast, is it 35 per cent of the votes cast on the amendment?

PORTEUS: Thirty-five thousand votes, 35 per cent of the votes that were cast at that general election. That's what the provision says.

ROBERTS: Well, that's what I understood.

ANTHONY: It says "registered voters."

PORTEUS: No, it doesn't say registered voters.

ROBERTS: There are two provisos there.

PORTEUS: You are looking, I'm sorry, Mr. Anthony, at the special elections. If you'll look at "a," general elections. The committee made it more difficult to carry a constitutional amendment in a special election. We're talking about the general election under "a."

WIRTZ: There's one other thing I'd like to point out about the feature that I think is liberal in the proposal as submitted by the committee. You will notice it says "a majority of all the votes tallied." That eliminates spoiled ballots, unmarked ballots, and everything; whereas the limitation of 35 per cent is on the total votes cast.

HEEN: I rise to a point of information. By using the word "tallied" in one place and the word "cast" in another place, is it supposed that there is a difference in the meaning of the two words?

WIRTZ: Is that question directed towards me?

CHAIRMAN: Would you be willing to answer the question?

WIRTZ: Yes, it was the concensus of the committee that "tallied" were the actual votes "yes" or "no" on a proposition and that were actually tallied in the booth, whereas votes cast included - - the total number of votes cast included spoiled ballots and so on.

HEEN: That's the way it's treated in the returns. If you will look at these official returns, you'll find one column says total votes cast and if you'll look at the number of votes cast in the various precincts, they tally, they come out the same.

WIRTZ: As I understand it, maybe the chairman would like to answer this, but my understanding was that we were going under the impression that spoiled ballots and blank ballots were counted as ballots cast in the election.

CASTRO: Recall that this section deals with the general election, and the supposition is that more votes will be cast for candidates than will be cast in the square relating to the amendment, so the majority refers to the tally upon the question, but the 35 per cent refers to the votes at the election. So that if 85,000 people voted on candidates, but only 70,000 people voted on the question, the 35 per cent would refer to the 85,000 rather than the 70,000.

FUKUSHIMA: I'd like to add a little to what Judge Wirtz has said. I think when you go to the polls, and you give your name and your name is scratched out, that is counted as a vote cast. Now, whether you submit a blank ballot or whether your ballot is checked off as being an illegal ballot, nevertheless, it's still a vote cast. I think that's correct. Is it or not?

SHIMAMURA: May I ask if that distinction is clearly brought out in the committee report so that there won't be any difficulty in interpretation and construction. I've been trying to look for that page but I can't locate it.

FUKUSHIMA: That is stated on page 6 of Committee Report No. 48.

SHIMAMURA: Thank you.

CHAIRMAN: For the purpose of record will you read that sentence?

FUKUSHIMA: It's page 5 and 6. "The reason for using the term 'votes tallied,' is to exclude blank ballots and spoiled ballots on the ratification question only, thus requiring the majority of the votes actually tallied for or against ratification."

APOLIONA: To me there is a great difference between the word "tally" and the word "vote" - - I mean the word "cast." For instance, a lot of voters will go to the polls to have their votes cast. That means they go in there, accept a ballot and have their name registered in the book as having cast their votes. But a lot of people do not vote, they give in a blank ballot, in order so that they save their name on the register for the next election. There's a big difference there.

CHAIRMAN: The Chair feels that there has been sufficient discussion on the amendment offered. Are you ready for the question?

LOPER: May I rise to a point of information? I'd like to ask the chairman of the committee if the committee considered the advisability of basing it only on the total votes on the question, but requiring more than a simple majority. For example, counting only those voting for and against but requiring 60 per cent or two-thirds to carry it. Did the committee consider that?

FUKUSHIMA: I believe the committee did and we felt that the proposition as we advanced would be more feasible; more liberal, too, Dr. Loper.

CHAIRMAN: You ready for the question?

ROBERTS: I'd like the delegates to very seriously consider this question before the vote is taken. I think this is one of the most serious questions which has come before the Convention, even though its present impact is not felt. The question of constitutional amendment goes to the very heart of the things we are working on. Most of the states provide a majority of those voting on the question. That to me is a preferable procedure. What we're proposing here is an actual requirement of an affirmative vote. It may be true that the way the ballots are presently counted, all peoples' ballots when they are thrown in the box are counted. When we go to mechanical counting, that will not be the case.

I'd like to point out a very simple illustration in the case of the State of Illinois. They tried for years to bring about certain constitutional amendments. They were unable, even though substantial numbers of people went to the polls and

voted on the question. They finally got to the point in 1932 when they tried to get a proposal to amend the amending provisions of the constitution, and they obtained a total vote in the affirmative on that constitutional amendment of over one million votes. There were only 200,000 against the amendment or a positive vote of 80 per cent in favor of changing the amending provisions of the constitution. But it required, on the basis of a majority of those voting in the general election, 1,700,000, and that amendment did not carry.

It seems to me, that this problem is extremely serious and we ought to have a procedure which would provide the opportunity for rectifying any mistakes which we may make, and I don't think that our Constitution is going to be so perfect that we want to tie the hands of future generations and future constitutional conventions to amend it.

ANTHONY: I am in accord with the statement of the last speaker. One of the greatest vices of state constitutions is the inflexibility of amendments, notably in Illinois, that was spoken of yesterday and again by, I believe, the last speaker. But in Illinois, they have been trying to get away from the system of elective judges for the last 40 years, and they can't even get enough people to pass on the constitutional amendment. Now I would favor a simple majority of those voting on the question, and I think an appropriate amendment should be drafted that will conform to that.

HEEN: I rise to a point of information. What is the amendment now before the committee? Twenty-five per cent?

CHAIRMAN: Twenty-five per cent.

HEEN: I'd like to amend that so that that clause "a" there shall read, "At a general election by a majority of all the votes cast upon the question"; and delete the rest of that clause.

MAU: How about paragraph "b"?

ANTHONY: I second the motion.

ROBERTS: I will accept the amendment.

H. RICE: We withdraw our original motion, I understand, and accept this as the original -- as an original amendment.

CHAIRMAN: Then Dr. Roberts, by accepting the --

ROBERTS: I will withdraw the motion.

CHAIRMAN: Delegate Roberts, by accepting the amendment, you are not interested in making the change of 35 per cent to read 25 per cent?

ROBERTS: We'll withdraw in favor of the amendment.

CHAIRMAN: Will you restate the amendment offered, Delegate Heen?

HEEN: Amend the clause "a" to read, "At a general election, by a majority of all the votes cast upon the question"; then delete the rest of the language there in that clause "a."

CHAIRMAN: Do you retain the disjunctive "or"? That is to be retained, is it not, before "b"?

HEEN: That's right, leave that "or" there.

WIRTZ: Before we vote on the question, I'd like to state the sentiments of the committee, that we wished it to be flexible, that is the process of amendment. However, we did not want to make it so easy that the process became simply similar to amending a statute. Now we've heard a lot about Illinois, and I think in fairness to this Committee of the Whole, the delegate from the fourth district should point out that this provision as submitted is much more liberal than Illinois'. That is the proposition as proposed by the committee, and it was put in this way to take care of that situation of Illinois. Now it's the feeling of the committee that a substantial number of people should be interested to amend their Constitution, otherwise the amendment is really not necessary.

LAI: I think the amendment made by Delegate Heen is a little too liberal, and I think is too dangerous. Do you realize that if you have say, 20,000 votes cast on a question, and it takes only 10,001 to pass an amendment and I think that's too dangerous. We don't want anybody to amend our Constitution that way.

TAVARES: It's just been pointed to me that we don't even allow a minority in the legislature to pass an ordinary law. Here we are going to allow any kind of minority, no matter how small, so long as it's more than the people voting against, to change our basic law. I submit that if we are going to profit by the experience of other states, we must bear this in mind also. First, if an amendment to the Constitution, a proposed amendment, is very controversial, and there is reason for argument on both sides, strong arguments, a lot of people are going to get awfully confused by the arguments pro and con. They are going to be so confused that they are going to refuse to vote, and it means then that a very small minority can, in many cases, put through an amendment as to which many of the people, perhaps a large majority, have serious doubts.

I believe in a territory or in a state this small, we can educate our people sufficiently to see that we have the requisite majority and the requisite minimum number. This is a small state and our record of turnouts to elections is unusually high. I think that's another thing to be borne in mind in connection with the comparison with other states. Our people do take a greater interest in elections, on the average, than most states, and I'm sure than Illinois. And I believe that because of the smallness of this territory, it will be possible for us to do a better job of educating than it is in a large state with so many million people, like Illinois. I, therefore, believe that some sort of a minimum is reasonable and proper, and if 35 is too high, let's bring it down to 30. Perhaps that would be a good compromise, but I don't think we should go below that. I hope, therefore, that the motion to amend will not be adopted.

DOI: I feel that I need more time to study this, the question on the floor. Therefore at this time, I would like to move to defer the consideration of this paragraph till the end of Section 4. There's something I would like to talk over with some of the delegates on this question.

YAMAMOTO: I'd like to second the motion.

ROBERTS: I'd like to call one fact to the attention of the delegates before this question is put, before the deferment, so that they can think it over during the actual consideration. I assume that the purpose of deferment is to give these people an opportunity to think the question over. I'd like to call this to their attention so that they can give it some thought, if it's agreeable with the Convention; if it's not, I'll keep quiet.

CHAIRMAN: Are you ready to vote on the motion to defer action on this question -- on the amendment?

ASHFORD: Let's hear from Delegate Roberts.

CHAIRMAN: I beg your pardon, Delegate.

ASHFORD: If this is being deferred for consideration, we should have before us every argument available. I think, therefore, that by unanimous consent, Delegate Roberts should be permitted to advise us as to the further reasons we should consider.

DELEGATE: Kokua.

DELEGATE: Second the motion.

PORTEUS: And out of courtesy, anyone else who wishes to add anything.

HEEN: Absolutely.

SILVA: Well, ask him to withdraw the deferment.

CHAIRMAN: Delegate Silva, did he have anything to say?

SILVA: I would suggest that the person who made the motion to defer withdraw his motion.

YAMAMOTO: I'd like to withdraw my second, for the sake of Delegate Roberts.

CHAIRMAN: The second to the motion to defer action on the amendment before the table has been withdrawn by Delegate Yamamoto. Then the motion to defer will die due to lack of a second?

KAUHANE: I second the motion to defer.

CHAIRMAN: Delegate Kauhane seconded Delegate Nelson Doi's motion to defer action.

CROSSLEY: As I understand it, the second was withdrawn to allow Delegate Roberts to talk. I think, if there's no second made, there can be discussion on the subject until it's fully covered. Then we can fully proceed.

ROBERTS: The impression given in the previous discussion, in part implied that the question of an amendment to the Constitution would go to the people directly. That is not the procedure that is provided in this proposal. There are two procedures for amendment, to initiate the amendment. One is through the constitutional convention. No question is going to be put to the people until the constitutional convention has deliberated and made recommendations. Then it goes to the people on the vote. The second procedure for amendment is for amendments provided or proposed by the legislature, and it requires a two-thirds vote in both houses of the legislature first, before the question comes to the people on a vote. So you have your screening process before the question is put. It seems to me that is not leaving the question wide open to minority groups. That provides deliberate consideration by both or either a constitutional convention or the houses of the legislature. I think we ought to keep that clear in mind, that it's not a proposition put directly to the people without prior consideration either by constitutional convention or by a substantial majority of the houses of the legislature.

NIELSEN: Isn't there a motion before the house?

CHAIRMAN: Delegate Nielsen, yes, there is a motion to defer action.

NIELSEN: I move for the previous question.

TAVARES: There's just one thing to be explained about this statement just made, and that is under the legislatively proposed constitutional amendments, proposed by our committee, there are two methods for the legislature to do it, one by a two-thirds vote of each house of the legislature at one session, or a majority vote of each house of the legislature at two successive sessions. I think that ought to be made clear.

ROBERTS: That's true, but after it's enacted by the legislature, then it goes to the people for ratification. So you have a double check on the specific proposal. It isn't a direct constitutional initiative; it provides for consideration by the legislature or by a constitutional convention. It seems to me that the deliberate consideration is given there, and when it subsequently comes to the people for ratification, just as our own Constitution is going to the people for ratification, it requires a simple majority. And it's quite possible, as Delegate Lai pointed out, that our present Constitution may be submitted on a vote which is extremely small. Suppose only 10,000 people go out to vote for the Constitution, it still will require only a majority vote.

HOLROYDE: Another point in that regard. When you have the legislature operating on a subject that may be a rather difficult one or one that is receiving a lot of public attention, knowing the fact that it's going to the people anyway, they will be inclined to vote in favor of it and let the people make the final decision. Then you come back to the point where only 10,000 people can make that decision.

CHAIRMAN: Are you ready for the question?

MAU: The impression has been given that any question put to the people would result in a very small vote. We've always prided ourselves in arguments for statehood, and we make it one of the best arguments we have, that the electorate goes out to vote full force. We always use the figure 80 per cent of the registered voters come out to vote. I don't think that there is a fear that only 20,000 people will vote on the question, not in the State of Hawaii. Even ourselves here in this Convention, we have a rule where those who are silent are considered to have voted in the affirmative. It seems to me that just because some of the people may not cast their vote on this question, although they vote in the general election for candidates, doesn't mean they are against the proposal. I think that the argument is not sound. It is not a factual argument, at least in my judgment.

CHAIRMAN: The Chair will refuse to recognize any delegate, if the delegate is going to speak on the amendment. The motion before the floor is the motion to defer action.

BRYAN: May I ask a question?

CHAIRMAN: Information?

BRYAN: Information. If that is the Chair's ruling, I don't think it's a fair one. After all, we stood by to let a speaker speak on the question after the motion was made. I think that if one piece of debate is worthy of consideration while this thing is being deferred, all debate is worthy of consideration, and I ask leave to speak on the subject.

CHAIRMAN: The Chair feels that the debate on the motion, on whether or not the amendment offered is sound, is different from the motion now pending on the floor, whether to defer action. It will not cut off any debate on the amendment. You ready for the question? The motion - - The question is on the motion to defer action on the amendment made by Delegate Heen and which was accepted by Delegate Roberts.

SAKAKIHARA: Point of order. First, I'd like to rise to a point of information. Who made the motion to defer and who seconded it?

CHAIRMAN: Delegate Doi made the motion to defer action, Delegate Yamamoto seconded the motion. The second was withdrawn, but subsequently seconded by Delegate Kauhane.

Ready for the question? All those in favor of the motion to defer action on the amendment will signify by saying "aye." Contrary minded, "no." The ayes have it. The motion to defer action is carried.

FUKUSHIMA: I move that we take a short recess at this time.

CHAIRMAN: All those in favor will signify by saying "aye." Recess.

(RECESS)

CHAIRMAN: Will the committee come to order, please. Have the delegates reached an agreement?

HEEN: At this time I withdraw my motion to amend.

ROBERTS: I'd like to move that in the sixth paragraph, the sixth line, the words "constituting at least 35," that the word "35" be changed to "25," and to leave the rest of the section as is.

CHAIRMAN: In other words, it would be tantamount to the original amendment which you had offered, Delegate Roberts?

ROBERTS: No, not identical, because it still leaves the 35 per cent in the special election.

CHAIRMAN: No, I mean as to "a."

ROBERTS: As to "a," 25 percent. That's correct.

KELLERMAN: I second that.

CHAIRMAN: The motion is to amend the sixth paragraph of Section 2, that particular clause of the sixth paragraph in Section 2, designated "a," wherein there appears the word "35," in lieu thereof the word "25" be inserted. Are you ready for the question? All those in favor of that amendment will signify by saying "aye." Contrary minded say "no."

The Chair will ask the vote by the show of hands. All those in favor of the amendment will please signify by show of your right hand. 23 ayes. All those opposed. I'm afraid the vote is very close.

PORTEUS: There are other people that have come in. I wonder if you could call for a standing vote. That would be a little easier.

SAKAKIHARA: I make a formal motion that we have a roll call.

ROBERTS: Second.

CHAIRMAN: The Chair is very receptive to that suggestion.

HEEN: Those who came in may not know what the question is. They wouldn't know how to vote. They are liable to vote for both ways.

LAI: Will you state the motion again for the benefit of the latecomers.

CHAIRMAN: I shall do that. Roll call has been suggested and the Chair is receptive to that suggestion, so, Miss Clerk, will you proceed with the roll call. The question is, shall that clause designated as "a" in paragraph six of Section 2 be amended so that the word "35" appearing therein be deleted, and in lieu thereof, the word "25" be inserted. Will you proceed with the roll call.

Ayes, 29. Noes, 30 (Apoliona, Ashford, Bryan, Crossley, Doi, Dowson, Fong, Hayes, Holroyde, Ihara, Kage, Kam, Kawakami, Kido, Larsen, Luiz, Lyman, Porteus, Sakai, Sakakihara, Serizawa, Silva, Smith, St. Sure, Tavares, Wirtz, Woolaway, Yamamoto, Yamauchi, Okino). Absent, 4 (Arashiro, Mizuha, Phillips, A. Trask).

CHAIRMAN: The amendment has failed to carry by two votes.

FUKUSHIMA: I now move that paragraph six be tentatively agreed to, as approved.

SAKAKIHARA: I second it.

ANTHONY: Point of information on the last vote. As I understand the rules, not voting is counted in favor of the motion. Is that not correct?

CHAIRMAN: They are absent.

ANTHONY: Oh, they were absent.

CHAIRMAN: Yes.

LAI: I second Fukushima's vote, I mean motion.

CHAIRMAN: All those in favor of the motion to adopt tentatively paragraph six of Section 2 will signify by saying "aye." Contrary minded say "no." Carried.

FUKUSHIMA: Seventh paragraph, which reads:

> The provisions of this section shall be self-executing, but the legislature shall appropriate money and may enact legislation to facilitate its operation.

I move at this time that we tentatively approve paragraph seven.

SMITH: I second that motion.

HEEN: I'd like to ask the chairman of that committee as to how will the provisions of the section be self-executing? What would be the mechanics with reference to that?

FUKUSHIMA: I'll ask Dr. Roberts to answer that question.

ROBERTS: The proposal for constitutional amendment, as I indicated before, was one of the most important provisions of the Constitution. You've got to provide some procedure for seeing to it that amendments are put, that constitutional conventions are held. As was pointed out by our eminent lawyers on the floor, you cannot mandate a legislature to do anything if they don't want to do it. I think, as they put it, you can't get a writ of mandamus to force them to do anything. However, a proviso in the Constitution, which in effect says that the legislature has a responsibility to do the job, carries with it certain moral force, carries with it the suasion of public opinion. It seems to me that a proviso to this effect indicates to the legislature that they are to carry out their responsibilities under the Constitution. If they do not do so, then, of course, they are subject to action by the people. There is no way of forcing them to do it. It is merely an indication of the Convention that they want them to do it.

Now, with regard to the other sections on the constitutional convention, we have provided a machinery for the holding of elections, we have provided machinery for election of delegates, and for the operation of the constitutional convention in case of amendments. The only self-executing problem that you bump into with the legislature is the problem of providing funds, and it seems to me that question, of course, still rests with the legislature. The intention is to indicate to them that they are to make appropriate provision for the carrying out of this section.

NIELSEN: It just states that they shall appropriate money which doesn't mean too much. And I would like to make the amendment to have that read after the word "shall," "make the necessary appropriations and may enact legislation to facilitate this operation." Then it is required that they make sufficient appropriation so that the thing can be carried out. I so move.

CHAIRMAN: Is there a second to that amendment?

SHIMAMURA: I second the motion.

HEEN: I'm not satisfied with the answer that was made by Delegate Roberts. Assume that the legislature does nothing at all, then how are these provisions to be executed on a self-execution basis? I'm rising for information, more definite information.

PORTEUS: I don't know that I have the information, but nonetheless, in the first paragraph of Section 2, insofar, I think just to reinforce some of the material that fellow delegate from "Q" has brought to your attention, if within the ten-year period the question hasn't been submitted to the people as to whether or not there shall be a constitutional convention, it is made the duty of an officer to certify this question for submission to the people at the first general

election. Now, if that had been at a special election, the failure of the legislature to provide money could block that. However, if it's to be certified at a general election, then the money that is provided for the general election will help carry the expenses here, and it can be submitted to the people even though the legislature doesn't want the question submitted to the people.

I think that the provision -- The question was asked, who calls the convention. Once the people, however, have said that they want a constitutional convention, I don't think that the people elected to the legislature are going to hold out against the will of the voters by saying, now that you voted to have it, we're not going to come through with the mechanics of providing the money for the payment of the delegates and so forth. I think there is a good deal of compulsion on a legislature, once the people of the territory have indicated that that's the way they want it done. I think the phrase, if nothing else, at least is a threat over the heads of the legislature that if it doesn't pay attention to this subject, why, someone is apt to take it away from them, and there's apt to be action in any event.

LEE: I think that on most questions Delegate Porteus would be right, but, of course, we have that stock example in the Organic Act on reapportionment where it's never done and the so-called moral persuasive force of the Organic Act was evidently missing.

CHAIRMAN: I believe Delegate Ashford wanted to be recognized prior to the last speaker.

ASHFORD: I'm an enthusiast about the expression, "this provision shall be self-executing." I think perhaps the provision requiring the legislature to appropriate funds is not there -- is not properly there. I think perhaps it might just be, "the legislature shall or may take such steps as are necessary to fully implement the matter." But, I very much approve the provision that certain sections or the Constitution itself, insofar as possible, shall be self-executing, because it goes to the interpretation of the section and the intent of the Convention in writing it in and the people in ratifying. That is, that regardless of what the legislature does, that stands, and if there be no money for a convention, if they choose to sit without money, they can still amend the Constitution.

SHIMAMURA: May I add to the excellent exposition of our Secretary, that paragraph four provides the machinery for an election of the delegates to our constitutional convention.

TAVARES: It is true that we cannot mandamus the legislature to appropriate funds for this election, but I think of all uncontroversial types of things that can be in this manner at least morally mandated on the legislature, the one of appropriating funds is the most perfunctory. It is the type of thing that the legislature isn't very likely to get wrangling about very much. There will be an estimate as to how much is going to be needed for this thing, and in the ordinary course of events, that estimate will be somewhat approximated. It's a little different from requiring a legislature to reapportion itself. That brings up very, very highly controversial matter. I think, therefore, that there is some reason for leaving it to the legislature to appropriate the money.

However, if the members of this Convention think that it isn't sufficient, I'm quite willing to propose an amendment that all moneys necessary, are automatically appropriated out of the general fund of the territory. If the members of the Convention would rather have that, I'll put such an amendment.

NIELSEN: I'll accept that as an amendment. The reason I brought this up is the fact that I think the amount for this Constitutional Convention was just grabbed out of a hat. I don't think the cost of holding the election was even considered by the finance committee.

CHAIRMAN: That wasn't an amendment, Delegate Nielsen, and if Delegate Tavares --

TAVARES: I haven't yet proposed it. I'd like to hear a little more argument against the provision.

CHAIRMAN: Then your original amendment stands as it is, Delegate Nielsen. Is there any further debate relating to the suggestion just made by Delegate Tavares, that the language may be provided in the Constitution whereby the appropriation may be taken care of? Is there anyone who will suggest a recess?

LEE: No, I think we ought to proceed. There is a motion on the floor made by Delegate Nielsen to make -- there was a second by Delegate Shimamura, if I recall. I don't see what difference it makes --

CHAIRMAN: All right. Are you ready for the question, to vote for the amendment?

LEE: I'm not through speaking yet.

CHAIRMAN: I'm sorry.

LEE: But I was saying that I can't see much difference between the language posed by Delegate Nielsen, "shall make appropriation," compared with the language, "shall appropriate." I may be a little dense. Perhaps Delegate Nielsen can explain the difference a little more clearly than he has.

NIELSEN: Shall I answer him? When you just say they "shall appropriate" money, that doesn't indicate how much or how little; they can appropriate only half enough or any specific sum they care to. But if it says that they "shall make the necessary appropriation," why then they can make it -- if it's a special election, it's going to cost a whole lot more than if it's a general, and they'll appropriate whatever is sufficient for the purpose.

DELEGATE: Question.

CHAIRMAN: You are now voting on the amendment offered by Delegate Nielsen. The amendment -- paragraph seven will read as follows with the amendment.

> The provisions of this section shall be self-executing, but the legislature shall make the necessary appropriations and may enact legislation to facilitate its operation.

All those in favor of the amendment will signify by saying "aye." Contrary minded say "no." The amendment is carried.

CROSSLEY: I move that the paragraph as amended be adopted.

CHAIRMAN: Tentatively.

FUKUSHIMA: I second the motion.

CHAIRMAN: All those in favor of the motion will signify by saying "aye." Contrary minded say "no." Carried.

FUKUSHIMA: That is the end of Section 2, but I believe that yesterday there was deferred the first sentence of paragraph three and all of paragraph four. The first sentence of paragraph three reading, "Any qualified voter of the district concerned shall be eligible for membership in the convention," that was not tentatively approved.

LEE: I believe, in order to bring the delegates up to a point where we can move, a question was raised by Delegate Kellerman concerning the oath, and I believe there was a difference of opinion among a couple of delegates as to

whether or not there is anything which requires the oath. And they came to the conclusion, as I recall, that there is nothing which requires the oath, so that from there we can proceed. I believe Delegate Anthony had an amendment which read as follows:

> Notwithstanding any other provision in the Constitution to the contrary, any qualified voter in the district concerned shall be eligible for membership in the convention.

CHAIRMAN: That is correct.

LEE: I move for the adoption of the amendment as just read by myself which was proposed yesterday by Delegate Anthony.

CASTRO: I second the motion.

CHAIRMAN: All those in favor of the motion - -

TAVARES: I thought I called the attention of the Convention to a very serious situation that would exist in such a case. The article which we have proposed to comply with H.R. 49 makes a member of certain subversive groups absolutely ineligible to hold any office. And here we're going to, notwithstanding that provision, going to make him eligible to hold office in this convention, if it's an office, which seems to be the attitude of the members here. I think that one thing is going to destroy your compliance with H.R. 49.

LEE: I thought that was settled yesterday among our legal fraternity here, where Delegate Ashford pointed out that clause there. I think that Delegate Ashford might answer that question.

ASHFORD: Under the provisions of H.R. 49, no oath is required, but it is absolutely - - is required to be an absolute disqualification for office that anyone be a member of a subversive organization. In other words, I agree with Delegate Tavares that that should be written in here. There's no provision for an oath but there is a provision that our Constitution shall forbid the holding of office by anyone who belongs to any organization that's dedicated to the overthrow of government by force.

LEE: Well, can't we proceed and write that in? Is there any reason why we couldn't amend the first sentence differently then, to read somewhat along this line, in the sense of this thought? "Any qualified voter, except as otherwise provided in this Constitution, of the district concerned shall be eligible to membership in the convention." I'm not saying the language is correct.

TAVARES: I think it would be - - if we leave it to the Style Committee, this would be all right, to have it read, "except as provided in Committee Proposal No. 24," and then the language that's been suggested. Then the Style Committee can substitute the proper article and section number when it's adopted.

CROSSLEY: I would suggest about a five-minute recess, so that the legal fraternity can get together back here on the proper rewording of this amendment.

CHAIRMAN: The Chair declares a recess.

(RECESS)

CHAIRMAN: Delegate Fukushima, are you ready to move an amendment?

FUKUSHIMA: I don't have an amendment, but I believe Delegate Anthony has an amendment to make.

CHAIRMAN: Delegate Anthony, are you ready to - -

ANTHONY: In the paragraph under discussion, I propose the following amendment. We're discussing the line, "Any qualified voter in the district concerned shall be eligible to membership in the convention." I move the following amendment:

> Notwithstanding any provision in this Constitution to the contrary, other than Section _____, any qualified voter of the district concerned shall be eligible to membership in the convention.

CHAIRMAN: Is there a second to that amendment?

NIELSEN: I'll second the amendment.

HEEN: I don't quite understand the clause, "other than Section blank." In other words, there may be some provision to the contrary, and that section blank is certainly contrary. Therefore, you leave it in when you say, "other than Section blank," which I understand is the one relating to communist affiliation.

ANTHONY: That is correct. The purpose of the proposed amendment is to exclude all other prohibitions in the Constitution other than the prohibition of any person holding an office who belongs to a subversive group.

HEEN: In other words then, as I understand it, that would permit persons holding public office or positions to run for election to the convention.

ANTHONY: That is correct; that would permit judges, legislators and other state officers, which might otherwise be prohibited from holding two offices, to hold an office as a delegate to any future constitutional convention.

FUKUSHIMA: Will the movant of the amendment accept the further amendment by stating "Section blank of Article blank"?

ANTHONY: That's accepted.

CHAIRMAN: Before the question is put, Delegate Anthony, the Chair assumes that the original amendment which you had offered is withdrawn? You had an original amendment which simply read, "Notwithstanding any other provision of this Constitution to the contrary." Would you withdraw that in favor of the amendment which you have now proposed?

ANTHONY: I do.

ASHFORD: Before we vote, may I explain my vote? I shall vote against this amendment because in my opinion it is a gross impropriety for the bench to sit in on a constitution of which they will be the interpreters.

CHAIRMAN: All those in favor of the amendment.

ANTHONY: I think - - I don't know whether that has been fully discussed or not, but - - Am I out of order?

CHAIRMAN: You have the floor, Delegate Anthony.

ANTHONY: We did debate that at great length in the judiciary article. And I certainly feel there's a great deal in what the delegate from Molokai said. It has been said in a jocular tone here that we were cutting Judge Wirtz out of future constitutional conventions. But it wasn't the person that we were debating. We were debating with the principle, whether or not a judge should sit in a constitutional convention and one of the considerations was the one which was just raised by the delegate from Molokai, and I think it is a valid consideration. We voted on it once in the judiciary article, and I'm inclined to think that we should not make the exceptions for judicial officers, whatever we do for other officers.

CHAIRMAN: Are you ready for the question?

YAMAMOTO: Will you please state the question.

CHAIRMAN: The amendment offered by Delegate Anthony to the third paragraph of Section 2 appearing on page 2 of the Committee Report No. 48 is as follows:

Notwithstanding any provision in this Constitution to the contrary, other than Section _____ of Article _____, any qualified voter of the district concerned shall be eligible to membership in the convention.

All those - -

HEEN: Point of information. I am in agreement with what was stated by the delegate from Molokai. Notwithstanding the fact that Delegate Wirtz has made some valuable contribution here in the deliberations of the Convention, a judicial officer, in my opinion, should not be a delegate to a constitutional convention because that judicial officer might be called upon to interpret the Constitution, as to whether or not some particular matter is constitutional or otherwise. I think that's a principle that should apply here, that no judicial officer should be placed in a position where he may have to interpret what he has done in a constitutional convention.

ANTHONY: In order that the delegates will not misunderstand my position, I was merely doing a job of draftsmanship here, because I thought it was the sense, judging from the debate yesterday, that they wanted judges to sit in future constitutional conventions. I still think, as a matter of principle, it's not correct.

CHAIRMAN: Delegate Roberts, you requested the floor?

ROBERTS: I asked a point of information before.

CHAIRMAN: State your information.

ROBERTS: The two blanks that are left in the proviso, are they to be confined only to the blanks in the judiciary article?

CHAIRMAN: Will the mover answer that question?

ANTHONY: No, that will only refer to the section wherein there is incorporated, pursuant to a mandate of Congress, that no person shall hold office who belongs to any subversive group or the Communist Party or whatever it is.

ROBERTS: What I had in mind is when we get to the section on the legislative article, I feel that the legislators have as much to contribute as other individuals in the community on the constitutional convention. I don't want to be - - have that precluded when the question comes up.

TAVARES: It's my understanding that that "Section blank of Article blank" referred to in the proposed amendment refers to Section 1 of Committee Proposal No. 24, and that the Style Committee will insert the proper numbering when that article and section are adopted.

RICHARDS: I can't see why all this hullabaloo about judges being in the convention. The fact is that he might be a judge today and a practicing attorney the next day, and any attorney that attends a convention is apt to be a judge the following day and still rule on the matter that was taken up in the convention. I don't see any difference at all.

CHAIRMAN: Are you all ready for the - -

H. RICE: I second Mr. Richards' thought on this matter. And don't forget, in spite of that it's the people that elect whoever comes to this convention, and they will decide whether he's fit to go or not, and I've seen judges disqualify themselves because they had. There are a lot of judges - - There are going to be lot of judges in this territory, and he could disqualify himself if necessary.

CHAIRMAN: All those in favor of the amendment will signify by saying "aye." Contrary minded say "no." Carried.

FUKUSHIMA: I now move that paragraph three as amended be tentatively approved.

YAMAMOTO: I second the motion.

CHAIRMAN: All those in favor of that motion will signify by saying "aye." Contrary minded say "no." Carried.

TAVARES: There was one other paragraph which was deferred. That was the fourth paragraph of Section 2, and I have an amendment to propose that I think will take care of the argument over that section. I'm having it mimeographed, but I will read it. I withdraw my amendment until it comes back, Mr. Chairman.

PORTEUS: Can we proceed with the other articles, and then at a later time, as soon as this is mimeographed, we can move back?

CHAIRMAN: Then we proceed to Section 3.

FUKUSHIMA: Section 3 has to do with the amendments proposed by the legislature. It reads,

> Amendments proposed by legislature. The legislature may propose amendments to the Constitution in the following manner: (a) By adopting the same, in the manner required for legislation, by a two-thirds vote of each house on final reading, after either or both houses shall have given the governor at least ten days' written notice of the final form of the proposed amendment; or, (b) by adopting the same, in the manner required for legislation, with or without such notice to the governor, by a majority vote of each house on final reading, at each of two successive sessions of the legislature.

I move at this time that these two paragraphs be tentatively approved.

HAYES: I second the motion.

AKAU: Point of information. "At each of two successive sessions of the legislature," I wonder if that can be clarified. Why do you need two?

FUKUSHIMA: I think that can be taken care of by the Style Committee.

TAVARES: I think the question was as to why we have to have two successive legislatures approve. The difference is this. The alternative method one, if at a single session, two-thirds of the members of each house vote for an amendment, it can be submitted right away. But if they don't get a two-thirds vote, then they must pass it by a majority vote in two successive sessions and then submit it to the people for ratification. The point being if it finds enough approval to get a two-thirds vote at one session, why it can be submitted right away. But if it can't find enough approval to have a two-thirds vote at one session, then it must have two successive sessions approve it by a majority vote.

AKAU: Pursuant to that same idea, supposing, for example, the same people were in one session and in another session, are you going to be tied both ways?

TAVARES: There is such a thing, you know, as people changing their minds or seeing the light in the two years between sessions, or between - - in the period between two sessions. It's quite possible they'll pass, inadvisably and hastily by a majority vote in one session, a provision that they would find after due consideration is not so proper. Or the people will educate them, or someone will, that it's not so proper.

ASHFORD: I had thought that Delegate Akau's question ran to another point, which I think should have some reference in the report of this committee, "two successive." Now one of the judges of the circuit court in Honolulu construed two successive as meaning three, on the theory that the first year was not a successive year. That was in the divorce court, if the chairman will remember. I think that some interpretation of that should be included in the report of committee.

TAVARES: I think that the clause that the delegate just spoken refers to was a clause that said, "published for three successive weeks." But we have said, "at each of two successive sessions." That covers it. "At each of two successive sessions." That only means two sessions.

HEEN: Addressing myself on paragraph a, does that involve the veto of the governor?

FUKUSHIMA: We have the following section, Section 4, where we say the veto is inapplicable. In other words, subparagraph a which the delegate from the fourth district is referring to will be adequately covered by Section 4. That takes care of that.

HEEN: That's correct. Now as to paragraph b, was it intended that reference to two successive sessions, that one might be a general, a regular session, and the successive, say, special session?

TAVARES: Yes. In my argument just lately, I mentioned two years. That's wrong. It's any two successive sessions. It could be one regular session and one special session, or it could be a special session followed by a regular session, as long as there are two successive sessions, or it could be two special sessions, yes.

CHAIRMAN: Are you all ready for the question? Tentatively approve?

SHIMAMURA: May I ask a question? I take it that under paragraph a the words "two-thirds vote of each house" means two-thirds vote of the entire membership of each house?

TAVARES: That is correct. On final reading, that means third reading.

CHAIRMAN: Delegate Anthony, do you wish to be recognized by the Chair? If not, all those in favor of the motion to adopt tentatively the first paragraph of Section 3 will signify by saying "aye." Contrary minded say "no." Carried.

FUKUSHIMA: The second paragraph reads,

> Upon such adoption, the proposed amendments shall be entered on the journals, with the ayes and noes, and published once in each of four successive weeks, in at least one newspaper with general circulation in each senatorial district wherein such a newspaper is published, within the two months' period immediately preceding the next general election for members of the legislature.

I move at this time that this paragraph be tentatively approved.

KAWAHARA: Second that motion.

AKAU: Does "published" mean the same as circulated? We haven't the word "circulated" in there, and I was wondering, a newspaper could be published, could be in one house, but circulation, I think has a different connotation.

HEEN: The Star-Bulletin, the foremost paper in the territory, is published in Honolulu, but it has a circulation throughout the territory. Take the Maui News, it's published in Wailuku, but I don't think it circulates in Kauai. Therefore, it wouldn't be a good paper.

AKAU: Would it be in order then, since the delegate from the fourth district has explained the question of circulation, to amend "published and circulated" or "circulated"? Would that clarify that?

FUKUSHIMA: I believe there is a phrase, "published once in each of four successive weeks, in at least one newspaper of general circulation." I believe that would cover what the delegate from the fifth district has in mind.

LOPER: May I ask whether it was intended in the last line of this paragraph to exclude special elections? It reads "within the two months' period immediately preceding the next general election for the members of the legislature."

CHAIRMAN: Is that an amendment you are offering?

TAVARES: As I recall - -

CHAIRMAN: Just a moment, Delegate Tavares.

LOPER: I was merely asking for information, whether it was intentional to leave out any provision for special election.

TAVARES: That was done with malice aforethought. The idea was that these legislators who passed this amendment are going to be required, at least those who are going to run again, to go before the electorate and explain that proposed amendment to the electorate at the general election where they are running, and not have it at a special election. The thought was that it would be more of an incentive to have them explain to the voters what the provisions were and what the pros and cons were of this proposed amendment. And perhaps get a better vote and a more intelligent vote on it than if it was held at a special election where the people might not be willing to carry the ball.

ANTHONY: I have an amendment to this paragraph, the paragraph under debate. The language which was just referred to by the Delegate Akau, "published once in each of four successive weeks, in at least one newspaper of general circulation, in each senatorial district," I think that's an unhappy expression, and I would substitute for that "in at least one newspaper of general circulation in the state," and delete "in each senatorial district wherein such a newspaper is published." In other words, if you publish it it in a newspaper of general circulation which is published and circulated throughout the state, that is the requirement. You don't care whether it's in the senatorial district or any other kind of district.

CHAIRMAN: Is there a second to that?

HEEN: Second that motion.

TAVARES: It seems to me that in the case of a constitutional amendment, it should have a little higher degree of publicity than a mere law, which only needs to be published in one newspaper of general circulation throughout the territory. Therefore, if you do publish it in more than one paper, I don't see any harm in it. There should be as wide publicity as possible and the little extra expense required for that, it seems to me, shouldn't deter us from acquiring that extra publicity.

There is another matter and that is, it is a well-known fact that the rural newspapers in this country have a tremendous circulation that is not always tapped by the state-wide or nation-wide publications. They have their own editorials and they have their own subscribers who may not actually subscribe for the state-wide paper, and, therefore, I think it's a good thing if they have a newspaper of general circulation in each senatorial district, that they publish it in that newspaper in addition to the state-wide newspaper.

HEEN: If Oahu is going to be divided into two senatorial districts, and all the newspapers are published in the fourth district - - Still, it might have a circulation in the fifth. I think it's all right.

CHAIRMAN: Are you ready for the question? You are voting on the amendment offered by Delegate Anthony. The words "the state" be inserted and the words "each senatorial district" be deleted.

ANTHONY: Although I think it's a good amendment, I'll withdraw it.

CHAIRMAN: Then I think a motion is in order to tentatively adopt paragraph two of Section 3.

FUKUSHIMA: I've already made the motion.

CHAIRMAN: I'm sorry. All those in favor will signify by saying "aye." Contrary minded say "no." Carried.

FUKUSHIMA: The third paragraph reads,

> At such general election, the proposed amendments shall be submitted to the electors for approval or rejection upon the ballot separate from that upon which the names of candidates appear.

I move that this paragraph be tentatively approved.

KAWAHARA: Second that motion.

CHAIRMAN: All those in favor of the motion will signify by saying "aye." Contrary minded say "no." Carried.

FUKUSHIMA: Fourth paragraph reads,

> The conditions of and requirements for ratification of such proposed amendments shall be the same as provided for in Section 2 of this article relating to ratification at a general election.

I move that this paragraph be tentatively approved.

KAWAHARA: Second it.

ROBERTS: I'd like to propose an amendment to this paragraph. The amendment is taken from the provisions of the New Jersey State Constitution which provides an identical procedure on amendment as set forth in this section, but the provision dealing with the approval reads as follows: "If the proposed amendment or amendments or any of them"– I'm having this mimeographed, and copies will be available for the delegates–

> If the proposed amendment or amendments or any of them shall be approved by a majority of the legally qualified voters of the state voting thereon, the same shall become part of the Constitution, on the thirtieth day after the election, unless otherwise provided in the amendment or amendments.

I move that paragraph four of Section 3 be amended by deleting the paragraph and substituting the language I just read.

MAU: I second the motion.

BRYAN: I think that we've already voted on the substance of that amendment.

CHAIRMAN: The Chair will ask the mover of that amendment to read over what you have just read, apparently from the New Jersey Constitution.

ROBERTS:

> If the proposed amendment or amendments, or any of them, shall be approved by a majority of the legally qualified voters of the state voting thereon, the same shall become part of the Constitution on the thirtieth day after the election, unless otherwise provided in the amendment or amendments.

CHAIRMAN: Delegate Roberts, Delegate Bryan here has raised a point of order, his grounds being that in substance the same is covered by the provision as set forth in this proposal. Will you - -

ROBERTS: May I speak to that, please. It seems to me that we have provided for two methods of amending this Constitution. All that we have voted on thus far is on the question of the provision for the calling of a constitutional convention. This section provides for amendments proposed by the legislature. It's a separate section, and therefore has separate provisions. I can see no objection to having separate provisions for ratification in those two sections. The only thing that we voted on in Section 3 - - excuse me, in Section 2, was not on the question of a majority vote, but on a question on a 25 per cent vote. It seems to me, therefore, that we shall be voting on an entirely different question and with different substance.

CHAIRMAN: The Chair will resolve the doubt in favor of the movant and declares that the amendment is in order.

TAVARES: I agree that it is not out of order. I do believe, though, that it is out of line with what this Convention has already decided it wants for the constitutional convention type of amendment, and, therefore, I see no reason for departing from them. There is a further objection, I think should be pointed out, and that is the amendment itself proposed by the legislature may be one that the legislature itself in the proposal doesn't want to take effect in 30 days. That should be left to the legislature or to the people drafting the amendment as to when it becomes effective, and an absolute time to make it effective is inadvisable. I think the amendment should be defeated.

ANTHONY: On the assumed legal impasse that there would be a different date as provided in the contemplated act or amendment passed by the legislature and the proposed amendment, I don't see that presents any problem. If the legislature, for instance, would approve an amendment to take effect two years hence, then by operation of this, that amendment would take effect 30 days after the expiration of the two years as provided in the amendment. It seems to me that this is - - it will give an opportunity for the people by a majority at any election, if they vote in favor of a particular amendment, that that amendment would be put into the Constitution. It seems highly desirable to me.

PORTEUS: This is the argument that we had before. I don't know that we're going to change any votes. My opinion is the same as it was before. I think the method of adoption should be consistent. Because there are few of the outside islanders not here who voted against the other, I intend to ask for roll call on this matter and if at the end I think we've lost, I'll change my vote to have an opportunity to reconsider when the rest of the members are present.

NIELSEN: I believe that this is going to defeat what we voted on yesterday and that was that the outside islands should control the Senate. With this in the Constitution, why the proposed amendment might be on the reapportionment of the Senate and with this amendment in this section, why, it will kill what we did yesterday.

BRYAN: My objection to the proposed amendment is not on the basis of the majority, it's on the basis of the majority voting on the amendment; and we get back to the same old bugaboo of ten people voting on it, and if six people say yes, the amendment is ratified by the people. That is my objection to the proposed amendment.

ROBERTS: May I answer Mr. Nielsen's question? He raised the question as to whether or not this would nullify the action taken yesterday. It does not. The action yesterday indicates very specifically that there can be no constitutional change on that question, and, therefore, the question cannot be put in the amendment. If it is put, it has to carry all of the outside islands. So it seems to me raising that question does not go to this issue. That question was decided and, so far as I know, it has not been reconsidered. The only question here is on an amendment, which is proper, which requires a majority of the qualified voters voting thereon to approve it.

[The last part of Delegate Roberts' speech and the next twenty minutes of debate were not recorded. The following is taken from the minutes.]

Delegate Roberts stated the other proviso in the constitution had other limitations and that required a majority in each of the counties; that it seemed to him that question had no bearing on this particular proposal and the proposal would not take away the provision acted on yesterday.

Delegate Ihara stated that having voted in the majority on paragraph six of Section 2, he would move to reconsider action on that paragraph.

The Chair ruled that Delegate Ihara was out of order, that the committee was debating on the last paragraph of Section 3, and that the delegate was introducing entirely new matter.

Delegate Lai stated that he could not see any difference between amendments made by the convention or by the legislature, and he did not think there should be ratification of amendments by different methods.

Delegate Nielsen stated that he would like to hear from the legal staff here.

Delegate Heen stated that in connection with the remark about the famous proviso about not changing the makeup of the Senate, his statement in that regard was that one constitutional convention cannot bind a subsequent constitutional convention, and he felt that that provision had no validity at all; that it would be the same thing as one legislature passing an act and saying in that act, "This Act shall continue for ten years" and then another legislature comes along after that and repeals it; they cannot bind a succeeding legislature.

Delegate Wirtz stated that what the delegate from the second district wanted clarified was that this proposed amendment now would in effect, as to this type of amendment, differ from the procedures adopted yesterday by eliminating that proviso in Section 2.

Following considerable debate, Delegate Roberts stated that in order to clarify any misunderstanding there might be with the delegates from the outside islands, even though he had voted against the proviso which was in the first section, he would move a further amendment to include that proviso in the section so there would be no doubt in the minds of the outside island delegates that he wanted to take away anything which they obtained on the floor yesterday.

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The Chair called upon Delegate Roberts, asking if he had made an amendment to his original motion.

Delegate Roberts stated that the paragraph as it now reads, that it was not his intention to delete the proviso, and therefore he moved that the same proviso which was now provided in the paragraph also be included in his amendment so that the section before the committee would contain the same thing after the semicolon on page 2, "provided that no constitutional provision altering" etc., which was acted on earlier in the Convention, so the language would be the amendment plus the proviso, and he moved for a roll call vote.

Delegate James Trask seconded the motion.

Delegate Kellerman asked to speak against the first part of the amendment, not the proviso; that this amendment up to the point of the proviso was now reducing the number required votes to amend the Constitution which the committee had already approved, where the amendments were being proposed by a convention especially called for drafting amendments to the Constitution, and that it seemed to her that the reasoning was upside down.

Delegate Anthony stated that he thought the committee should take a firm vote on this, that this was the same question they had voted on a few minutes ago; though he was in sympathy with it, he thought it had been settled by the prior vote.

Delegate Ihara stated that regarding the question by the lady delegate from the fourth district, that was the reason why he had put that question about reconsideration.

Delegate Porteus asked the mover to read the amendment in its entirety.

Delegate Roberts stated that the amendment provides that "If the proposed amendment or amendments or any of them shall be approved by a majority of the legally qualified voters of the state voting thereon, the same shall become part of the Constitution on the thirtieth day after the election, unless otherwise provided in the amendment or amendments," and then the proviso that the committee had already acted upon, which is part of the previous paragraph.

A roll call being demanded, the motion was put and lost on the following vote:

Ayes, 13 (Akau, Arashiro, Corbett, Heen, Ihara, Kawahara, Kawakami, Loper, Mau, Nielsen, Ohrt, Roberts, Shimamura). Noes, 40. Excused, 10 (Fong, Kauhane, Lee, Mizuha, Noda, Phillips, Sakakihara, Silva, A. Trask, Yamauchi).

Delegate King advised the committee that he had granted permission to certain of the delegates to attend a meeting of the Holdover Committee of the legislature, and so if they did not answer, it was to be understood that they were properly excused.

The Chair thereupon put the motion to tentatively adopt the paragraph, which was carried.

Delegate Fukushima moved for the adoption of Section 3 as amended. Seconded by Delegate Lai and carried.

Delegate Fukushima then proceeded to read Section 4, and then moved that it be adopted. Seconded by Delegate Mau and carried.

Delegate Fukushima at this time moved that the committee go back now to paragraph four of Section 2; that the amendment proposed by Delegate Tavares had been distributed and was on the delegates' desks.

Delegate Tavares moved the adoption of the amendment, which he read, as follows:

> Unless the legislature shall otherwise provide, the delegates to such convention shall consist of the same number, and be elected from the same areas, and the convention shall be called and conducted in the same manner, as nearly as practicable, as were required for the Hawaii State Constitutional Convention of 1950.

Seconded by Delegate Nielsen, and carried.

Delegate Fukushima moved that Section 2, as amended, be adopted. Seconded by Delegate Lai, and carried.

Delegate Fukushima then moved that the committee go back to Section 1 which had been tentatively approved, so the opponents to this section and the proponents of the initiative could file their amendment if they saw fit.

The Chair stated that the committee would go to the amendment to Proposal No. 9, together with Committee Report No. 47.

Delegate Fukushima at this time stated that the committee had for consideration now Standing Committee Report 47 and the Minority Report, which was Standing Committee Report No. 49, which dealt with initiative, referendum and recall, and he stated that he would like to turn this matter over to his vice chairman, Delegate Lai.

Delegate Lai stated that he felt that the committee should take the two reports together, the minority report and the majority report, because they were on the same subject.

The Chair asked if it was the desire of the committee to go through the proposed amendment, and Delegate Lai suggested that the minority make their motion, and the matter could then be discussed.

Delegate Fukushima stated he would like to clarify the situation, and he believed the Secretary would have the same information, that Standing Committee Report No. 47 had to do with statutory initiative and referendum; that the standing committee had before it two proposals favoring the inclusion of the initiative and referendum, which were Proposals 113 and 148; that the majority voted on the question and decided to reject Proposals 113 and 148, and recommend the filing of those two proposals; that Standing Committee Report 49 had attached thereto a proposal in the form of an amendment to Committee Proposal No. 9; that this had to be done because of this situation. The minority could not come out with a minority report inasmuch as it was not a committee, being only a minority; they could not amend another individual proposal referred to the committee because that would violate one of the rules of the Convention which tried to discourage the adoption of any individual proposals; that therefore, in order to have their minority proposal considered, it was suggested by the Secretary, in accordance with the rules, that that amendment be appended to Committee Proposal No. 9, and so he believed the vice chairman was right, that if the proponents of initiative would like to amend Committee Proposal No. 9, they should carry the ball and take up the laboring oar.

Delegate Heen stated that it seemed to him that action should be taken on Committee Report No. 47, wherein it was recommended that two proposals be filed, they would serve no further purpose at all in this Convention, and he thereupon moved that Standing Committee Report No. 47 be adopted. Seconded by Delegate Smith.

The Chair stated that as he understood it, the suggestion was that the committee take up Committee Proposal 9 with the specific understanding that the amendments offered by the minority be considered afterwards.

Delegate Heen stated that the minority report was designed to amend Committee Proposal No. 9, and therefore had nothing to do with the proposals recommended for filing.

Delegate Fukushima stated that Proposal 148 was about the same as the proposal submitted by the minority.

Delegate Nielsen stated that that was correct, and asked if it would not be proper to go ahead and move without accepting this Report No. 47 and then the committee would be able to go on and let the minority amend the proposal.

Delegate Lai stated that if they adopted Report No. 47, that would foreclose any minority amendment, and the Chair agreed that that was how he felt about the problem before the committee.

Delegate Porteus asked if it would not be possible to proceed as the Chair had suggested, that the committee consider the question by the minority of the standing committee; that the burden was on them to stand up and make the motion and ask for passage, and it was now in order for them to be recognized and make their amendment.

Delegate Nielsen thereupon moved that the minority report and amendment submitted with the minority report be agreed to, with reference to Committee Proposal No. 9.

The Chair inquired whether he meant the whole amendment, and Delegate Nielsen stated that it could be considered section by section or the whole thing, and he again moved that the amendment be agreed to. Seconded by Delegate Kawahara.

Delegate Lee asked if that meant the amendment was in toto to adopt the entire proposal, and also asked if it would not be better to discuss the proposal section by section.

Delegate Anthony stated that he thought all the minority wanted was a vote on the simple issue whether or not there should be the initiative incorporated in the Constitution and he asked why the committee couldn't take a simple vote on that issue, rather than going through this step by step.

Delegate Lai agreed with Delegate Anthony, and felt that the matter should be discussed as a whole, instead of section by section.

The Chair thereupon asked if the minority would agree to that suggestion by Delegate Anthony.

Delegate Kawahara, in answer to the question, stated that the problem arises that some people were probably inclined to believe that some clarification of this proposal might be made, and if the committee took the proposal as a whole, probably it would not give a chance to those people to express their views, and he was inclined to believe that it would be better to take the proposal up section by section.

Delegate Porteus stated that as he understood, the suggestion was made that the committee attempt to determine now whether this Convention was in favor of a constitutional provision covering the initiative and referendum; that if it was indicated that they favored something like that, then the committee would go forward with this other matter section by section; that if the people don't want it, no matter how it was spelled out, the committee would be wasting a lot of time going over it section by section; that the idea was to get a concensus vote and then after that get down to the individual sections, if necessary.

Delegate Crossley stated that he believed the original motion that was originally made and seconded said exactly that, and would accomplish that purpose, the original motion was the adoption of the entire proposal of the minority.

Following some discussion, Delegate Nielsen stated that there was an understanding yesterday as to how this was to proceed, but if the committee were to vote on the major question as to whether there should be initiative at all in the Constitution, he thought it would foreclose the minority from presenting what they thought they had to sell to the Convention, and he stated he wanted to hear what they had, and he thought that they should consider it section by section.

[Recording resumed.]

LAI: To be technical, don't you think we should adopt Report No. 47 first, because that is the majority report from the committee, and that's what we are here to decide, to decide on committee reports. If the minority want to amend this thing, I think they should come afterward. I don't mind, I concede to the idea of voting on the subject first. If you all favor to have that in the Constitution, it's all right with me; then we go section by section, see. But I think the committee report should come in preference to any other report.

MAU: We had an understanding yesterday how this was to proceed. We're on the right tract in accordance with the agreement yesterday, but if we were to vote on the major question as to whether or not we should have initiative at all in the Constitution, I think it would foreclose the minority from presenting what they think they have, something to sell to this Convention, and I want to hear what they've got to sell. I think that even though that motion is

to adopt the whole minority report, they should consider it section by section; otherwise, we cannot intelligently vote on this important question.

KING: The Standing Committee Report No. 47, which is the majority report, recommends that there be no initiative and referendum. If a motion were offered for the adoption of that report and seconded, then the minority could offer an amendment that Standing Committee Report No. 49 be considered in place of it. Wouldn't that make a clean-cut vote on the issue?

CHAIRMAN: Insofar as it relates to the subject matter of initiative and referendum upon statutory matters.

KING: Right.

TAVARES: Unfortunately, I think we ought to clarify what Committee Report No. 47 does. Committee Report No. 47 recommends against the initiative method of adopting statutes. Then Committee Report No. 48 refers back to Committee Report No. 47 insofar as 48 relates to constitutional amendments and says for the same reason stated in Report No. 47, we reject initiative - - the initiative method for constitutional amendments. I think the members should understand that so that if we adopt 47, we are only voting on the right to initiate legislation by the initiative method. That's all right with me, I'll vote either way.

CHAIRMAN: The Chair is trying to ascertain what procedure the assembly would desire to adopt.

NIELSEN: If the delegates here have read the minority report and are ready to vote, that is the big question I have in my mind. I feel that with so many states allowing the people to initiate and handle legislative matters by initiative and referendum that this should be considered and that it really has a place in the Constitution if the people of the State of Hawaii are going to really be their government. Now in committee, five people decided that all the people in the territory should not have any right to initiative or referendum as to statutory measures. I think it should have further consideration than for just five people to decide that for the entire State of Hawaii. That's the reason I filed the minority report.

CHAIRMAN: The Chair is still in doubt as to what procedure this committee may follow.

TAVARES: To clarify matters, I second Delegate King's motion that we adopt Committee Report No. 47, which will dispose of the question of statutory initiative.

HOLROYDE: Point of order. I think there is a motion before the house by Delegate Nielsen to adopt this as an amendment, his minority report. He made that motion and it was seconded.

CHAIRMAN: The order is well taken. There is a motion made by Delegate Nielsen and duly seconded.

TAVARES: Point of information. Does that mean that it's a proposed amendment to Committee Proposal No. 9? But it doesn't say where it will go and - -

KING: At the end of the Committee Report No. 49, it recommends the addition of this initiative and referendum proposal to Proposal No. 9. It is an amendment to Proposal No. 9. It seems to me the question is now before the Convention and can be discussed on the basis of Mr. Nielsen's motion that has been already seconded. I didn't make a motion, I only made a suggestion.

CHAIRMAN: That is the reason why the Chair felt that the suggestion made by Delegate Anthony was an excellent one, namely, we have taken up the constitutional revision and amendments, insofar as the majority - - committee proposal by the majority is concerned. Then the recommendation made by the minority is that the initiative method be applied with reference to constitutional amendments.

HEEN: The situation as it stands now is this. The motion, as I understand it, is to adopt the minority report and if that is adopted, it would mean the adoption of the proposal that was attached to that minority report, and that would be an amendment of Committee Proposal No. 9. So we can at this time debate that whole question as to whether or not Committee Proposal No. 9 shall be amended by this proposal submitted by the minority.

WIRTZ: I'd like to point out one thing in this connection, and that is that the amendment as submitted with the minority report applies to both constitutional and statutory matters. So that if it is adopted, it will, in effect, require us to reconsider everything we have done insofar as constitutional methods of amendment, because it changes the entire procedure and includes an additional method, namely, the initiative.

NIELSEN: May I speak on the amendment? The reasons are outlined in Standing Committee Report No. 49. I'm not going to take the time to read them, but the main thing that comes before the Convention at this time is the fact that we've made arrangements to amend our Constitution, but we've ignored the right of the people in any way whatsoever to initiate statutory measures. I think that possibly by amending the sections that we voted on this morning so far as the Constitution, it could be made to cover statutory matters as well as the Constitution. But whatever we do, as decided by the Convention, is entirely satisfactory.

In the amendment as proposed, there are some that do not like the direct method. They prefer the indirect method and that could be corrected if we went through the whole amendment section by section. However, by getting the sense of the Convention on a vote as to whether they want to give the people the right to initiate - - initiative or referendum measures as to statutory legislation, that will decide the whole thing and I have no objection if a vote is taken on that, on the amendment in that respect.

CHAIRMAN: Then, Delegate Nielsen, is the Chair correct in understanding from you that you would be willing to withdraw the original motion made with reference to the amendment and ascertain at this time the consensus of the delegates with reference to the question of direct initiative of constitutional amendment?

NIELSEN: That would be all right. I'd like a roll call vote on it.

CHAIRMAN: Then would someone make a proper motion to that effect, please?

MAU: Point of information. Do I understand that the minority now is willing to concede that they are - - that portion of their amended - - proposed amended proposal relating to constitutional amendment by initiative be dropped? Is that the idea? And that they are now merely advocating initiative insofar as statutory law is concerned?

CHAIRMAN: No, we are shortly to ascertain how the Committee of the Whole feels on the question of constitutional amendments by direct initiative.

MAU: No, I would like to have one of the members of the minority answer that. As I got it, that is their position. They are not interested now in attempting to amend the Constitution by initiative, merely pointing it to statutory law. Is that correct?

NIELSEN: That is correct. We have already devoted yesterday and most of the morning on the constitutional amendment. As to statutory amendments, we have made no provision whatever. Now, I would like to see a vote taken

on whether statutory amendments shall be subject to initiative or referendum.

HOLROYDE: Wouldn't we be able to get at this if the minority moved for the amendment to Committee Proposal No. 9 as submitted by them in substance only, with the understanding that if they win approval by that vote, that we will go into the detail of their section thereafter?

DELEGATE: There is such a motion before the house, I believe.

HOLROYDE: I understand Delegate Nielsen withdrew his motion.

NIELSEN: No, I don't think I withdrew the motion, but I said that if they wanted to take a vote regarding initiative and referendum of statutory measures, why that would practically decide the same thing. As I understand it, at present we have a motion to adopt 47, which is to file initiative or statutory referendum. Now I have amended that to include -- my amendment would reverse that. It would include initiative and referendum by the people. Now if my amendment fails, why then, the people don't want initiative or referendum covering statutory measures.

ROBERTS: I think we are in the Committee of the Whole, the purpose of which is to get the sense of the Convention with regard to specific proposals and on specific questions. I for one, cannot support the article proposed by the minority. It covers initiative, it covers referendum, it covers statutory initiative, it covers constitutional initiative. It seems to me that we've got to have something to discuss specifically, not an over-all proposition. It would seem to me, therefore, that under normal procedures, the minority would ask that its report be substituted for the majority and you would get a straight out-and-out vote on the question one way or the other. In the Committee of the Whole, however, I think it's perfectly proper to get the sense of the Convention and to put the minority report to us, not on adoption, but for consideration, and then if any amendments are proposed on specific items, we then have the opportunity to vote on them. So something has to be gotten before our Committee of the Whole to discuss.

I would therefore suggest that instead of voting on the entire proposal, that the committee consider the proposal and see if any amendments are offered to that which might be acceptable to some, so that we get the sense of the Convention. Otherwise, if we vote this thing down, you're pau, and you have had no opportunity for others to express their opinion with regard to some modifications.

PORTEUS: I think what the delegate has said is perfectly true. There may be those in the Convention who have more or less made up their minds after the study of this subject, what they'd like to do. I've consulted with the representative from the -- delegate from the second representative district, who made a previous motion. He informed me that he would be satisfied to bring this matter to a head on a motion that this Committee of the Whole now proceed to consider statutory initiative and referendum. If that carries, we will then go into the subject. If it loses, it means that the Committee of the Whole does not desire any further investigation of the subject. He has informed me that he's willing to make a motion to that effect to bring this to a head.

CHAIRMAN: Is that the motion?

NIELSEN: That is the motion and I so move.

SMITH: I'll second it.

H. RICE: I'm surprised that three of the so-called neighbor islands should sign a minority report like this. With 70 per cent of the vote here in this City and County, what chance will the outside islands have in any matter of legislation? We are sunk.

SMITH: I believe that in the statement of Delegate Nielsen, he didn't think that five persons in a committee should be able to tell the whole territory whether we should have initiative or referendum or recall or not. He was asking, I believe, all he was asking was that a verification of the five be made by the Committee of the Whole.

CHAIRMAN: You ready for the question? All those desiring roll call will signify by the show of hands. Keep your hands up, please.

HEEN: I rise to a point of information. What is the question?

CHAIRMAN: The question is the suggestion made by Delegate Porteus, which was accepted by Delegate Nielsen to be his motion, that the Committee of the Whole proceed to determine whether or not the committee favors statutory initiative and referendum. And if that is adopted, then we shall go into this amendment, section by section, relating to that subject matter.

ROBERTS: Point of order. I don't think that the question was that. As I heard the question, it was whether or not the Committee of the Whole wants to consider the question of initiative -- statutory initiative and referendum.

CHAIRMAN: That is correct. The Chair stands corrected.

CROSSLEY: On a point of order, I believe that the previous motion made by the delegate from Hawaii should be withdrawn.

CHAIRMAN: The Chair understood that he was willing to withdraw that in favor of that subsequent motion.

LEE: Point of information. When the first motion was made to adopt Committee Report 47, it made sense. Now the motion has been changed, as I get it, whether or not the Committee of the Whole wants to take up the subject of statutory initiative. Actually, you have a better vote on the first motion than on your second. The second you say you don't even want to consider it, whereas the other one you say you are for or you are against it.

LAI: I think Delegate Lee is right. I think the vote should be on Report No. 47. If the opinion of the Convention doesn't want initiative and referendum in the Constitution, then let's vote for Report No. 47. And if you do want it, then vote against that. I think that's the proper way to do. The motion is already made and seconded; so if we take a vote on Report No. 47, that would clarify everything.

CHAIRMAN: There is a new motion before the Committee of the Whole now.

FUKUSHIMA: I think we're confusing a lot of things which are very simple. I move at this time, that it is the sense of this committee that we favor the inclusion in our Constitution of statutory initiative and referendum.

CHAIRMAN: Is that an amendment? There is a motion before --

FUKUSHIMA: Yes.

NIELSEN: Is it necessary for me to withdraw my previous motion? I so do.

DOI: I second the motion.

CHAIRMAN: That will make one motion before the assembly. Will you state the motion again please, Delegate Fukushima?

FUKUSHIMA: I move that it is the sense of this committee that we include in our Constitution the provisions of statutory initiative and referendum.

CHAIRMAN: Second to that motion?

AKAU: I second it.

ROBERTS: I'd like to speak to that question. It would seem to me that such a motion would prevent individuals who could support some provisions in the Constitution dealing with statutory initiative, perhaps not with the referendum, from getting to the question. The question is too broad; the question does not permit a show of the sense of this Convention with regard to the problem. I, therefore, would feel that I would have to vote against such a proposal, even though I could support, in proper language, a provision with regard to statutory initiative.

FUKUSHIMA: I withdraw my motion in that event and make a new motion. I move that it is the sense of this committee that we include in our Constitution the provision for statutory initiative.

NIELSEN: I'll second that.

LAI: I'm speaking for myself and for the members of this committee who signed a report against the inclusion of the initiative and referendum and recall in this Constitution. If you don't mind—bear with me for a few minutes—I will take up few main points from the report. Initiative and referendum are found in the constitutions of 19 states; most of these states adopted these methods of direct legislation between 1898 and 1918, and since then no other states have adopted them. This is because - -

MAU: What page are you reading from?

PORTEUS: I rise to a point of order. I don't think the speaker when making a speech, ought to be asked what page he's reading from.

LAI: No, this is my own words, to summarize the points.

MAU: Oh, excuse me. I'm sorry I thought he was reading from the majority report.

LAI: No, if you read that, we won't get home tonight. It's rather long, so I just want to summarize that.

CHAIRMAN: Proceed with your argument, Delegate Lai.

LAI: This is because the results were not as good as they had first claimed to be by those who believed that the cure for all of our ills was more direct democracy in all forms of government. Because of possible abuse, inherent defects of the system have become more apparent in recent years. And also because the legislative machinery has been modernized and improved by having more frequent sessions of the legislature, by adopting rules and procedure to expedite legislation, and to avoid ice-boxing of bills, and by having more adequate compensations, technical and other assistance to the legislators.

Proponents of initiative and referendum claim that people should be given more direct say in running our government. Delegates, you must remember our government is the representative type of government. It is the government of the people through elected representatives whose duty is to study problems and enact legislation that would be of greatest benefit to all the people. The legislature is the only branch of our government with its entire membership elected by the people. Initiative and referendum will tend to reduce the importance of the legislature and the responsibility of the legislators.

The use of the initiative eliminates deliberation, amendment and compromise usually necessary to produce sound and lasting legislation. The people must vote yes or no on the proposal once submitted to the electorate. In the legislature, a bill may be amended any number of times, and after considerable debate, its weaknesses are being disclosed, or opposition forces compromise between objections raised to its form or substance. After the initiative measure is submitted to the people, no matter how many weaknesses, evils or faults are discovered during the course of the campaign for or against its adoption, it cannot be amended; the people must take it or leave it as is.

Realizing this basic weakness, the proponent of the initiative have hit upon the indirect initiative as an alleged means of overcoming this defect. However, even this does not fully meet the situation. If an initiative measure appears to the legislature, to which it is submitted under the indirect initiative system, to be in bad draftsmanship, impracticable, or otherwise undesirable as to warrant its being entirely rejected, it is asking too much of human nature to expect them to spend days, perhaps weeks of study, debate and redrafting just to put the measure in as nearly perfect form as possible. The result would be submission of the original or some poorly redrafted substitute to the electorate to be voted on, without any further opportunity for amendment.

Initiative and referendum are expensive. The State must pay for the printing of petitions, ballots, information pamphlets, the cost of mailing such information to voters, other advertising costs, the checking of the petitions to see that they have been signed by requisite number of voters and the election expenses. Much greater expenses fall upon the sponsors and opponents of the measure. They must pay the cost of securing signers to the petition and underwrite an expensive campaign to inform and influence the voters on the issue. Your committee was given figures indicating the cost to defeat the Townsend pension plan in Oregon was $44,000. Recently, in California, because the taxpayer did not make available substantial private funds to oppose Proposal No. 4, which provided abnormally high payment to the aged, leaving insufficient funds for other government purposes - -

CHAIRMAN: Delegate Lai, you have two minutes more.

LAI: - - it was necessary to spend $900,000, imagine $900,000, to bring the subject before the electorate again and defeat it. Initiative has, according to some authorities, even produced professional publicists who, for stated fees of so much a head or other consideration, undertake to secure the required number of signers to any petition or to sway the election.

Say, I have a few more paragraphs to make. May I have unanimous consent to continue?

CHAIRMAN: You have one minute.

ANTHONY: I think the Chair should get the unanimous consent.

CHAIRMAN: You may proceed.

LAI: Thank you.

The small size of the proposed State of Hawaii having a population less than that of many large cities, with its less complex problems than those of most of the states which have a very large number of counties, make it possible for our legislators, because of personal knowledge and contact, to consider adequately and with reasonable promptness, all of the local and general problems which are likely to arise.

The fact is that, according to figures given to your committee, in a number of cases fewer persons voted on an initiative proposition than signed the petition. The small number of persons that often vote on such a question is further indication that the signing of an initiative petition is often procured without any real understanding of or interest in the measure on the part of the signer. This is because any possible opponent of the measure cannot be present at such time, and consequently is unable to expose false statements of fact, unsound arguments, half truths or to

present countervailing arguments, facts or other pertinent information.

Referendum, independently of the initiative, for many of the foregoing reasons is also objectionable in the view of the majority of your committee. In addition it is believed that the referendum, whether compulsory or optional, tends to further weaken the legislature and to encourage it to pass the buck, and thereby avoid the responsibility to make laws, for which it is elected. A strong, responsible and responsive legislature can best be assured by giving it full and sole responsibility and holding its members thereto.

So, I therefore ask delegates here to vote against the initiative and referendum -- statutory initiative and referendum. Thank you.

H. RICE: Point of order. We've been considering yesterday and this morning Standing Committee Report 47 -- 48. It seems to me that Delegate Lai's first proposal was correct. If they have any amendment, they should amend that first section in Committee Report 48 and not switch over. And where are we going to end? Are we going to take another day and a half to talk over all these new proposals? I think we're wasting a lot of time.

CHAIRMAN: Strictly yes, but there was that explicit understanding before we considered the proposal submitted by the majority committee.

KING: If the amendment carried, the whole matter could be referred back to the committee to include in its final proposal a provision for statutory initiative and referendum. But the pending motion is only to approve of the statutory initiative, as I understand it. Is that correct?

CHAIRMAN: The motion pending before the Committee of the Whole now, it is that the sense of this committee that we include in our Constitution the provision of statutory initiative, period. All those in favor of that motion will signify by saying "aye."

DELEGATE: Roll call.

CHAIRMAN: Will you signify by the show of your hands, how many of you desire roll call? Roll call.

Ayes, 19 (Akau, Arashiro, Doi, Fukushima, Ihara, Kauhane, Kawahara, Kawakami, Kido, Luiz, Mau, Nielsen, Roberts, Serizawa, St. Sure, J. Trask, Yamamoto, Yamauchi, Okino). Noes, 39. Excused, 5 (Mizuha, Noda, Phillips, Silva, A. Trask).

FUKUSHIMA: I now move that it is the sense of this committee that we favor the inclusion of statutory referendum.

NIELSEN: I second the motion.

CHAIRMAN: All those in favor of that motion will signify by saying "aye," that is, for statutory referendum.

DELEGATES: Roll call.

ANTHONY: We don't need a roll call on that. I don't see why those in the minority don't recognize that.

CHAIRMAN: A request has been made. Will you signify by the show of your hands please, those desiring roll call. Three. All those in favor of the motion will signify by saying "aye." Contrary minded say "no." The motion is defeated. The noes have it.

FUKUSHIMA: I now move that we adopt Committee Proposal No. 47.

LAI: You mean the Committee Report No. 47.

FUKUSHIMA: That's right.

LAI: I second that motion.

CHAIRMAN: All those in favor of adopting Committee Report No. 47 will signify by saying "aye." Contrary minded say "no." Carried.

FUKUSHIMA: I believe we have only one other thing to consider, so I'll make a motion at this time that it is the sense of this committee that we include in Section 1 of Proposal No. 9, popular initiative. I think that was the understanding. I'm not in favor of that, but in order that we may not foreclose the minority, it was understood when we passed Section 1. Now we voted merely on statutory initiative. Now the question is, we still have constitutional initiative. So I'll make a motion at this time that it is the sense of this committee that we favor initiating constitutional amendments, besides the initiation by the legislature and by constitutional convention, a third method which is popular initiative.

NIELSEN: I'll second that motion.

CHAIRMAN: Will you restate that motion a little more clearly, please.

FUKUSHIMA: I move that it is the sense of this committee that we include in Section 1 of Committee Proposal No. 9 popular initiative as the third method of initiating constitutional amendments.

CHAIRMAN: All those in favor say "aye." Contrary minded, "no." The noes have decidedly won.

FUKUSHIMA: I now move that we adopt Section 1 of Committee Proposal No. 9.

CROSSLEY: I'll second that motion.

CHAIRMAN: Going back to the original proposal, Section 1, all those in favor of that motion please signify by saying "aye." All those opposed say "no." Carried.

FUKUSHIMA: I now move that we adopt the article on revisions and amendments in its entirety as amended.

LAI: I second that motion.

CHAIRMAN: All those in favor of the motion.

BRYAN: I think the motion would be that when we arise, we report recommending --

FUKUSHIMA: I'm making that recommendation subsequently.

BRYAN: Is that correct? I retract my --

CHAIRMAN: All those in favor of that motion, adopting Section 2 of this proposal as amended.

FUKUSHIMA: The entire article as amended.

CHAIRMAN: Oh! The entire article as amended, will signify by saying "aye." Contrary minded say "no." Carried.

FUKUSHIMA: I now move that we rise and report progress and when we do rise that we recommend the adoption of the article on revision and amendments as amended.

PORTEUS: I wonder whether it wouldn't also be appropriate to move -- include in the motion the adoption of the Committee Report 47.

CHAIRMAN: And Committee Report 48?

PORTEUS: And Committee Report 48 as well, and that 47 not be adopted. I mean 49.

HEEN: I would suggest that the committee rise, report progress and ask leave to sit again at a later date and in the mean time a written report be prepared when the committee sits again.

FUKUSHIMA: I'll accept that and I'll second that motion.

CHAIRMAN: All those in favor will signify by saying "aye." Contrary minded say "no."

JUNE 24, 1950 • Morning Session

CHAIRMAN: The Committee of the Whole will come to order, please. We have before us for consideration this morning Committee of the Whole Report No. 9. I'm sure printed copies of the report have been circulated and placed upon the desk of each delegate.

FUKUSHIMA: I move the adoption of Committee of the Whole Report No. 9 recommending passage of Committee Proposal No. 9 as amended on second reading.

DOI: I second the motion.

CHAIRMAN: Are you ready for the question? All those in favor signify by saying "aye." Contrary minded say "no." Carried.

FUKUSHIMA: I now move that the committee rise and report its recommendation, the adoption of Committee of the Whole Report No. 9.

KAM: Second the motion.

CHAIRMAN: Delegate Kam seconded the motion. All in favor of the motion signify by saying "aye." Contrary minded say "no." Carried.

Debates in Committee of the Whole on

ORDINANCES AND CONTINUITY OF LAW

(Article XVI)

Chairman: NELSON K. DOI

JULY 3, 1950 • Morning Session

CHAIRMAN: The Committee of the Whole will now come into session to consider Committee Proposal No. 23 and Standing Committee Report No. 68. Is the chairman of the committee ready to proceed?

SHIMAMURA: Yes, Mr. Chairman, we are.

CHAIRMAN: Could Delegate Shimamura outline the procedure we should follow in considering this committee report and the committee proposal.

SHIMAMURA: I believe, if I may so suggest, that it will be preferable for us to consider each section as we go along, with some commentary on each section from a committee member.

CHAIRMAN: That is acceptable to the Chair, and I think we should follow that procedure.

SHIMAMURA: As to Section 1 of the Committee Proposal No. 23, I move for the adoption of the section.

SAKAKIHARA: I second it.

CHAIRMAN: Delegate Sakakihara has seconded the motion. It has been moved and seconded to adopt Section 1 tentatively. Any discussion?

SHIMAMURA: Section 1 is adopted here. The delegates will recall that at the opening session of this Convention, a resolution was adopted adopting the Constitution of the United States on behalf of the people of Hawaii. Now Act 334, Section 3, requires such an adoption. Also Section 3 of H.R. 49, prior to its amendment by the Committee on Interior and Insular Affairs of the Senate, also provided for such adoption. Now there is no mandatory requirement either in Act 334 or in H.R. 49 for incorporation of the adoption of the Constitution of the United States in our Constitution, but the Committee on Ordinances and Continuity of Law felt that it would be a wholesome and a helpful thing to do; therefore the incorporation of Section 1.

CHAIRMAN: Is there any other discussion? Are you ready for the question? All those in favor of the motion to adopt will say "aye." Opposed, "no." The motion to adopt Section 1 is carried.

SHIMAMURA: I move for the adoption of Section 2 of Committee Proposal No. 23.

SAKAKIHARA: I second the motion.

CHAIRMAN: It has been moved and seconded to adopt Section 2 of Committee Proposal No. 23. Any discussion?

SHIMAMURA: The purpose of this section is obviously to preserve existing rights, actions, proceedings, contracts, and so forth. The necessity of such a provision is also obvious. Unless we had such a provision, it may be that outstanding rights, obligations and contracts, actions may abate. Also, it is important that administration of law continue in spite of the change from a territorial to a state form of government. Also this section, as you will notice, in the second portion after the semicolon provides for the validity of all process previously issued in the name of the Territory of Hawaii. As everyone knows, under the Organic Act all process must run in the name of the Territory, and therefore, all process in the Territory, that is for the - - I think the laymen know what a process is, but as you know, process is any writ, warrant, summons, subpoena and so forth which is issued under authority of the courts. Now it validates, as I've said, all process issued prior to the admission of Hawaii into the Union as a state, even though such process may have been issued under the territorial form of government and by territorial courts. But this section, of course, does not seek to validate any defective writ; any writ which was defective, any process, that is, that was defective prior to the admission of the state into the Union will remain defective. For example, as I mentioned, in case a writ, a summons or an order to show cause omitted the style of the process, the Territory of Hawaii, then such a writ will not be validated merely by this section.

CHAIRMAN: Is there any other discussion? All those in favor of the motion, please say "aye." Opposed, "no." The motion is carried.

SHIMAMURA: I move for the adoption, tentatively, of Section 3 of Proposal No. 23.

A. TRASK: Second it.

CHAIRMAN: It has been moved and seconded to adopt Section 3 of Committee Proposal No. 23. Any discussion?

SHIMAMURA: This section continues all laws of the Territory of Hawaii which are in force on the date of the admission of Hawaii into the states. It provides for the continuance of all laws which are not inconsistent with, or repugnant to, this new Constitution of Hawaii. And the term "laws" is intended to include all rules, regulations and ordinances of the City and County or counties having the force and effect of law.

Now as to the use of the word "mutatis mutandis" or "mutatis mutandis," if you like—some persons prefer the latter pronunciation—that means, as everyone knows, all changes, necessary changes being made, and those words were inserted at the suggestion of Miss Ashford, the vice-chairman of the committee, to take care of situations where the law may not be applicable by the use of the words, Territory or Territory of Hawaii or Treasurer of the Territory of Hawaii. But it is not intended by this, by the use of these words, that substantial changes should be made in the laws.

TAVARES: I take it that in line with the chairman's statement that this explanation is not exhaustive, there would also be included in the intent of this section the substitution of the proper officers or offices who may be the successors under different names even, entirely different names, of existing offices and officers. So that it will be implied that whatever function is transferred from an existing office to an office under the State will also be considered in the term substituting the proper names or terms for the ones existing beforehand.

SHIMAMURA: Yes; the statement made by the delegate from the fourth district, Mr. Tavares, is quite correct.

For example, we now have the secretary of state -- of the Territory rather, and in our new Constitution under the section on executive powers, we've included provision for the lieutenant governor. Now any function that is to be performed under our present laws by the secretary of Hawaii will be and shall be performed by the lieutenant governor.

TAVARES: There is one other thing. I believe I was probably overruled by the committee on this. I'm still a little concerned about the possibility of a hiatus by only continuing in effect the laws not inconsistent with the Constitution, and before the Convention is over, if I can think of any situations, I think they should either be covered by special ordinances or something else should be inserted to take care of any hiatus. I'm not going to make a point of it now, but I think we ought to bear that in mind. Something might occur to us under which merely continuing in effect the laws not inconsistent with the Constitution will leave a hole that isn't plugged.

SAKAKIHARA: I would like to -- I'm in accord with the statement made by the last speaker. That is the reason why I did not rise to second the motion to adopt Section 3. I think we should defer action on Section 3 so that Delegate Tavares, who raised this very question to the committee, it could be studied and adequate amendment could be offered.

TAVARES: I'm sorry. I did not intend to ask for delay on this but I felt that every member of the Convention ought to be directing his attention particularly to this section so that if anything did occur to him which left a hiatus or a hole that was not plugged, that it would be called to the attention of the Convention before it is over, and we can always reconsider. And as I say, I'm not sure enough of my ground to make a fight for it at the present time, but I think if we all think about possibilities we may find these holes and perhaps we can handle them by special provisions in another section of the ordinances.

HEEN: I believe that the use of this term "mutatis mutandis" will not take care of the situation where you have no secretary of state. Nowhere in any of the articles already presented to this Convention is there any definite description of the duties of the lieutenant governor. That will have to be taken care of by legislation and perhaps, as pointed out by Delegate Tavares, there may have to be somewhere in the schedule, or perhaps in the separate ordinance, that pending appropriate legislation the lieutenant governor shall exercise all of the powers and duties defined in the laws as to the secretary of the Territory who later on, of course, will become the secretary of state. There has been some discussion that all of these duties may be placed in the hands of the lieutenant governor and that he as such will be ex officio secretary of state. That is a point that has to be taken care of, as pointed out by Delegate Tavares.

CHAIRMAN: Is there any more discussion?

BRYAN: As far as our intent is concerned, the one with respect to the secretary of state, we have covered it in the committee report on executive powers which should be out and printed before we meet again, and that is specifically to the point of certification of returns for the election of United States senators and representatives. But I think also that intent would cover other situations.

SHIMAMURA: I think the point raised by the delegate from the fourth district, Senator Heen, is a good one. As a matter of fact, in considering H.R. 49, our special election -- our election ordinance providing for a special election, I mentioned the matter in the course of discussion here once and also have a proposed amendment to make under our provisions to comply with H.R. 49, namely to designate the lieutenant governor as secretary of state. I think we could well at the end of this proposal put in a clause that the lieutenant governor shall succeed to all the duties and powers of the secretary of Hawaii.

ASHFORD: I call to the attention of the Convention that by implication, at least, in another article the lieutenant governor is assumed to be the man who is going to look after elections because I think it's in revisions and amendments to the Constitution that it provides that in the event that a ten year period shall elapse without a convention that the lieutenant governor shall submit such question to voters.

SHIMAMURA: Also, if I may respectfully suggest, I believe the report of the Committee of the Whole could very well state that this section not only means the successor officer with the similar name, but shall also include successor offices like the lieutenant governor whose name is not the same as the present officer, to clarify that.

I should like to raise one point, that we didn't have adequate opportunity to consider in the Committee of the Whole a point which frankly occurred to me very recently. We have here in Section 3, "All laws of the Territory of Hawaii" and I'd like to have the considered thought of the other delegates as to whether that includes provisions of the Organic Act. If we said "All territorial laws of the Territory of Hawaii," probably that would not include the provisions of the Organic Act, but since the section reads, "All laws of the Territory of Hawaii," meaning such laws as may have been enacted by the legislature of the territory, that probably would not include provisions of the Organic Act, and if it does not, whether an interpretation should be included as to our intent in the report of the Committee of the Whole, so that provisions of the Organic Act not repugnant to this Constitution shall be included here.

CHAIRMAN: I would like to remind the last speaker that the Committee of the Whole report cannot contain a statement saying that it is the opinion of the Committee of the Whole merely because one delegate stated it so. I think we must come to an agreement on that, otherwise --

ROBERTS: I move that it be the sense of this Committee that the Organic Act be included in the general language, "All laws of the Territory" and that such be included in the Committee of the Whole report.

CHAIRMAN: Delegate Roberts, did you say "included" under the --

ROBERTS: That the statement of the sense of the Committee of the Whole be included in our Committee of the Whole report.

HEEN: Does this --

CHAIRMAN: That the Organic Act be included --

ROBERTS: That the Organic Act is covered by the term, "the laws of the Territory of Hawaii."

HEEN: I don't think that will cure the situation. Technically speaking, the Organic Act is the law of the United States applicable to the Territory of Hawaii. That to me is distinct from saying the "laws of the Territory of Hawaii." As I interpret that term, "laws of the Territory of Hawaii" are laws passed by the legislature of the Territory of Hawaii. Therefore, this provision should read "All provisions of the Hawaiian Organic Act and all laws of the Territory of Hawaii in force at the time of admission."

ROBERTS: If the senator will make that in the form of a motion, I will second it.

HEEN: I so move, that after the word "all" in the first line of Section 3, add the words "provisions of the Hawaiian Organic Act and all." So that part of the sentence shall read: "All provisions of the Hawaiian Organic Act and all laws of the Territory of Hawaii," and so on.

ROBERTS: Second.

TAVARES: I'm sorry I must disagree. I believe that is too broad and if there's going to be such an amendment I think we should defer, because there are the land laws included too, and we have treated those specially. I'm a little afraid we might be incorporating a little too much by stating it generally in that fashion. There is a body of laws created under the Organic Act, under which we have acted, which would be carried over anyway as laws of Hawaii; but to incorporate all those laws of the Organic Act without a minute study, with all those provisions, I think would be a little too -- going a little too far.

HEEN: I might point out that later on in that same sentence, we have the clause "not repugnant to this Constitution," and there might be room for enlargement on that particular phrase, "not inconsistent and not repugnant to this Constitution."

TAVARES: I want to -- my idea is this. That there might be something we haven't mentioned one way or the other that we don't want to carry into effect; and if we haven't mentioned something contrary, then we would be incorporating it automatically, and perhaps without rereading very carefully that whole act, it would be unwise to do that.

ARASHIRO: Since there's a dispute in this thing and we are not clear as to the language of this thing, I move that -- no, I second that motion made by Delegate Tavares.

CHAIRMAN: Did you make a motion, Delegate Tavares? It has been moved and seconded.

TAVARES: I'll make that motion to defer to the end of this section, and then perhaps we can defer it further if we haven't come to some different conclusion.

CHAIRMAN: It has been moved and seconded that consideration of Section 3 --

SAKAKIHARA: May I offer an amendment to the amendment, request for deferment until the end of the calendar day?

TAVARES: I'll withdraw my motion and let the delegate make his.

CHAIRMAN: Motion to defer has been withdrawn.

SAKAKIHARA: I rise at this time to ask that action be deferred on Section 3 till Wednesday.

CHAIRMAN: Do I hear a second? The motion is to defer Section 3 until Wednesday.

SHIMAMURA: I'll second the motion.

CHAIRMAN: Ready for the question? All those in favor of the motion to defer Section 3 until Wednesday, please say "aye." Opposed, "no." Motion to defer Section 3 to Wednesday is carried.
Section 4.

SHIMAMURA: I move for the adoption of Section 4 of Committee Proposal No. 23.

SAKAKIHARA: I second the motion.

CHAIRMAN: It has been moved and seconded to adopt Section 4 of Committee Proposal No. 23. Discussion.

SHIMAMURA: This section relates to the disposition of all debts, forfeitures, fines, penalties and escheats accruing to the Territory of Hawaii or any public -- or any political subdivision thereof.

TAVARES: After further consideration, I believe that this section could be -- should be amended further, and I move to amend the section by adding after the word "forfeitures," the word "claims" in the first line; and on the second page in the first line, between the words "or" and "its," insert the words "any of"; and in the same line make the word "subdivision" plural, "subdivisions"; and in the next line or the last line of Section 4, change the word "its" to "such." May I repeat that again, Mr. Chairman. On the first page insert after the word "forfeitures," the word "claims"; on the second page, the first line, insert between the words "or" and "its," the words "any of"; and in the same line, make the word "subdivision" plural, "subdivisions"; and in the last line change the word "its" to "such."

CHAIRMAN: Do I hear a second?

SAKAKIHARA: Second it.

CHAIRMAN: It has been moved and seconded to amend Section 4 by inserting the word "claims" after the word "forfeitures" in the first line; and on page 2, in the first line, inserting the words "any of" between the words "or" and "its," and making the word "subdivision" into a plural; and in the second line, inserting the word "such" in lieu of "its." So that the amended form would read --

LAI: Would this section include taxes and license fees due to the Territory or the subdivisions?

CHAIRMAN: Would a member of the committee answer the question? Would you repeat the question, Delegate Lai?

LAI: Would this section include taxes and license fees due to the Territory or its subdivisions?

SHIMAMURA: No, this section does not cover taxes, but the next section covers that.

ASHFORD: If the amendment be adopted, I think "claims" might be broad enough to cover that. And may I suggest that as a part of the amendment, the second word "subdivision" in the second line on page two should be in the plural also.

TAVARES: I think I respectfully differ on that last suggestion. The word "any of its" is singular; "any" is singular and therefore "such" goes back to the word "any," and therefore it can be singular. I wonder if the delegate would agree with me in the light of that word "any."

ASHFORD: I don't agree, but I'm very amiable.

HEEN: I think the period at the end of the sentence should be changed to a comma, and the words "as the case may be" should be inserted there. We have used that term quite often in some other parts of the Constitution, as so far drafted.

SHIMAMURA: I think that's an excellent suggestion.

TAVARES: I'll accept that amendment. Yes, I'll accept that as an addition to my amendment.

CHAIRMAN: The suggestion is to add after the sentence, "as the case may be." Is there any more discussion on the amendment?

SHIMAMURA: I wonder if the delegate who moved for the insertion of the word "claims" on the first line after the word "forfeitures" will consent to its deletion, in the light of the fact that Section 5, I think, covers claims.

TAVARES: I would, except for the fact that this section goes to political subdivisions, and Section 5 only goes to the Territory.

SHIMAMURA: My draft here, if I may say so, I was going to amend Section 5 to include political subdivisions.

TAVARES: May I think that over just a second, Mr. Chairman?

CHAIRMAN: Is there any other discussion while Delegate Tavares is thinking it over?

HEEN: I think the word "claims" should remain in that Section 3, because we don't know, there may be some other claims outside the statutes. It's a catch-all word.

ASHFORD: May I suggest that Mr. Tavares, being a member of the committee who signed the report, would come over and join us here.

CHAIRMAN: Is there any more discussion?

SHIMAMURA: I'm quite willing that the word "claims" be left in.

CHAIRMAN: Then there is no dispute. Is there any more question on the amendment?

HEEN: I think Delegate Tavares should remain where he is, otherwise he might be guilty of association.

SAKAKIHARA: Delegate Tavares is a member of the committee; he has every right to be there to commit collusion or conspiracy.

CHAIRMAN: Is there more discussion? Are you ready for the question?

NODA: I move for the adoption as amended.

CHAIRMAN: No, it hasn't been voted on yet.

TAVARES: On the assurance that the matter will be covered in the next section as far as the word "claims" is concerned and it will be explained - -

CHAIRMAN: Are you ready for the question? The question is to amend Section 4 to read thus: "All debts, fines, penalties, forfeitures, claims and escheats which have accrued or may hereafter accrue to the Territory of Hawaii or any of its political subdivisions shall enure to the State of Hawaii or such political subdivision, as the case may be." All those in favor - -

PHILLIPS: That word "claims" still bothers me. I wonder if the delegate from the fourth district could give me an example of a claim of the Territory against whatever it might be. Could you give me just one example, please?

TAVARES: I can imagine a situation where somebody runs into a truck belonging to the Territory and is negligent; the Territory has a claim for damages against that person for damaging the truck. That's just one of many, many other types of claims. Or it could include even taxes, although I think that's going to be covered too. But "claims" is a very broad term; "claims" covers every type of right of action which might be made against any other person.

CHAIRMAN: Are you satisfied, Delegate Phillips?

PHILLIPS: May I continue my question by saying that I believe that that particular example would fall under Section 5. It strikes me that even the word "debts" doesn't have - - doesn't fit into this particular section; that fines, penalties, forfeitures and escheats are of a class, and that the words "debts" and "claims" fall very carefully and seem to be completely covered in Section 5. I feel that he's - - that there is a reiteration. Now if they want to leave in the two words, I don't think it's going to hurt anything, but at the same time, it would give for more clarity of understanding of this provision when it's referred to or any question comes up about it. The word "debts" and "claims" seems to not fall into the same classification of state matters such as fines, penalties, forfeitures and escheats.

TAVARES: I think that the liability to a fine is one kind of a debt, so that I think that that isn't necessarily incongruous. As a matter of fact, since we are - - these are catch-all provisions, I think it would be just as well to have - - to say too much rather than too little, and the Style Committee can always change it if we've overlapped too much.

CHAIRMAN: Are you ready for the question? Question is on the amendment, motion to adopt the amendment. All those in favor of the motion to amend, please say "aye." Opposed, "no." The motion to amend is carried. Are you ready for the - -

BRYAN: I move the adoption of Section 4 as amended.

WOOLAWAY: I second that motion.

CHAIRMAN: It has been moved and seconded that Section 4 as amended be adopted. All those in favor of the motion, please say "aye." Opposed, "no." It's carried. Section 4 as amended is adopted.

WOOLAWAY: I move for the adoption of Section 5.

CHAIRMAN: Do I hear a second? It has been moved and seconded that Section 5 be adopted. Discussion?

SHIMAMURA: I at this time would like to move for the amendment of Section 5, line five, after the words, "Territory of Hawaii" and after the comma, the words "or any political subdivision thereof."

CHAIRMAN: Do I hear a second to the motion to amend?

SAKAKIHARA: Second it.

CHAIRMAN: Moved and seconded.

SHIMAMURA: I have some other - - if the delegate from Hawaii will please withhold his second.

SAKAKIHARA: I'll withdraw - - withhold my second.

SHIMAMURA: And on line six, after the word "Hawaii" and after the comma, "or its political subdivision, as the case may be." I'll repeat that. After the comma following the word "Hawaii" on line six "or its political subdivision, as the case may be," comma, and then in line seven, after the words "State of Hawaii," comma, "or its political subdivision," comma; and on the last line, after the word "Hawaii" delete the period, insert a comma in its stead and the words "or its political subdivision."

SAKAKIHARA: I second the motion for an amendment.

CHAIRMAN: It has been moved and seconded to amend Section 5. Is there any discussion?

TAVARES: Inasmuch as this might involve some matters like title to property and so forth, which perhaps could be studied a little more in the light of the subdivisions being brought in, I think it should be deferred and I move to defer the matter until Wednesday.

SAKAKIHARA: Second it.

CHAIRMAN: It has been moved and seconded to defer consideration of Section 5 till Wednesday. All those in favor of the motion, please say "aye." Opposed, "no." It's carried.

For the benefit of the Clerks, I would like to now declare a recess.

(RECESS)

CHAIRMAN: Will the committee please come to order. We have deferred Section 5 till Wednesday. Now Section 6 is up for consideration.

SHIMAMURA: I move for the adoption of Section 6.

SAKAKIHARA: Second it.

CHAIRMAN: It has been moved and seconded to adopt Section 6. Discussion?

HEEN: This is a little out of order, [but] I'd like to ask the chairman of the committee as to why - - as to whether or

not they considered the provision contained in the Model Constitution, on page 21, as to existing laws. "All laws not inconsistent with this Constitution shall continue in force until specifically amended or repealed, and all rights, claims, actions, orders, prosecutions and contracts shall continue except as modified in accordance with the provisions of this Constitution." It seems to me that that simple language could take care of Sections 3, 4 and 5.

SAKAKIHARA: We're on Section 6. I think the delegate-at-large from the fourth is not talking on Section 6.

CHAIRMAN: That is right. The Chair will rule Delegate Heen out of order, but probably the suggestion is beneficial and if that is the case, we suggest Delegate Heen take it up with the chairman of the Committee on Ordinances and Continuity. We may be able to reconsider it.

SHIMAMURA: At this time I move to amend Section 6 by deleting the words "county or City and County" of line three of Section 6 after the word "any" and insert in lieu thereof the words "political subdivision thereof" comma.

TAVARES: I second the amendment.

CHAIRMAN: It has been moved and seconded to amend Section 6. Is there any discussion on the amendment? Are you ready for the question? The motion to amend will delete in the third line the words "county or City and County" and insert in lieu thereof the words "political subdivision thereof." All those in favor of the amendment - -

ANTHONY: Mr. Chairman, I rose to get the attention of the Chair.

CHAIRMAN: I'm sorry, Delegate Anthony.

ANTHONY: I'd like to know from the committee the difference between Section 6 and Section 4.

CHAIRMAN: Delegate Shimamura, or any member of the committee.

SHIMAMURA: Yes, Mr. Chairman. I feel that there is an essential difference between Section 4 and Section 6. Section 6 provides for the accrual of all debts, fines, penalties, forfeitures and claims and escheats to the Territory of Hawaii or any governmental or political subdivision thereof; whereas Section 6 provides for the continuance of all recognizances, bonds and obligations entered into or executed to the Territory or any political subdivision thereof. In other words, Section 6 is very essential to continue these bonds which - - For example, a surety bond may run to the Territory of Hawaii in the name of the treasurer of the Territory of Hawaii, but that bond would not necessarily continue running in favor of the Territory [sic] of Hawaii by the treasurer. Therefore it has to be continued so that the treasurer of the State of Hawaii will succeed to all rights thereunder.

ANTHONY: Well, I have a further question. If we adopted the simple language contained in either the Model Constitution or the New Jersey Constitution—the Model Constitution is Section 1401, page 21—why wouldn't that cover not only Section 4, but Section 5 and Section 6 as well? And Section 7, I might add.

SHIMAMURA: The committee had the provision of the Model Constitution under consideration. The committee felt that it was far too general and did not provide for many situations which would arise. Mr. Tavares has something additional to say on that.

ANTHONY: I'd like to have the particulars rather than the general statement. As far as I'm concerned, the simple language is broad enough.

TAVARES: In the first place, New Jersey is an existing state. The changeover is very minor. In the second place, a provision like the Model Constitution's drawn without particular regard to any particular jurisdiction, I think is always dangerous. I don't doubt that there are overlaps in these sections, but when you are transferring everything from one jurisdiction to another as drastically as changing over from a territory to a state, it seems to me that if your basket is a little too wide, it doesn't do any harm. All you have is a little empty space there. But when your basket is too small and you leave something out, then you have trouble. Therefore, I see no objection to having some overlap and some excess verbiage here rather than run the risk of having something left out.

ANTHONY: The chairman of the committee said that Delegate Tavares would supply the particulars; thus far I've heard no particulars. Therefore, I move that we defer action on this until Wednesday.

BRYAN: I think before we move to defer I'd like to ask the members of the committee one question, and that is, if the word "contract" in Section 2 would give adequate coverage to the material now under consideration.

PHILLIPS: I second the motion.

CHAIRMAN: It has been moved and seconded to defer Section 6 to Wednesday. All those in favor of the motion to defer, please say "aye." Opposed, "no." The Chair is in doubt, and we'll call again for the ayes and noes. All those in favor of the motion to defer say "aye." Opposed, "no." The ayes have it.

AKAU: Point of information. All these matters on the ordinances so far have been matters which are very definitely the concern of our good friends the lawyers here, and I was wondering if it would be possible, let us say, not only for the committee, but for the lawyers to somehow get together—I'm just thinking of the time, and I'm not trying to be facetious either—if some of the lawyers could get together. We have 17 of them here. You people know what you want. We're just dragging along here trusting to luck that we'll guess the right word because we don't know these technical things; they are very definitely legalistic. Would it be in order, Mr. Chairman, to ask our members of the Bar Association, the 17 people, to get together and work this out so they can save the time? I'm just asking; I don't know.

ANTHONY: That could be done - -

ASHFORD: By way of preliminary remarks, I would like to say that the delegate quite apparently is not a member of the Committee on Style, which has eight attorneys on it, when she talks about getting together.

In this committee, we had two very brief articles to start with and the expansion of these sections was due to the suggestion of various attorneys.

CHAIRMAN: You will note that the committee is predominantly made up of attorneys also.

SHIMAMURA: We are trying to bring before all the delegates this article and to give all delegates here an opportunity to participate in the discussion, and any suggestions you may - - they may have, we welcome any suggestions.

CHAIRMAN: Section 6 has been deferred, Delegate Shimamura, to Wednesday.

ANTHONY: The same remarks I have go to Section 7. I really believe this whole thing can be boiled down to one simple paragraph or two, and therefore, I move that 7 be deferred.

CHAIRMAN: The Chair would wish to rule that Delegate Anthony is out of order.

SHIMAMURA: I'm amenable to any - -

ANTHONY: I was not out of order, Mr. Chairman; Section 7 is before the house.

CHAIRMAN: Section 7 is still not before the house.

SHIMAMURA: May I make a statement, that I'm amenable to any suggestion the house may have. However, if we defer too many of these sections, that means that we'll have to take them up at a later date anyway. And may I also state that although the delegate from the fourth district has a point, that many of these sections may be boiled down, but as Delegate Tavares said a few moments ago, it's quite different in dealing from a transition or change or revision from a state to a state constitution, but here we have a transition from a territorial to a state form of government. And what may be adequate in providing for a revision or consolidation of a constitution is quite different from providing for the transfer and change in the form of a government. I may also add that the state constitutions which were adopted at the time of the admission of many western states to the Union make very elaborate provisions, as we have here, and we arrived at this after much deliberation and after much research. I move for the adoption of Section 7 at this time.

CHAIRMAN: It has been moved and seconded to adopt Section 7. Question. Rather, discussion?

TAVARES: I have an amendment of - - just a formal amendment to propose. In the fourth line of Section 7 the word "then," t-h-e-n, that it be deleted and that there be inserted after the word "pending" in the same line and before the comma, the words, quote, "at the time of such change," end of quote. So that that line would read "which shall be pending at the time of such change," comma.

[The tape recorders were out of order for several minutes. The following debate is from the minutes of the committee.]

SHIMAMURA: Second.

The Chair thereupon put the motion to amend, which motion was adopted.

ANTHONY: I move we defer action on Section 7 as amended, until Wednesday.

LAI: Second.

BRYAN: Is it the Chair's ruling that there will be no discussion on a motion to defer?

CHAIRMAN: Yes.

The Chair thereupon put the motion to defer action on Section 7, as amended, until Wednesday, which motion was carried.

SHIMAMURA: I move the tentative adoption of Section 8 of Proposal 23.

SAKAKIHARA: Second.

ANTHONY: I would like to know what is the difference between Section 8 and Section 2.

SHIMAMURA: Section 2 is a very general section. Section 8, in addition, specifically provides for the transfer of all pending civil cases to the courts of the state, which Section 2 does not.

ANTHONY: It seems to me there is a good deal of repetition, and I think if the committee were to get together this could be again boiled down, and accordingly I move to defer action on this section.

HEEN: I would like to know whether the term "civil causes" there means something else from cases in equity.

SHIMAMURA: We have defined the term "civil causes" in our report, and civil causes includes all causes at law, all suits in equity and all other legal proceedings other than criminal cases.

CASTRO: I would like to second Delegate Anthony's motion to defer.

FONG: I would like to state that in reading Sections 2 to 11, I am of the opinion that all of the sections could be boiled down into one paragraph of general language instead of having all these paragraphs.

[Recording resumed]

CHAIRMAN: The question on the floor is for the Chair to determine whether the consideration should be deferred. Therefore, the Chair would like to call again for the ayes and noes. All those in favor of the motion to defer, please say "aye." Opposed, "no." The ayes have it.

SHIMAMURA: I move for the adoption of Section 9.

CHAIRMAN: Do I hear a second?

KAM: I second it.

CHAIRMAN: It has been moved and seconded that Section 9 be adopted.

LAI: I want to amend the motion to include Sections 10 and 11 for tentative adoption.

CHAIRMAN: The Chair would like to rule, for the sake of order, that we should consider these section by section. Would that be okay?

LAI: Well, I thought somebody was going to make a motion to defer the whole thing up to Section 11. It will save a lot of time to take up three sections at one time.

FONG: I was going to ask for a deferral of that section together with Sections 9, 10 and 11 on the same grounds, that Section 2 to 11 probably could be condensed into one paragraph.

ANTHONY: I'd like to second that motion, and I'd like to add in support of it, the same can be said of 12 and 13.

CHAIRMAN: Delegate Fong, is that your motion, to defer Section 9?

TAVARES: I can't let that remark pass unchallenged. Section 12 is one of the things - - Well, I think that's out of order. I will subside, Mr. Chairman, but I think that's a rather uncalled for statement. Section 12 is very important to our public lands.

CHAIRMAN: I think the Convention - - the committee out of fairness should give the committee a chance to speak in defense of its committee proposal, and - -

FONG: I believe Section 12 and Section 13 are a little different. I think the committee also sees the possibility of condensing Sections 2 through 11. Is there a possibility, Mr. Tavares, of condensing Sections 2 through 11? Is there a possibility of combining all those sections?

TAVARES: There is a possibility of doing many things, if we take the time.

FONG: Well, with that statement from the member of the committee, I think we should defer action on Sections 8, 9, 10 and 11.

CHAIRMAN: Section 8 has been deferred.

ASHFORD: I'm just as much out of order as anybody else who has spoken after the motion to defer, but perhaps the Convention would just let me say something very briefly. We started with a very simple - - some very simple measures, and the attorneys who were members of the committee felt that they should be developed. Now, in my

opinion, if this committee should report in its committee report that all of these sections were covered by a couple of brief sections, the same results would be attained.

SHIMAMURA: May I also add that as far as the committee is concerned, it has no pride of authorship at all. We don't care how the sections are amended. We put our best effort in it and took considerable time and made considerable research. If any member here wishes to go over the whole thing and overhaul it, it's perfectly all right. We only wanted to provide certain things with abundance of caution.

CHAIRMAN: It has been moved and seconded to - - Is there anyone - -

ARASHIRO: It is my opinion that when the delegate from the committee made a statement about a big basket, then I think that by having a shorter paragraph or a shorter section it would broaden the language and have a bigger basket than trying to itemize it, and then making the - - by itemizing it, I think we are making a smaller basket.

ROBERTS: I was going to suggest that when the motions to defer are made and the motion to defer to a specific time, that that motion is debatable and I believe that the members of the committee ought to be given the opportunity to state their position as to why we should take it up now.

SHIMAMURA: Also, when any committee - - any delegate here has any suggestions why should it be deferred, we should like to have the reasons for it, and if he thinks that the sections are similar, we should like to have it pointed out wherein they are similar. I feel personally that some of the sections are quite divergent and quite different.

ASHFORD: May I call the attention of the Convention - - of the Committee of the Whole to Section 11. In my opinion, that would not be covered, because those judges are appointed by the federal government under the provisions of the Organic Act and I think they would have to be carried on in office after we have become a state until their successors are appointed.

HOLROYDE: I wonder if those that are moving for deferment on these sections propose to bring in amendments on Wednesday.

SHIMAMURA: I think that's an excellent question, and I feel that the members who are moving for deferment should try and put some effort in this thing and bring in some counter proposals.

CHAIRMAN: Delegate Fong, could you repeat your motion again?

FONG: On the premise that these sections could be consolidated into one or two or three paragraphs, I move that Sections 8, 9, 10 and 11 be deferred until Wednesday.

CHAIRMAN: The Chair would like to inform you that Section 8 has already been deferred, and we'll have to, for the sake of order - - the record, we'll have to make a motion to adopt Sections 9, 10 and 11 first. There is a motion at the moment to adopt Section 9. Is your motion just confined to Section 9?

SHIMAMURA: I think there has been a motion, hasn't there? If not, I'll so move just to facilitate our getting on.

SAKAKIHARA: I'll second it.

FONG: I shall now repeat my motion, that we defer action on 9, 10 and 11.

SHIMAMURA: Pardon me, will the delegate who last made the motion withdraw that for a moment. I'd like to make an amendment before - -

FONG: Sure I will.

SHIMAMURA: On the fourth line of that Section 9, before the word "courts" I move to insert the word "state"; and also at the end of that section, insert the following new sentence: "Until the legislature shall otherwise provide, the courts of the Territory of Hawaii shall continue as state courts."

CHAIRMAN: Do I hear a second?

KAM: Second that motion.

SAKAKIHARA: Will the chairman of the committee restate the amendment?

CHAIRMAN: Will you restate the amendment, Delegate Shimamura?

SHIMAMURA: Add a new sentence to read as follows:

CHAIRMAN: After Section 9?

SHIMAMURA: Nine. "Until the legislature shall otherwise provide, the courts of the Territory of Hawaii shall continue as state courts."

FUKUSHIMA: I'd like to further amend that by inserting in the place of "continue," the word "function." It cannot continue as state courts; I believe we can function as state courts.

CHAIRMAN: Delegate Shimamura, is that amendment acceptable?

SHIMAMURA: Yes, Mr. Chairman.

CHAIRMAN: Any discussion on the amendment?

BRYAN: I'd like to ask the movant if he doesn't think it would be more appropriate, although it may be a matter of style, to place that after Section 11, rather than after Section 9.

CHAIRMAN: Delegate Shimamura, Delegate Bryan has asked you a question.

SHIMAMURA: I have no objection to that, either way. I think that's a matter of arrangement.

HEEN: It seems to me that it's not necessary to have this section at all. Go back to Section 3, you have there the term, "mutatis mutandis"; that will take care of this situation.

SHIMAMURA: I do not agree with the learned gentleman from the fourth district.

HEEN: Perhaps the vice-chairman of that committee has a different view upon this subject. She is responsible for the use of the term "mutatis mutandis."

SHIMAMURA: If I may answer the learned gentleman from the fourth district. The reason I think the third section doesn't cover this situation is that we must prevent a hiatus. In these sections we provide for the transfer of pending calls of action to appropriate state courts. Under the section on judiciary, there is no provision for definite state courts, and until such courts are organized, we should provide that the territorial courts shall continue as state courts. At first I personally felt that such a section was not necessary, but the more I thought about it, the more it appeared to me that such a section should be incorporated.

CHAIRMAN: Now the Chair would like to make a statement for the sake of saving time and that is, I believe there is going to be a motion to defer all Section 9, 10 and 11. If that is the case, this motion to amend has served its purpose of suggesting to the group what should be considered in their deliberations. Therefore, if there is no objection, probably the motion to defer is in order at this time. Unless there is another suggestion to be made.

NODA: I so move.

CHAIRMAN: Is there any second to the motion?

TAVARES: We have deferred so many sections relating to this, I think we ought to defer the others, and I'll second the motion.

CHAIRMAN: It has been moved and seconded to defer Sections 9, 10 and 11 to Wednesday. All those in favor of the motion to defer please say "aye." Opposed. The ayes have it. The motion is carried.

SHIMAMURA: I rise to go through the motion of moving to adopt Section 12.

NODA: I'll second that.

CHAIRMAN: It has been moved and seconded to adopt Section 12.

ASHFORD: I feel very disloyal in disagreeing with the chairman of the committee, but I spoke to him—after having signed the report—I spoke to him about a provision of Section 12 with which I do not agree, and we agreed that I would be permitted to disagree. That is the proviso which is the second section of the sentence. I think we should continue to homestead our public lands in the fullest manner possible. I therefore move to delete from Section 12 the last sentence which begins, "Provided."

KING: I'm very happy to second that. I do not think the State of Hawaii should declare a moratorium on homesteading for five years. I think they should go right ahead as lands become available and can be developed for that purpose.

TAVARES: In the first place, I think that the two delegates who advocate the elimination of this section are not giving full consideration to the fact that the only thing we are saying is that the legislature is not mandated. In other words, what we're trying to do, those of us who advocate leaving those words in, is this. Today you have a mandatory provision in your Organic Act that when so many homesteaders ask for 40 acres of land, they have got to get 40 acres of land; and that's one of the policies already decided by the Lands Committee, as I understand it, that 40 acres is too much in most cases for farming. The persons advocating leaving out those words are advocating that you force a mandate of the 40 acre and other large provisions now before we have a chance to take care of the other situation, unless our Constitution specifically provides otherwise, and I think that that is a very unfortunate thing to leave that mandate in. The legislature can provide if it wants to, as far as this section is concerned, but all we say is that the mandate -- it's not compulsory until the legislature otherwise provides.

KING: The legislature may remove that mandate by taking proper action in the first session after statehood is obtained, or attained. The mandate would only exist till such time as the legislature has provided for some other program. Also, be it noted that the homestead laws, while 40 acres are the maximum, are not always providing 40 acres to each homesteader. I'm familiar with a great many homestead areas where the lots are cut into ten and eleven acres and the homesteaders apply for that. It all depends on the character of the land. Some lands, five acres are more than enough to support a family with intensive cultivation under irrigation; other lands, ten acres might be ample; but there are other lands where 40 acres would make a very bare living under some types of farming. So I see no reason why we should ban any homesteading for a five year period. The sooner the legislature adopts appropriate legislation, that ban would automatically expire.

CHAIRMAN: Delegate Shimamura, and then I'll call on you, Bryan.

SHIMAMURA: I yield to Mr. Bryan.

BRYAN: I'm quite in sympathy with the feelings of the movant and the second as far as homesteading is concerned. I think that was evident when the Land Committee brought its report. However, I'm quite concerned and would like to state that I'd like to see this remain. I'd like to speak against this motion to delete that part, for several reasons. When the Land Committee discussed the present land laws, there was some question about whether there should be a change placed in the Constitution or a revision of the land laws attached in this section of the Constitution because there was some doubt of the status of many of our public lands under H.R. 49. That doubt has been renewed and emphasized in the last 48 hours or so, and that's why the five year period was placed here.

This provision would suspend the right of mandate to the legislature -- or to the Land Board, until the legislature took action. Whereas, if it were removed, the mandate would remain until the legislature took action. It was the feeling of the members of the Land Committee, that it was proper to do it in this manner, so that, should we find as a result of H.R. 49 that our public lands are fewer than we expect them to be, they won't be all used up under this mandate before the legislature has time to take care of it, or until the five year period of disposition that is set forth by the present provisions of H.R. 49 has a chance to operate. Therefore I would speak in favor of leaving this provision in the section.

SHIMAMURA: May I state that this proposal, this section originated in the Committee on Agriculture and Conservation and it was at the suggestion of the attorney general's department that this proviso was included. I may also state that there is one member of the committee who is absent today who feels very strongly about this proposal. Therefore, to give him an opportunity to be present and argue against it, and also in the light of certain amendments to H.R. 49, I move that it be deferred until Wednesday.

CHAIRMAN: It has been moved and seconded --

TAVARES: Second the motion.

CHAIRMAN: It has been moved and seconded to defer consideration of Section 12. All those in favor of the motion, please say "aye." Opposed. The ayes have it. Section 12 is deferred till Wednesday.

SHIMAMURA: I move for the adoption of Section 13.

YAMAMOTO: Second the motion.

CHAIRMAN: It has been moved and seconded to adopt Section 13. Discussion?

SHIMAMURA: May I briefly state that this section provides for a revision commission, that is, a commission for the revision of laws to be appointed by the governor to take care of any laws that may be -- may not be in conformity with the Constitution.

CHAIRMAN: Any discussion?

TAVARES: I might point out that this section sort of takes a leaf out of the notebook of Congress in dealing with Hawaii. When we became a part of the United States, a joint resolution provided for the creation of a commission to prepare an Organic Act for the Territory of Hawaii. As it turned out, the commission had two years, or had a sufficient time to do the job well, and they not only prepared an Organic Act, but they took the trouble to make all the necessary amendments to the existing laws of Hawaii. We're doing it now without sufficient time to do that second part of the job. Therefore, we feel that provision should be made to start as soon as possible after the adoption of this Constitution along the line of that revision, so that if we have left any holes, if there are any discrepancies, they will be discover-

ed as soon as possible and the legislature will be aided in making the necessary amendments.

ROBERTS: I'd like to speak in favor of the inclusion of this section. I'd also like to suggest a slight change in language which would provide that at least one of those five members shall be a layman. I don't know whether the subcommittee gave this matter consideration, but I am personally quite concerned about laws which are not intelligible to the majority of the lay people. I would, therefore, move an amendment in Section 13, where after the words, "of five members, at least one of whom shall be a lay person, whose duty it shall be" et cetera. May I have a second to that?

SHIMAMURA: Second it.

HEEN: I think the amendment should be the other way around, "At least, four of whom shall be lawyers."

HOLROYDE: I'd like to second that motion, and in doing so, I feel very sorry for the lay person.

CHAIRMAN: It has been moved and seconded to amend Section 13.

ASHFORD: May I ask General Roberts, the authority on style, whether "layman" is the correct word to use in that connection? "At least one of whom shall not be a lawyer," would that not be better?

ROBERTS: I didn't want any specific expression in opposition to lawyers. I like lawyers personally. My only purpose was to make sure that there would be one person on there who would be a lay person. Now, as far as the style is concerned, I think the intent is clear and we can handle that in the Style Committee.

ASHFORD: Isn't the true meaning of a "layman," one who is not a cleric?

CHAIRMAN: Delegate Heen was standing up first. After Heen, I would - - Delegate Lee.

LEE: He has yielded to me, Mr. Chairman, if you don't mind. Is that all right? Thank you.

Being a lawyer I appreciate Delegate Roberts' sentiments. In fact I'll even go farther than he has. I suggest by way of elimination that the words be, "at least three of whom shall be attorneys or lawyers," or you can use the phrase "not more than three shall be attorneys at law." If you'll accept the amendment, I would suggest that, and you might have two laymen.

ROBERTS: I'll accept that amendment, since it comes from an attorney. Therefore, I can't be accused of being biased against lawyers. The language then would read that "no more than three shall be attorneys." Is that correct?

ANTHONY: I'd like to speak against the amendment. This has nothing to do with the substantive provisions of the laws. This is a professional and technical matter, and we don't want laymen fooling around with the laws. Whether Dr. Roberts thinks he could do a job or not, he is not equipped by training to fit in the various statutes in their proper place. Now, we've had commissions revising our laws ever since the Revised Laws of 1905, and they have done extraordinary jobs. I think - - I believe Delegate Tavares has had something to do with some of those commissions, but they have always been three lawyers, and I think we want to continue that. I don't care about putting any words in there, but any executive that knows what he's about, if he's going to have a job done properly, he's going to have it done by a professionally trained person.

ROBERTS: I am in complete sympathy with some of the observation made by the previous speaker. I think, as I recall, this Constitutional Convention is concerned with the very basic problem of writing a law which, I venture to suggest, is as important as some of the statutes which are on the books. I am not in accord that the greatest contribution made in this Convention has been by the lawyers. I think we have some very able and very competent men in this Convention, non-technical, non-trained in the legal profession. But it seems to me that the observation with regard to the contribution which can or cannot be made by lay people is a problem which I think deserves consideration and care by this Convention.

I would also venture to suggest that some of the lawyers of a past generation never went to a law school, Harvard or Yale or any other law school, and turned out to be quite competent lawyers. They know how to read; they know how to examine language; and I think they have some basic consideration as to the function of laws. It seems to me that this amendment is quite appropriate and lay people can make a contribution, not only to statutory law but also to constitutional law.

KELLERMAN: I'm in an in-between position. I once was a lawyer and now I am definitely a layman, but I have seen both sides of the question. I've seen it when I was practicing law, and I've seen it since. If you're going to have a bridge designed, you don't usually put laymen on the board to design an engineering project. This job of revision of laws is not a rewriting of the substance of laws; that would be the job for the legislature. It is a redrafting of the technical discrepancies between laws applying to the territory and laws applying to the state under the Constitution. It seems to me it is purely a technical job, and I can see no reason in the world why a person who is not trained in the technical legal language and the technicalities of law should be put on such a commission. It seems to me he would be of very little assistance and it would be just a waste of one position that might be of material assistance.

ASHFORD: While resenting the omission of the women of this Convention as having made a valuable contribution, I still am prepared to go along with the delegate who wants at least one layman on that board, and I do so by virtue of the education I have received in this Convention on the Style Committee, where extremely valuable suggestions have been made by laymen.

FONG: As I see it, as soon as the Constitution is ratified and Congress gives us the go ahead signal, your legislature is going to be elected and it will - - it is going to be in session. Now, this Section 13 to me is purely statutory. I believe that could be taken care of by the legislature, by a resolution by this Convention asking the legislature to immediately set up this commission to do the work, rather than cluttering up our Constitution with this very long paragraph. I'd like to move that we defer action on this section until Wednesday.

CHAIRMAN: It has been moved and seconded to defer action on Section 13 till Wednesday.

TAVARES: As I understand it, it's now understood that a motion to defer is debatable?

CHAIRMAN: The Chair was - -

ROBERTS: The motion to defer to a specific time is debatable.

CHAIRMAN: Go ahead, Mr. Delegate Tavares.

TAVARES: I won't debate long. I feel this way, that we can't afford to lose any time in starting to revise our laws. It will take the legislature a certain amount of time to get organized, a certain amount of time to get up steam, a certain amount of time to get their committees and a certain amount of time to pass the bills, and by that time we've lost some valuable momentum. It seems to me that deferring

for the purpose of putting this into a mere suggestion to the legislature is not wise. If we are deferring it for further study or for some other purpose, fine, but I don't believe the purpose of having the legislature do it is sound in this case. We need to go fast; there may be some very bad holes we want to start in right away on, and we can help the legislature if a committee is appointed right away and can have some suggestions ready as soon as possible. If the legislature does it, they've got to create the commission, then the commission's got to be appointed, and there is that much more time lost. As far as the layman is concerned, I don't object to a layman or so on the board. We'll just have to educate him. But if they want a layman on, o.k., we'll do that.

CHAIRMAN: All those in favor of the motion to defer Section 13 till Wednesday, please say "aye." Opposed. Motion is carried.

SHIMAMURA: I move for the adoption of Section 14.

SAKAKIHARA: Sections 14 and 15 are very important, also. I ask that it be deferred till Wednesday along with the rest of them.

CHAIRMAN: To get the records clear, is there a motion to adopt Section 14 and 15?

WOOLAWAY: I'll second that motion.

CHAIRMAN: It has been moved and seconded to adopt Sections 14 and 15.

SAKAKIHARA: I now move that we defer action on Sections 14 and 15 to Wednesday.

CHAIRMAN: Do I hear a second?

HAYES: I second it.

CHAIRMAN: It has been moved and seconded to defer action on Sections 14 and 15 to Wednesday. Debate? Would the committee like to express their sentiments on this question? The motion is to defer both 14 and 15.

SHIMAMURA: The committee defers to the Convention -- to the Committee of the Whole.

CHAIRMAN: All those in favor of the motion to defer action on Sections 14 and 15, please say "aye." Opposed, "no." The ayes have it. Sections 14 and 15 deferred till Wednesday.

BRYAN: I move that we rise, report progress and ask leave to sit again.

SAKAKIHARA: Second it.

CHAIRMAN: It has been moved and seconded to rise and beg leave to sit again. All those in favor of the motion, please say "aye." Opposed. The ayes have it.

JULY 10, 1950 • Morning Session

CHAIRMAN: Will the committee come to session, please. The Chair will now declare a recess of five minutes.

(RECESS)

CHAIRMAN: The last time the Committee of the Whole met to consider the proposals of the Committee on Continuity and Ordinances, it considered Committee Proposal No. 23. At that time most of the sections were deferred, and the Chair at this time would like to state those sections that were adopted. Section 1 was adopted; Section 2 was adopted. Section 4 was adopted with several amendments. All the other sections in Committee Proposal No. 23 were deferred. What is the wish of the chairman of the Committee on Continuity and Ordinances?

SHIMAMURA: If I may suggest, we'd like to start with Section 3, which was deferred.

CHAIRMAN: The Chair recalls that Section 3, before deferral, was amended. In the first line of Section 3, up to the first word "All," the following words were inserted, "provisions of the Hawaiian Organic Act and," so that the first line would read, "All provisions of the Hawaiian Organic Act and the laws of the Territory of Hawaii."

SHIMAMURA: The Chair will recall that some delegates spoke in opposition to the insertion of the amendment. The committee did not insert the Organic Act provision because it was felt that, as one of the delegates stated, that the public lands provisions in the Organic Act may come into question. The enabling act, that is H.R. 49, provides that "all territorial laws" of the Territory of Hawaii are amended by Committee Print C. Originally, the word "territorial" was omitted, and as I was saying, in Committee Print C the word "territorial" was inserted, I believe to distinguish it from any acts of Congress, the Organic Act also being an act of Congress.

CHAIRMAN: I believe Delegate Heen was the movant of the motion to amend. Would you care to say a few words in favor of your amendment?

HEEN: I don't recall that, but it seemed to me that the provisions of the Organic Act should also continue because all matters relating to public lands are found in the Organic Act. Therefore, those provisions should also continue until all this will be changed by the legislature itself, the legislature of the State.

The provision found in the Model Constitution to me is -- seems quite appropriate. "Existing laws. All laws not inconsistent with this constitution shall continue in force until specifically amended or repealed, and all rights, claims, actions, orders, prosecutions, and contracts shall continue except as modified in accordance with the provisions of this constitution." That would, it seems to me, cover everything.

CHAIRMAN: Is there any more discussion?

TAVARES: I take it we are discussing Section 3 now.

CHAIRMAN: That's right.

HEEN: That's correct.

TAVARES: I am sorry to say that as a member of the committee I have been somewhat derelict in that I have not studied the question since it was last considered. I am afraid that it is too broad. I must be frank about it, and yet in fairness to the chairman, I want to say I've given him no help and, therefore, I'm slightly embarrassed about having to admit I'm not prepared to say that that is not too broad.

HEEN: Just to the contrary, I think it's too restrictive instead of too broad.

ANTHONY: At the time this was last discussed, there were a number of proposed amendments and most of the sections, those indicated by the Chair, were deferred. I've just consulted the President and he tells me that this is the last order of business. I know that a number of us have proposed suggestions in regard to this schedule, and we have not, by virtue of our continued session with the legislative article, have not had a chance to perfect them. I am suggesting that it would be the part of wisdom and economy of time if we should take a recess until such time, say for an hour or for the rest of the morning, those amendments could be gotten together. I would therefore move that we rise and report progress and ask leave to sit again, if that's the sense of the body that that time could be --

SAKAKIHARA: I second the motion.

CHAIRMAN: It has been moved and seconded that this committee rise and report progress.

WIRTZ: I wonder if the movant would amend the motion. It's not necessary to report progress. We can take a recess.

ANTHONY: We could, but I didn't know what the wish of the President was. I don't see him on the floor.

CROSSLEY: I might say that if we do recess until say one-thirty or two o'clock, the Committee on Style has a lot of work, and therefore, if we rise, the Committee on Style could be delegated to go out and go to work, too. I think it would be proper to rise, report progress, beg leave to sit again.

CHAIRMAN: The question before the floor is that the committee rise and report progress. Is there any more discussion? All those in favor of the motion, please say "aye." Opposed, "no." Carried.

Afternoon Session

CHAIRMAN: Committee of the Whole will please come to session. When the committee rose this morning, we were considering Section 3. What is the wish of the committee?

SHIMAMURA: I believe that it will be convenient to all if we proceed with the discussion of Section 3. I think Judge Heen had made a point, and Delegate Tavares had made a statement, and if I may be permitted to say a few words now, I'd like to.

CHAIRMAN: Go ahead.

SHIMAMURA: Speaking to Judge Heen's amendment to insert the words, "the Hawaiian Organic Act," I personally have no objection; and as I spoke to Miss Ashford some time ago, I thought that it would be sound to include the Organic Act. But some members of the committee felt that we would be enlarging the continuation of present laws unduely if we include the Organic Act.

SAKAKIHARA: May I ask the chairman of the Committee on Ordinances and Continuity of Law, what effect will Senator Heen's amendment have upon the adoption of the Constitution. It's provided in the same section, fourth line commencing with "mutatis mutandis," all necessary changes to be made, "until they expire by their own limitation." Wouldn't the Organic Act of Hawaii expire by its own limitations when the statehood Constitution is adopted?

SHIMAMURA: I didn't quite get a portion of the delegate from Hawaii's statement, but if I understood the delegate correctly, he is referring to the words, "until they expire by their own limitation." Is that correct? Well, there are certain acts of the legislature now in the Revised Laws of Hawaii which have certain periods of termination.

SAKAKIHARA: Just a minute, Delegate Shimamura. My question is directed to the amendment proposed by Senator Heen, not the provisions of the law as enacted by the legislature. What effect will Senator Heen's amendment have?

SHIMAMURA: As I understand it, the delegate from Hawaii is referring to the insertion of the word "Hawaiian Organic Act." Is that correct?

SAKAKIHARA: That's right. "All provisions of the Hawaiian Organic Act."

SHIMAMURA: As I said a few moments ago and I said previously, the insertion of the words "the Hawaiian Organic Act" was not made in the beginning. Although I personally thought it would be salutary to include that, some of the members did not think so, members of the committee, I mean. Now, by the inclusion of Delegate Heen's amendment, the words "Hawaiian Organic Act," all laws, or rather I should say, all provisions of the Organic Act which are in force on the date of the admission of Hawaii as a state will be continued in full force.

SAKAKIHARA: Won't that be in conflict with the following sentence, "Until they expire by their own limitation"?

SHIMAMURA: That's a good point, frankly, which wasn't raised in the committee. But this expression had particular reference to the laws, exclusive of the Hawaiian Organic Act. At the time this included, and I may say - -

SAKAKIHARA: That was my understanding from the committee.

SHIMAMURA: Pardon me?

SAKAKIHARA: That was my understanding from the committee.

CHAIRMAN: Will you please address the Chair so that we can get that straight.

SAKAKIHARA: That was my understanding from the committee.

SHIMAMURA: Is the gentleman referring to the words "Hawaiian Organic Act," that it was his understanding that those words would not be included? Is that his answer? Is that it?

CHAIRMAN: His question, I believe, was "What effect will the inclusion of the words 'provisions of the Hawaiian Organic Act and' have upon the clause 'until they expire by their own limitations'"?

SHIMAMURA: Well, there is no express limitation in the Hawaiian Organic Act. In other words, it's not like some statutes that have a termination date, if that's the point of the delegate's query. Now, on the other hand, if he means whether by the admission of Hawaii as a state, the Hawaii Organic Act ipso facto ceases to be effective, well, that's something else. But if that is his construction, we will continue it in force under this special provision. I don't know if I'm catching the delegate's exact point here.

CHAIRMAN: Delegate Sakakihara, has he answered your question?

SAKAKIHARA: He has answered my question.

CHAIRMAN: Any more discussion on this amendment?

HEEN: I did not move for any amendment at all to this section. I merely made some observations and a suggestion that perhaps there should be an amendment there so that the provisions of the Organic Act might be continued in force.

CHAIRMAN: I'm sorry. My minutes show that Delegate Heen moved and Delegate Roberts seconded the motion to amend the particular provision we are talking about now. Do you care to withdraw your - -

HEEN: Well, does it contain the language of the amendment offered, Mr. Chairman?

CHAIRMAN: Yes, Delegate Heen. It says, after the word "all" insert the words "provisions of the Hawaiian Organic Act and." That was on July the third, Saturday, I believe.

HEEN: You sure it wasn't July 4?

CHAIRMAN: No, Monday.

HEEN: How would that read then, if I may ask.

CHAIRMAN: In its amended form, Section 3, the first line, will read thus: "All provisions of the Hawaiian Organic Act and laws of the Territory of Hawaii in force at the time of its admission into the Union," et cetera.

HEEN: That's all right. That seems to be adequate and sound.

ASHFORD: May I call to the attention of the Convention that if that amendment is made, two of the provisions adopted this morning in the agriculture article can be deleted; that is, the provisions as to sea fisheries and their condemnation.

CHAIRMAN: Is there any more discussion on this question?

ROBERTS: It seems to me that the language of the section which provides that these things shall remain in force except insofar as they are repugnant to this Constitution; so that in actuality only those sections would remain in existence, unless they are contrary to the provisions of the Constitution, as we adopt it.

ANTHONY: This morning we took a recess designed to afford time to certain members who thought that this could be greatly simplified and present a simplified version of the continuity of laws, including the very question now raised by Judge Heen. It doesn't appear to me that we have given this enough thought to act on it intelligently. I was wondering if the chairman of the committee couldn't proceed with some other sections of this, get those out of the way, and then have a recess long enough to present something to the body, rather than try to do it on the floor, which is most difficult at this time, I believe.

CHAIRMAN: Your point is well taken. Is there any question?

SHIMAMURA: As far as I personally and the other members of the committee are concerned, we're willing and able to proceed with the other sections or this section. We have no difficulty with proceeding, although some other delegates may have.

CHAIRMAN: Well, in the absence of any motion for giving direction to the procedure of this committee, the section that is still before us is Section 3.

SHIMAMURA: I don't like to be talking too much, but I'd like to point out to the delegates at the Convention that this section and many other sections are taken from standard provisions from constitutions of states which were admitted from a territorial status, and those sections have been judicially determined.

CHAIRMAN: Are you ready for the question?

SAKAKIHARA: Will the Chair kindly restate the question.

CHAIRMAN: The question is the amendment to Section 3, which amendment will amend by inserting after the word "all" the words "provisions of the Hawaiian Organic Act and."

SAKAKIHARA: I'm against the amendment.

MIZUHA: I would like to ask the movant of the amendment a question. It seems to me the Hawaiian Organic Act is a Congressional law, a federal law, and we're not interested in that law. When we become a state, we have our own Constitution. The section as written at the present time refers to the statutory law of the Territory of Hawaii which will be enforced. I think that amendment is unnecessary because it is not a law of the Territory of Hawaii, but a law of the Congress of the United States.

ANTHONY: Beyond that, the Organic Act provides for the appointment of the governor by the President, the appointment of our judges. I do sincerely believe that we're acting too hastily on this and at this time I'll move to defer this section until the end of the calendar before this committee.

SAKAKIHARA: I second the motion to defer.

CHAIRMAN: It has been moved and seconded that we defer this, the consideration of Section 3, to the end of the calendar. Is there any discussion?

SHIMAMURA: May I just briefly point out that what the last speaker said is quite true, but those provisions that are repugnant to the Constitution, of course, are not being carried forth. Wherever there is an appointment of the governor or any other tenure of office or any other method of selection of any of the officers, of course they would not be carried forth. There are definite advantages for inclusion of the Hawaiian Organic Act and some disadvantages, and that problem has to be recognized by the Convention and the Convention act accordingly. As far as I personally was concerned, I felt there were certain advantages in the inclusion but I also saw certain disadvantages, therefore did not press the point of inclusion of the Hawaiian Organic Act under this section.

CHAIRMAN: Ready for the question? The motion is to defer Section 3 to the end of the calendar. All those in favor of the motion, please say "aye." Opposed. Carried. Section 3 is deferred till the end of the calendar.

WHITE: I wasn't here the other day. Could you as a matter of information, let me know what the status of Section 4 is?

CHAIRMAN: Section 4 has been adopted in this amended form. It will read "All debts, fines, penalties, forfeitures, claims, and escheats which have accrued, or may hereafter accrue to the Territory of Hawaii, or any of its political subdivisions, shall inure to the State of Hawaii, or such political subdivision, as the case may be."

WHITE: No provision is made in that as recommended in the -- by the Committee of the Whole, the addition to assume or to approve all of the acts of the legislature with regard to bond issues and so forth.

CHAIRMAN: Will the chairman of the committee attempt an answer?

SAKAKIHARA: Section 6 of the proposal takes care of that.

SHIMAMURA: If I understood the gentleman correctly, he was referring to the issuance of bonds, revenue bonds. Is that it? Territorial bonds for the raising of revenues?

WHITE: No, to approve all the acts of the legislature on bonds that had been issued, that had been authorized but not issued.

SHIMAMURA: That would be carried partly in the continuance of all laws of the Territory. Also we have a short clause later on in an amendment form, which is being prepared by the clerks, which provides for the signature by the governor of all acts requring the signature of the President and/or the Congress of the United States. I think that's what Mr. White has reference to.

CHAIRMAN: Delegate Ashford.

ASHFORD: Would you wait just a moment, Mr. Chairman, while I confer with the chairman of the committee?

CHAIRMAN: Anybody else like to do some talking?

ASHFORD: The section to which Delegate White has referred was recommended by the Committee of the Whole to be included in the article on ordinances and continuity of laws, but that was adopted after our first report was filed, and I think the committee felt that that should -- could be inserted as an amendment.

CHAIRMAN: Point of information from the Chair. Amendment to what section, Delegate Ashford?

SHIMAMURA: It's carried in the new amendment which is being printed by the printing department. Oh, we haven't come to that section yet. It's the latter section, toward the end.

CHAIRMAN: Section 5. What is the desire of the Committee as regard Section 5?

ANTHONY: When I made my motion, I didn't intend to make it as restrictive as it was ultimately put and carried. The purpose of our recess this morning was to enable those of us who had a little different view on this to have a little time to get them together and get them before the body. That entire time that was thus supported by vote of the committee had to be taken up by the Committee on Style. That was all right, but the purpose of our adjournment -- our recess this morning was just that. I think it would be in order if we deferred these Sections 5 to 15 inclusive until the end of the calendar.

CHAIRMAN: The point is well taken. I believe on July third, when the Committee of the Whole sat to consider this whole proposal, that was the same opinion of the Committee of the Whole. They deferred most of these sections in the proposal for the reason that the members would have sufficient time to work over them. Then the question also came up as to whether Section 8, 9, 10, 11 should be telescoped. And I think this Committee of the Whole probably should take a sense vote on that, as to whether it desires to have it telescoped, so that this draft, whoever works on it, can follow the directions of the Committee of the Whole.

SHIMAMURA: May I state that if the delegates who wish to do some research in this matter would look at the constitutions of Arizona, Nevada, New Mexico, and Oklahoma, no, Wyoming, they'd find that these sections are incorporated in their constitutions in practically identical form, and in some cases in similar or identical language.

WOOLAWAY: Is there a motion before the house to defer right now?

CHAIRMAN: No, I don't believe so.

TAVARES: I thought Mr. Anthony made the motion.

CHAIRMAN: Delegate Anthony, what was your motion?

ANTHONY: My motion was to defer the remainder -- the remaining sections until the end of the calendar.

CHAIRMAN: All of the remaining sections of the same proposal?

TAVARES: I'll second that motion. In so doing, I don't want to be obstructive, but I feel this way. Regardless of whether we adopt or don't adopt the sections remaining in the form which they are now in substantially, I am not satisfied and have gone over my notes and covered all the other things that ought to be covered in the ordinances and continuity of laws. My own feeling is we ought to put them all together in one big article, so that we can dovetail them all together rather than do it piecemeal. There are a few things, as the chairman has said already, and I think there are others we have not yet worked out; and since this is the last clean-up provision anyway, I think we'll save time in the long run if we try to get together now all of these things that the ordinances and continuity of laws are supposed to do and put them all together, dovetail them and submit it to this committee for one last look, and make it final at that time. Otherwise, I think we'll be reconsidering some of them in the light of new provisions that we may insert.

CHAIRMAN: Delegate Tavares, when you say "we," who are you referring to, the Committee on Ordinances and Continuity?

TAVARES: I think the whole Convention as well as this Committee of the Whole. In other words, suppose we have to draw something else about what's to happen when this -- when we first became a state. Well, for instance, Delegate Shimamura's statement about who's to sign these bonds which the present law requires to be signed by the President and so forth. Various other things. We may find ourselves going back to amend other sections of this ordinance article to conform and I think if we wait a little later, we'll actually be making haste, more haste that way than reconsidering and rehashing the same things over again, some of them.

CHAIRMAN: As a matter of information, Delegate Anthony, your motion doesn't go to Committee Proposal No. 25, does it? And to Committee Proposal No. 24 from the same committee? Then we can continue our consideration on those and defer this.

ANTHONY: That's my suggestion -- my motion.

CHAIRMAN: The motion is to defer the rest of the sections in Article 23 -- Committee Proposal 23, rather. Any more discussion? All those in favor of the motion to defer please say "aye." Opposed, "no." Carried.

The Chair's in doubt as to whether this Committee of the Whole sitting here now can consider Committee Proposal No. 24. I believe the person who made the motion to resolve ourselves into Committee of the Whole was Delegate Kam. You just stated, "I so move." Did your motion include Committee Proposal No. 24, and No. 25?

KAM: Sure, Mr. Chairman.

CHAIRMAN: It did?

KAM: Yes.

CHAIRMAN: Also Committee Reports 73 and 70? Is there any objection? Chairman Shimamura, what is the wish of the committee as to the order of consideration of Committee Proposals 25 and 24?

SHIMAMURA: Pardon me, Mr. Chairman. I'm sorry, I didn't hear you.

CHAIRMAN: Which would you like to consider first, Committee Proposal 24 or 25?

SHIMAMURA: Well, let's go to 25. I think that's practically all from H.R. 49, and perhaps we can find some area of agreement on this proposal.

CHAIRMAN: We are now considering Standing Committee Report No. 73 and Committee Proposal No. 25.

BRYAN: I move the adoption of Committee Proposal No. 25.

WOOLAWAY: I'll second the motion.

CHAIRMAN: The entire proposal?

SHIMAMURA: May I ask leave to amend Committee Proposal No. 25. First, the title, after the words "A proposal relating to," strike out "an," a-n, insert the words "the initial"; strike out "ordinance," insert "in the state"; so that it shall read "relating to the initial election in the state."

Also, while on my feet, to conform to the title of the article, the following amendment. Insert the word "initial" before "election," the word "election" following the word "article." Strike out the word "ordinance." The reason for that is that Committee Print C as amended in the Committee on Interior and Insular Affairs of the Senate has deleted the word "ordinances" or the word "ordinance" whenever it appears, except in very limited form.

CHAIRMAN: Delegate Bryan, would you withdraw your motion for the sake of order here? Withdraw your motion? You moved to adopt the whole Committee Proposal No. 25, didn't you?

BRYAN: That's right. You want to take it by sections?

CHAIRMAN: Yes.

BRYAN: All right. I'll move the adoption of Section 1 of Committee Proposal No. 25.

CHAIRMAN: Just a second. We have Shimamura's motion on the floor.

DELEGATE: I think his original motion was correct.

CHAIRMAN: Whose original motion?

DELEGATE: Mr. Bryan's.

CHAIRMAN: Oh, yes, that's right.

BRYAN: Let's vote on the amendment suggested, and then I'll go on.

CHAIRMAN: It has been moved and seconded that, first, that the committee adopt Committee Proposal No. 25, and subsequently Delegate Shimamura moved to amend the title to read "Relating to the Initial Election in the State." Also, the words after "article" read "initial election," and cross out the word "ordinances." Is there any second to the motion?

BRYAN: I second the motion.

CHAIRMAN: It has been moved and seconded. Is there any more discussion?

SAKAKIHARA: If it's appropriate at this time, I would like to move to defer action on Proposal No. 25, Committee Proposal No. 24, Committee Proposal No. 23, to be taken up together so that we might make faster progress here. We might go over the proposal, Committee Proposal No. 25, section by section, and perhaps we might find ourselves in the same predicament we find ourselves in now with Proposal No. 23. I desire to move at this time that instead of making amendments at this time to different sections we'll take up Proposals 23, 24, 25 in a recess, and I think we'll make faster progress.

OKINO: I second that motion.

CHAIRMAN: It has been moved and seconded that we defer action on Committee Proposals No. 23, 24 and 25. Is there any discussion?

PORTEUS: I might inform the body that I discussed this matter with the chairman of the Committee on Style, and if this plan is followed, he will not hold a meeting of Style this afternoon in order to let those that wish to get together with the Committee on Ordinances and Continuity of Laws in order to work this out. And that he'll call a meeting of the Style Committee tonight at 7:30. That would leave the rest of the afternoon open. The difficulty is that if we keep considering these other matters, at the end of the afternoon we will still not have found the time to permit these people to work on this thing together. So I think it would be desirable to rise, report progress and ask leave to sit again.

CHAIRMAN: Point well taken. Now, is there any more discussion on the question to defer?

H. RICE: I'm wondering if Delegate Sakakihara can tell us where in Section - - in Proposal No. 25 we'd get stuck again?

SAKAKIHARA: My motion is in general terms, as we have deliberated on Proposal No. 23. I have a strong feeling that among the delegates present here in Committee of the Whole, they are bound to bring that question up. I think it might expedite the proceedings here if we would defer action on these three proposals and deliberate as a separate body and make for faster progress. It would also help the Style Committee, going into a meeting.

SHIMAMURA: This matter is entirely up to this body, but I don't think we'll make much faster progress by continuing all these proposals. Proposal No. 25 is taken almost word for word from H.R. 49 with necessary changes, and - -

H. RICE: That's my idea. I've worked on H.R. 49. That's my homework to keep in touch with that. It seems to me Proposal No. 25 is all in order. It's simply a matter of going through and reading it and understanding it.

PORTEUS: I don't think there's any question but that we are all agreed that we want to get at this and get it disposed of as fast as possible. The only thing is that it's now quarter past two. If we work for two more hours on these other matters, you won't have had any conferences on the earlier proposal on which there seems to be some difference of opinion. If we stop now, if there's any time left over they can go into these other subjects. I think we'll make time faster by taking time off to do it.

CHAIRMAN: Are you ready for the question? All those in favor of the motion to defer action for consideration of Committee Proposals No. 25, 24 and 23, please say "aye." Opposed, "no." Carried.

BRYAN: I move that this Committee of the Whole rise, report progress and ask leave to sit again.

SAKAKIHARA: I second the motion.

CHAIRMAN: It has been moved and seconded that this committee rise, report progress and beg leave to sit again. All those in favor of the motion, please say "aye." Opposed, "no." Carried.

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CHAIRMAN: Will the Committee of the Whole please come to order. Delegate Shimamura, what is the wish of the Committee on Continuity and Ordinances insofar as order of procedure goes?

SHIMAMURA: If I may suggest, it might be preferable to take up Committee Proposal No. 25. I think that's least controversial.

CHAIRMAN: If there is no objection then, we'll proceed with consideration of Committee Proposal No. 25 and Standing Committee Report No. 73.

BRYAN: Again I move the adoption of Committee Proposal No. 25.

CHAIRMAN: I believe the motion was made yesterday and seconded, was it not? Then the Chair rules it's not necessary today.

SHIMAMURA: Has there been a second to that motion?

CHAIRMAN: The motion was made yesterday and seconded; therefore, the motion is still before the committee.

SHIMAMURA: Was my motion to amend the titles voted upon yesterday?

CHAIRMAN: No, the motion was made but not voted on.

SHIMAMURA: The change in the titles, as the delegates know, is to conform to H.R. 49 which has done away with reference to ordinances except in two particulars which do not pertain to the present section.

CHAIRMAN: Is there any more discussion on the amendments on the title of the article? Are you ready for the question? The amendment reads, after the word "a proposal," after amended it will read "Relating to the initial election in the state"; and after the word "article" it was

moved to amend to read "initial election" and the word "ordinance" was deleted. All those in favor of the motion to amend, please signify by raising your right, rather, by saying "aye." Opposed, "no." Motion is carried.

SHIMAMURA: May I point out for the convenience of the delegates, so that they may follow this article more easily, that the substance of it is taken from H.R. 49, Committee Print C, Sections 4 and 5.

I move in Section 1 to delete the word "that," the first word of the section, and capitalize "in" on the first line; also to strike out the word "President" on the second line, and insert the word "Congress"; the fifth line, after the word "President," insert the words, "of the United States."

HEEN: Mr. Chairman.

CHAIRMAN: Just one second. Is there any more amendment you - -

SHIMAMURA: Yes, Mr. Chairman. If I may make these because these are in compliance with H.R. 49. On the eighth line - -

HEEN: What was the last amendment?

SHIMAMURA: The last one, Judge Heen, was the insertion of the words "of the United States" on the fifth line, Section 1, after the word "President."

CHAIRMAN: Could you proceed a little slower. Probably some of the delegates have difficulty following.

SHIMAMURA: On the eighth line, Section 1, first page, delete the words starting with "except those officers for which" down to the second line on page two, "temporary provisions." And also on the fifth and sixth lines on page two, Section 1, on the fifth line after the word "required," delete the words "by ordinance of this Convention" and down to the sixth line, "duly ratified by the people or." Those amendments, as I've said, are to comply with the amended form of H.R. 49.

CHAIRMAN: Do I hear a second to the amendments made to Section 1?

H. RICE: I second the amendment.

CHAIRMAN: It has been moved and seconded that Section 1 be amended as stated by Delegate Shimamura.

TAVARES: I'm sorry I haven't discussed this with Mr. Shimamura since yesterday, but I was wondering if he would answer a question as to whether we couldn't leave the mention of the President of the United States in and instead of changing it to Congress, make an alternative, so that wherever we mention "President of the United States," we could add something like this, "or the Congress of the United States, if its approval is required," or some word like that, so that whichever way it comes out in conference, we'd fit either one without having to call another Convention.

SHIMAMURA: I think that's a good suggestion. I have no objection. I think it's a good suggestion.

CHAIRMAN: Could you make the suggestion in the amendment?

TAVARES: Then, I move an amendment of the amendment, so that in the second line instead of changing the word "President" to "Congress," it would remain "President," and then the third line after the word "States" meaning United States, insert a comma, "or the Congress of the United States, if its approval is required," comma.

CHAIRMAN: Could you please read that over again?

TAVARES: Well, with the amendment it would read this way. "In case the people of the Territory of Hawaii ratify this Constitution and the President of the United States, or the Congress of the United States, if its approval is required, approves the same, the governor of the Territory of Hawaii shall" and so forth.

CHAIRMAN: I believe the present suggested amendment is acceptable to the movant of the previous amendment.

SHIMAMURA: It's quite acceptable. In that connection, may I point out then that from the - - on the fifth line, the suggested amendment I made "of the United States" after the word "President" should go out, then.

TAVARES: Yes, I was going to suggest in lieu of that, insert after the word "President" a comma "or from the Congress, if its approval is required" comma.

SHIMAMURA: On that, may I respectfully suggest that H.R. 49 in all its forms has "President." In other words, that's the certification of the President.

TAVARES: That's only the President that has to certify?

SHIMAMURA: Yes.

TAVARES: Well, then, I'll withdraw my amendment as to that.

H. RICE: Then, I take it, Mr. Tavares feels that it may be changed again in conference. Otherwise, we are, by the original, the way it stood originally, you are following H.R. 49.

SHIMAMURA: Yes, but I have been led to believe that there is some hope that if our Constitution is received by the members of Congress and the Senate before the final vote, there is a chance of changing back to presidential approval because then they'll know what we are going to offer as a constitution. That was - - that's my impression that I get from talking to people who have communicated with members of the Congress.

H. RICE: Well, I hope that that won't occur because it's easy enough to have the statehood bill then die in conference.

CHAIRMAN: Is there any more discussion on the amendments? Are you ready for the question?

A. TRASK: The last remark from Delegate Rice is quite quizzical. I wish he would explain that further. Maybe it would assist further in the drafting of this particular Section 1.

H. RICE: Well, as I say, this H.R. 49 has been my night reading. I would hate to see this H.R. 49. I think we ought to go along with it the way the Senate has finally drafted it. If we do that, I think they'll be more liable to accept it right pronto. But if we leave that part in doubt and make either the President or Congress could endorse our Constitution, why I can see that the House, Congressional House, may not agree with the amendment made by the Senate and put the bill in conference and then let it die in conference.

TAVARES: This amendment will not have any of those results. It'll only prevent, for that purpose, another Convention being called, because in case it should be changed and we have Congress' approval in here, we will have to wait till Congress meets again and approves before we can become a state; whereas, if it should be changed back to the President approving, our Constitution fits either one. So I think it's an advantage to have both. That doesn't mean that Congress has to act that way. It means we're covering both possibilities and trying to avoid a further amendment of our proposed Constitution before we can become a state, depending on which way the Congress finally acts.

CHAIRMAN: The amendment proposed is as follows: the first word "that" is deleted; the word, first letter of the word "in" is capitalized; and on the third line after

the word "States," a comma is inserted and the following words added, "or the Congress of the United States, if its approval is required," comma. And in the fifth line after the word "President," the words "of the United States" are inserted.

SHIMAMURA: Pardon me, Mr. Chairman. I did make that insertion at first, but I've withdrawn it since. The words "of the United States" should be withdrawn because on the second line the President of the United States is named.

CHAIRMAN: Then there is no amendment on the fifth line. In the eighth line, beginning with the word "except," the words following are deleted "except those officers for which"; and on the next page, "this Constitutional Convention, by ordinance duly ratified by the people, shall have made other temporary provisions," comma, they are all deleted.

ROBERTS: I'm generally in favor of the amendment proposed by Delegate Tavares. I do have some problem, however, as a matter of policy. If we put this language in—and it's desirable in line with H.R. 49 in its present state—suppose H.R. 49 is not acted on by this Congress. When we submit this Constitution at the next legislature of the United States we are in fact suggesting or implying that we think we ought to have approval by the Congress before this thing is put into effect. I think the amendment in H.R. 49 is highly undesirable. I don't see why we as a state have to go to Congress for approval when no other state coming in has had to do so. It's been acted on by the President. I do feel, however, we could get some general language, and broad, which would conform or indicate conformance to H.R. 49 in its present state in this session, but would not bind us in the future because the implication of this thing is that we have no objection to the Congress of the United States reviewing the Constitution. I think it's objectionable.

SHIMAMURA: I see the last speaker's point. However, there isn't anything that we can do except to comply with H.R. 49 which makes it mandatory to include these provisions, and the provision as amended says "Congress of the United States"; they have deleted "President," but we are leaving "President" in to take care of the situation which might arise necessitating only his approval.

TAVARES: I am gravely in doubt as to whether the next to the last speaker's statement is correct. I am very definitely of the impression that some states have been admitted under laws that did require the approval of Congress. That's my very definite recollection from previous study, and I think he is mistaken there. There are some statehood laws that have said Congress must approve; others have said only the President; so that I don't think it's correct that every state has been admitted only on presidential approval.

CHAIRMAN: Is there any more discussion?

ROBERTS: I have a suggestion which might meet that. I might say in reply to the previous speaker that I don't know of any states that have had to go and get their Constitution approved by the Congress. I would amend the second part, "or the Congress of the United States, if its approval is required under H.R. 49," so that if H.R. 49 is not passed in this session, then we do not suggest or imply to the Congress that we want to submit our Constitution to them for their approval. This election ordinance stays in our Constitution whether H.R. 49 passes or not. And if it should -- we should get no action on H.R. 49 in this session, we are, in fact, implying that we have no objection to the Congress reviewing our Constitution. I do.

TAVARES: Is the speaker finished?

CHAIRMAN: Are you through?

ROBERTS: Yes.

TAVARES: I think we are being -- we are acting detrimentally to the interests of Hawaii if we don't cover those possibilities. Anybody that thinks after this thing having been inserted in this bill, that the next Congress isn't going to notice it, is being naive, that's all. The same people that wanted that in the Senate bill today are going to want it in the next bill, and we're just closing our eyes if we think they are just going to overlook it the next time. I think we should cover both possibilities because otherwise if Congress still insists, then we'll have to call another convention to amend this before we can accept statehood.

HEEN: I have this suggestion to make. Have that clause read this way: "In case the people of the Territory of Hawaii ratify this Constitution and the same is approved by the duly constituted authority of the United States."

DELEGATE: [Inaudible.]

CHAIRMAN: Could you please use your mike?

HEEN: "In case the people of the Territory of Hawaii ratify this Constitution and the same is approved by the duly constituted authority of the United States."

ROBERTS: I'll second that if it's made in the form of a motion.

HEEN: I so move.

ROBERTS: Second.

CHAIRMAN: Is that amendment acceptable to the movant of the original amendment? If not, we'll have to decide on that first.

SHIMAMURA: I'm wondering if the Judge would -- Judge Heen would yield to a question? As I read Section 5, Committee Print C, it makes the provision of that section mandatory in language. I'm wondering if it's wise, as a matter of policy and also as a matter of law, to leave all reference to Congress out when it says that "said Constitutional Convention shall provide that in case of the ratification of said Constitution by the people and in the case the Congress approves the same," and so forth.

HEEN: I don't think it's inconsistent with that provision. If they should change it back to the President, this will conform, the language which I have just suggested.

TAVARES: May I ask --

CHAIRMAN: Are you through, Delegate Heen?

TAVARES: May I ask the delegate a question? At the expense of a few more words, couldn't we make that a little clearer by adding after the amendment suggested by the delegate, the words "whose approval thereto may be required"? So that it will read "and the same is approved by the duly constituted authority of the United States whose approval thereto may be required." That takes away the mandatory requirement that Delegate Shimamura expressed some concern about.

HEEN: I think that further amendment is in order.

TAVARES: I'll withdraw my amendment, if the second will consent to it.

ROBERTS: I'll accept that amendment.

TAVARES: I mean I withdraw my first amendment.

CHAIRMAN: And could you repeat your last amendment so we'll get the records cleared?

TAVARES: The last amendment is, instead of inserting after the word "States," in the third line the amendment which I first moved, insert the amendments that Delegate Heen has moved with my further addendum, reading as follows, "and the same is approved by the duly constituted

authority of the United States whose approval thereto may be required," comma.

CHAIRMAN: There are some delegates that are requesting that it be read again.

TAVARES: I should have deleted some further words. As I understand it, instead of the words from lines two and three, "and the President of the United States" should be deleted, and insert in lieu thereof the words, "and the same is approved by the duly constituted authority of the United States whose approval thereto may be required," comma, and delete the words "approves the same" in the same line, line three.

SHIMAMURA: That is acceptable to the committee.

CHAIRMAN: The Chair would like to reread the present amendment offered. In the second line, after the word "and," delete the words "the President of the United States approves the same," to the third line, including the comma; and inserting in lieu thereof the words, "the same is approved by the duly constituted authority of the United States, whose approval thereto may be required," comma. Is that correct, Delegate Tavares?

TAVARES: That is correct.

FUKUSHIMA: Then there should be the words "of the United States" following the word "President" in the fifth line.

SHIMAMURA: That is right.

CHAIRMAN: Are there any more amendments? The Chair would - -

ARASHIRO: If the above is amended as such, then I think we should continue and go down below where it says, "The Territory of Hawaii shall, within 30 days after receipt of such notification," insert a "such" before "notification," and delete "from the President," and then amend "certifying" by saying "certification of approval."

CHAIRMAN: Did the chairman of the committee hear the - -

SHIMAMURA: Yes, I did. I see the delegate's intention, but I think it's fully covered here because it says "within 30 days after receipt of notification from the President, certifying such approval," and H.R. 49 has not changed the fact that the President is the one to certify such approval, never Congress. Therefore, the notification portion remains the same.

ROBERTS: I think the words "certify such" or "certifying such approval" should be deleted, because in H.R. 49 the certification is the certification of action by the Congress, and since we've written this general language, I think certification has no meaning. I think that the amendment as proposed by Delegate Arashiro on the fourth line which reads "after receipt of such notification from the President"—that's notification of the approval above—"issue his proclamation," you can delete the words "certifying such approval."

H. RICE: Second the motion to strike out those three words.

CHAIRMAN: Is it acceptable to the committee?

SHIMAMURA: No.

CHAIRMAN: Just a second, let's get this straight. Delegate Shimamura.

SHIMAMURA: Under H.R. 49, on the mimeographed copy, page 19, it does say that, "It shall be the duty of the President to certify such approval." Whether the Congress makes the approval, or to put it differently, whether the Congress approves or the President approves, it is incumbent upon the President to certify to such approval. Therefore, I think it's correct as it is.

HEEN: I have this suggestion to make. Starting with the clause "within 30 days after receipt of notification," have that clause read as follows, "within 30 days after receipt of official notice of such approval" period - - comma, rather.

TAVARES: I second the motion.

HEEN: My point is this. By using this general language, it may come from the Chief Clerk of the Senate or the House, or it may come from the President, or it may come from some other source; as long as it's official, that's all we need to worry about.

SHIMAMURA: We have no particular objection as to that. Only thing is, the word - - language of the enabling act on page 20 is "within 30 days after the receipt of said notification from the President."

CHAIRMAN: You have no objection to that, is that correct? Is it acceptable? Delegate Heen, could you please repeat the amendment again?

HEEN: Have that clause read as follows, "within 30 days after receipt of official notice of such approval," comma.

TAVARES: I think to make it clearer, we should delete the words in lines four to five, "notification from the President," with the addition "of the United States" which was previously moved deleted also, "certifying," and then we would only need to insert the words in lieu thereof, "official notice of." In other words, delete the words "notification from the President certifying," and any other amendments heretofore offered to that clause, and insert in lieu thereof the words "official notice of."

SHIMAMURA: That is correct.

CHAIRMAN: Is that suggested amendment acceptable to Delegate Roberts? I believe it conforms with the motion he made.

ROBERTS: Yes, it is; if it deletes the word "certifying." It does.

ASHFORD: Why use the word "notice"? "Notification" is used throughout in H.R. 49, and if they are the same, why don't we follow the language of the Congressional bill? "Notification" instead of "notice."

HEEN: That's satisfactory so far as I'm concerned.

CHAIRMAN: Thank you, Delegate Heen. Is there any objection to it so far as seconds are concerned?

SHIMAMURA: When the Chair is ready, may we have that read, as amended in final form?

CHAIRMAN: Yes. The amendments, so far, are as follows. In the first line, the first word "that" has been deleted, and the first letter of the word "in" has been capitalized. In the second line, the following words have been deleted, "President of the United" and in the third line, "States approves the same" have been deleted. In the fourth line, the word "official" has been inserted between the words "of" and "notification," and the word "of" has been inserted after the word "notification," and the words "from the" have been deleted. In the fifth line, the words "President certifying" have been deleted. In the eighth line, the words "except those officers for which " have been deleted. On the following page, in the first line, the entire line ["this Constitutional Convention, by ordinance duly ratified by the"] has been deleted and in the second line the words, "people, shall have made other temporary provisions," have been deleted. In the fifth line, the words

"by ordinance of this Convention" have been deleted. In the sixth line, the words "duly ratified by the people or" were deleted.

TAVARES: I think you inadvertently omitted an insertion after the word "Constitution" in the second line, or rather "and." After the word "Constitution" in the second line there was an insertion reading, "the same is approved by the duly constituted authority of the United States whose approval thereto may be required." The first line - -

CHAIRMAN: Oh, yes, that's right.

TAVARES: - - second line, first page - -

CHAIRMAN: That's right.

TAVARES: - - after the word "and."

CHAIRMAN: The Chair stands corrected.

TAVARES: May someone now read the entire amended section as proposed to be amended?

HEEN:

Section 1: In case the people of the Territory of Hawaii ratify this Constitution and the same is approved by the duly constituted authority of the United States whose approval thereto may be required, the governor of the Territory of Hawaii shall, within thirty days after receipt of official notification of such approval, issue his proclamation for an election, or primary and general elections, as may be required, at which officers for all elective offices provided for by this Constitution, and laws of this State, shall be chosen by the people; but the officers so to be elected shall in any event include two senators and two representatives in Congress, and unless and until otherwise required by this Constitution or laws of this State, said representatives shall be elected at large.

NIELSEN: I'd like to make a further amendment in the last line after the second word, "State," insert "one of" and then read on, "said representatives shall be elected from," and add the following, deleting "at large," "from Oahu and the other from any other island." I so move.

DELEGATE: Second the motion.

NIELSEN: Is that acceptable to the Chairman?

SHIMAMURA: May I have that repeated, please?

NIELSEN: The last sentence in the last line, after the word "State," drop the comma and add "one of"; and then following the word "elected," the last - - the third from the last word, delete the words "at large," and insert "from Oahu and the other from any other island."

CHAIRMAN: The amendment has been moved and seconded.

TAVARES: These two amendments are so very different. One is non-controversial, the other one is.

CHAIRMAN: That's right.

TAVARES: I suggest that the movants withhold the motion until we vote on the clean-up amendments, which these first ones are, and then go on to the controversial one.

NIELSEN: That's entirely satisfactory, but I thought they were going to maybe approve this paragraph.

CHAIRMAN: I think that's fair enough.

ROBERTS: I have one question to direct to the chairman of the Committee on Ordinances and Continuity. In the sixth line, reference is made to "election, or primary and general elections, as may be required." I'm not quite sure I know what the import of those words are. Is it the intent that there shall be special elections, or primary and general elections, at the wish of the governor?

SHIMAMURA: Yes, I think it's incumbent upon the governor to proclaim in his proclamation whether there shall be just one election, or a primary and a general election, and this follows the language and sense of H.R. 49.

ROBERTS: I'm still not quite clear. There's no mandate in H.R. 49 which requires any special types of elections. I would assume, in line with our previous policy of elections in the state - - territory that there would be primary and generals. I didn't know that it was the intent to provide that the governor of the future State can be elected at a special election, without any provision for a primary.

SHIMAMURA: There's a definite provision in Section 5, Print C, page 21 on the official copy, the fifth and sixth lines of Section 5, page 21 on the official copy. On the mimeographed copy, it's on Section 5, page 21, the fifth and sixth lines there also.

CHAIRMAN: Thirteenth line.

ROBERTS: I'm not quite sure what they mean. That's the point.

SHIMAMURA: Well, I think—as I said a few moments ago, I could be mistaken—but I think that's discretionary with the governor, whether he shall call just one election or a primary and a general.

CHAIRMAN: Is there any more discussion on this question?

ROBERTS: What are the words "as may be required"? As may be required by what? By our statutes? I'm not sure of the meaning of that language and I think that in dealing with the election of the new officers of the state, that we ought to have a pretty good idea as to how they are going to be handled.

CHAIRMAN: Delegate Shimamura, the question has been directed to the committee.

SHIMAMURA: I think that's a good question. I had so far construed it to mean as may be required by the governor in his proclamation. I could be mistaken as to that. It is true that there is some uncertainty there, what exactly is meant by the language, whether it's meant by some requirement under our state laws or as required by the governor in his proclamation.

ROBERTS: In view of the statement, I would suggest that we be specific. I'm sure it was not the intention of the Congress in its statute, proposed statute - - bill, to tell us how to run our elections. I think we can indicate pretty definitely in our ordinance as to how we think they ought to be held, whether by primary and general, or by a special election, and I think we can write it in so there is no ambiguity. That would not be in contravention to H.R. 49.

SHIMAMURA: I think that's a good suggestion.

HEEN: There is a provision which the same committee will present to this committee later on reading thus: "All laws in force at the time this Constitution takes effect and not inconsistent therewith, shall be the laws of the State and remain in force, mutatis mutandis, until they expire by their own limitation, or are altered or repealed by the legislature." In other words, all the election laws will continue in force; and, therefore, those laws will be applicable at the time the elections are held, or rather this special election is held. Perhaps instead of having the clause read "as may be required," it might read "in accordance with law" —"for any election, or primary and general elections, in accordance with law." It fits the situation.

CHAIRMAN: Delegate Roberts, how does that suggestion meet your problem?

ROBERTS: I have the general problem that we have never in the territory before elected any governor or lieutenant

governor, and we have no laws dealing with those. We might put some language in here that the laws applicable to general elections shall also be applicable to the election of the governor and lieutenant governor. But we've got to make some provision in some way to handle it, because this will leave it completely in the hands of the governor to decide how he wants the election to be run.

CHAIRMAN: Delegate Shimamura, do you have a suggestion?

SHIMAMURA: I don't think there's anything applicable in our article on suffrage and elections. As I recall that article, it was just the general election that is provided for. Am I correct on that? I should like to be enlightened on it.

[Part of the debate was not recorded. The following is from the minutes of the committee.]

Mr. Tavares suggested, since there was doubt on the subject, that there be a short recess.

Mr. Bryan stated that it was his understanding that the chairman of the Committee on Executive Powers and Functions had been asked to write a statute covering the special election to be held for this purpose.

Mr. Shimamura stated that Committee Proposal No. 25 was the article to take care of the initial election.

The Chair declared a short recess.

(RECESS)

[Recording resumed.]

CHAIRMAN: It appears that the group that has been working on this problem has as yet not been able to come to some agreement. Therefore the Chair would like to suggest that we defer the consideration of Committee Proposal No. 25 until some time later in the day, and consider Committee Proposal No. 24.

PORTEUS: I move that the recommendation of the chairman be adopted, which would take us to Committee Proposal No. 24.

BRYAN: Second that motion.

CHAIRMAN: It has been moved and seconded that we defer consideration on Committee Proposal No. 25 and consider Committee Proposal No. 24. Any discussion? All those in favor of the motion, please say "aye." Opposed, same sign - - "no," rather. Motion is carried.

BRYAN: I move the adoption of Section 1 of Committee Proposal No. 24.

DOWSON: I second the motion.

CHAIRMAN: It has been moved and seconded that Section 1 of Committee Proposal No. 24 be adopted. Is there any discussion? Does the chairman of the Committee on Ordinances and Continuity wish to say anything on the section?

TAVARES: Isn't that covered now by another section on suffrage and elections? I think it is. Just a minute.

SHIMAMURA: No. I should like to propose a couple of amendments to comply with the latest draft of H.R. 49, which is Committee Print C. Delete the word "Ordinances" and the following words after the word "Article," "Be it ordained by the people of Hawaii." That is done in compliance with H.R. 49 which has deleted reference to ordinances with respect to these particular provisions.

CHAIRMAN: How would the amendment read, Delegate Shimamura?

SHIMAMURA: After the word "Article" in the center of the page, delete the word Ordinances" and also the words, "Be it ordained by the people of Hawaii."

H. RICE: Second the motion.

CHAIRMAN: It has been moved and seconded that the - -

LUIZ: I would like to ask a question here. It doesn't state who will say that the party or the organization is subversive. Who will be the judge of that?

CHAIRMAN: Delegate Luiz, could you please hold your question off for a few minutes until we've disposed of this proposed amendment? Delegate Shimamura, your amendment goes to the title below the word "Article." Is that correct?

SHIMAMURA: Yes, for the time being.

CHAIRMAN: And your motion is to delete the words "Ordinances" and "Be it ordained by the people of Hawaii." Is that correct?

SHIMAMURA: That's right.

CHAIRMAN: It has been moved and seconded to amend the title of Committee Proposal No. 24. Ready for the question? All those in favor please say "aye." Opposed, "no." Carried. Amended.

SHIMAMURA: I now move to delete the word "that" on the first line of Section 1 and to capitalize the next word, "No"; and to insert after the word "who" on the first line, Section 1, "aids or"–"a-i-d-s or." In other words, it will read, "or who aids or belongs." I move for that amendment.

DELEGATE: Second.

TAVARES: I have grave doubt that the word "aids" by itself is unconstitutional [sic] I think it should be preceded by the word "knowingly." I think that is the way it has been interpreted in the recent communist trials, that it must be something done with knowledge, because sometimes people unwittingly aid organizations that they don't know are subversive. I think - - I read the instructions of Judge Medina to the jury that convicted those persons accused of subversive activities in New York, and he very clearly stated that it must be done with knowledge. I therefore move to insert the word "knowingly" before "aids."

CHAIRMAN: Is that acceptable to Delegate Shimamura?

SHIMAMURA: I have no objection to that insertion. I was just trying to comply with the exact language of H.R. 49.

CHAIRMAN: Delegate Luiz, is there any question you wish to raise as regards the question - - section?

LUIZ: Want me to repeat the question?

CHAIRMAN: That's right. Is that a point of order you are rising to, Delegate Anthony?

ANTHONY: I want to speak to the amendment.

CHAIRMAN: Delegate Luiz, could you yield just a second? Confine our discussion to the amendment right immediately before us for the sake of order.

ANTHONY: I agree with Delegate Tavares that the proper construction of the incorporation provision which is mandated would include the word "knowingly," but I doubt the wisdom of modifying the language of the act of Congress. It would seem to me more appropriate to adopt the words of the act with our construction–which is, of course, the only supportable construction–that Delegate Tavares has just put upon it. In other words, rather than change the language of the act of Congress, let's interpret it to make it constitutional, and that would require implicit in that interpretation, the word "knowingly."

SHIMAMURA: I believe I would go along with that suggestion. I think it will be preferable to leave the words as specified by Congress, and leave that interpretation in the report.

TAVARES: I'll withdraw my amendment with that understanding.

CHAIRMAN: Is there any more discussion on the motion -- the amendment?

A. TRASK: Can the amendment be stated, please?

CHAIRMAN: The amendment is to delete the first word "that" and capitalize the first letter of the word, "No," and insert the words "aids or" between the words "who" and "belongs."

A. TRASK: Question on the amendment.

CHAIRMAN: All those in favor of -- The word "knowingly" has been withdrawn. All those in favor of the amendment, please signify by saying "aye." Opposed, same sign -- opposed, "no." Amendment is carried.
Delegate Luiz.

BRYAN: In order that he can proceed orderly, I move the adoption of the section as amended.

CHAIRMAN: His question went to Section 1. You see, the chairman feels that the question raised by Mr. Luiz goes to another portion of the first section; therefore, that is not necessary. Delegate Luiz.

LUIZ: I am not speaking against this section, but I wanted to find out just who is going to determine whether the organization is trying to overthrow the government or is subversive in any way. Just who are going to be the judges of that?

CHAIRMAN: Delegate Anthony, could you answer the question?

ANTHONY: In the first instance that would be determined by the officer who is appointing the particular person. Ultimately however, it would be determined by the ultimate, the proper court in which that question -- that would be a judicial question; but, of course, in the first instance, if there was a known communist, the governor couldn't appoint any person to any such office. It would be a prohibition against the governor in the first instance, and ultimately upon the courts.

TAVARES: May I supplement what has been said. There are two kinds of offices, elective and appointive. Insofar as the qualifications and so forth of elective officers are left as they are under this Constitution to a particular legislative body, that body would make the determination, as I see it. Insofar, however, as they are left to an appointive authority, he could decline to appoint a person on that ground or perhaps under authority of law could remove a person on that ground. If there is not due process of law involved, I presume then they would go to the proper courts for that determination. However, I don't think that would prevent our legislature from setting up loyalty boards as the United States government has and provide for a method of removal in that way without resort to the courts. Except, of course, that ultimately where due process is denied under any procedure, and some other constitutional right is infringed, of course, the courts are always the last resort. Except, of course, in election cases, where I think -- I mean election of legislators, where they are their own judges of their own qualifications, where the courts would not interfere with a finding.

CHAIRMAN: Is there any more discussion on the question raised?

ROBERTS: I have a question to ask the chairman of the committee. In the last line of that section, the words "or any public employment," those were not words which were in H.R. 49, were they?

SHIMAMURA: That is correct; it was not, but the committee felt that public employment as well as office of profit should be covered, but that is entirely a matter of policy up to this Convention.

CHAIRMAN: Is there any more discussion on the question?

ANTHONY: I think we're on safer ground if we just adhere to the language of the act. I had assumed that this was an attempt to copy the language of the act of Congress. I, therefore, would move an amendment to this section, to make it conform to the expressed mandate of the Congress, whatever that amendment may be.

CHAIRMAN: That would be to cross out the words "any public employment." Is that correct, Delegate Shimamura?

ANTHONY: I so move.

CHAIRMAN: Delegate Shimamura, on the question raised by Delegate Roberts, would it be conforming to H.R. 49 should we delete the words "any public employment"?

SHIMAMURA: Yes, it is -- it would be in strict compliance with H.R. 49 to leave out the words "or any public employment." The committee discussed the matter and some members of the committee felt very strongly that public employment should be covered.

CHAIRMAN: Is there a second to the motion?

DELEGATE: I'll second that motion.

CHAIRMAN: It has been moved and seconded that the words, "or any public employment," be deleted from the last line of Section 1.

ANTHONY: I just wanted to raise the issue before the body. It has been pointed out that the purpose is to prevent all persons belonging to a subversive organization from receiving any employment whatsoever under the State. I think under those circumstances I would withdraw my motion.

CHAIRMAN: Motion has been withdrawn. Any more discussion?

HEEN: It seems to me that the words "of trust or profit" should be deleted. It might be an unpaid office, like the police commissioner, unpaid office, although it may be an office of trust, and I don't think we should have any limitation there at all. If it's a public office, it's a public office, and no communist should hold any public office or any employment of any kind.

CHAIRMAN: Delegate Shimamura, what is the committee's wish?

SHIMAMURA: I'm sorry, Mr. Chairman, but I didn't get the last few words of the senator.

CHAIRMAN: Delegate Heen suggested that the words "of trust or profit" be deleted because the oath should apply to those in government work who do not receive pay as well as those who do.

SHIMAMURA: Well, as a matter of policy or principle I have no objection. We are just trying to follow the exact language of H.R. 49 which says "public office of trust or profit under the State constitution." That's page 9, Committee Print C, Section 2.

HEEN: You will recall the case of Judith Coplin. I don't think she held any office at all; I think she was only there as an employee in the State Department, and she was convicted of some offense, I think in connection with taking some secret documents out of the office in which she was employed. So I move that the words "of trust or profit" appearing in the fifth line of this section be deleted.

SHIMAMURA: I second the motion.

CHAIRMAN: It has been moved and seconded that the words "of trust or profit" in the fifth line be deleted. Is there any discussion of the motion?

A. TRASK: I'm opposed to that deletion. On Section 9, the Congressional act, H.R. 49, specifically uses those words and I think we should go along with the Congressional amendment, because it would be more specific and it wouldn't cast any doubt. I don't know whether or not the Coplin case is altogether in point when we don't know the precise language of the indictment under which and the law under which she was charged. I think it's altogether safe; it certainly is specific; it would take in some person in the commission where there is no pay, but it would be a trust as against another situation where there is money. The question of office, as distinguished from employment, would be a question of either pay or no pay, and I think these terms are all-inclusive, and it leaves no doubt, and I think we should conform at any rate with the Congressional amendment.

ASHFORD: I'm wholeheartedly in support of the amendment offered by Delegate Heen. I think the language cannot be made too broad. No one who is seeking to overthrow the government should hold any office or employment of any sort whatever, of the public.

KAUHANE: I'd like to second the motion made by the speaker before the last delegate, if the motion is in order.

CHAIRMAN: That has been moved and seconded, I believe, by Delegate Heen who has moved, and seconded by James Trask [sic].

TAVARES: May the records show that - - I think the records should show here that we are adopting this because, by taking those words out, we are broadening the class that can't hold office, and not restricting it; so that we are not only including offices of trust or profit, but any other offices. Therefore, there should be no objection to this amendment. We are complying with what Congress wants and more.

KAUHANE: I believe in the statement made by the first speaker before the last two was to the effect that he is against the amendment that has been offered, and I believe that was a point that he raised in objection to the amendment that has been offered. I'd like to second the motion to object to the amendment that has been offered. We have taken a position here, and I think we might as well take a definite stand, as to our intent and purposes. Much has been said about following H.R. 49 as much as possible so that we will not prevent the passage of H.R. 49 in the Congress, and it will only leave a question of doubt in their minds as to our sincerity in adopting this Section 1 of Committee Proposal No. 24. Rather than see any hitch in preventing H.R. 49 to pass because of our undetermined stand on the question, I think the motion for the deletion, or objection to the amendment that has been offered is proper, and I think the second to that objection is proper, too. So I'd like to move the previous question opposing the amendment.

CHAIRMAN: The Chair - - Just a second, I want to clear this. I direct this question to the last speaker. Is it your understanding that Delegate Arthur Trask made a motion to delete?

A. TRASK: If it is the sense of the Convention that the words "any public office" are more elastic than the additional words "trust or profit," I would withdraw my objection to it. As far as I see the question," public office" refers to offices which are paid for, offices which are those of trust. I don't know of any other offices besides those which are paid for and those that are not. So, my objection at the outset to the deletion of "trust or profit" is that it is more inclusive and broad. But if there is any thinking, as Delegate Heen said, that any public office—and as supported by the lady delegate from Molokai—that the words deleted would make it more expansive, I would withdraw my objection and as a member of the committee urge the chairman to accept the amendment.

H. RICE: As the opponents of statehood are pointing out that we are communists here in Hawaii, I think the strengthening of this is - - this is stronger with that amendment suggested by Delegate Heen, and therefore I'll support the amendment.

FUKUSHIMA: If the intent is to make it elastic as possible, would not the words "under this Constitution," should not they be deleted and in place thereof insert the word "in this State"? I'd like to ask the question of the chairman of the committee.

CHAIRMAN: Delegate Shimamura, could you attempt an answer?

SHIMAMURA: May I have that question repeated again, please? I'm sorry.

FUKUSHIMA: If the intent is to make this provision as elastic as possible, would not the words "in this State" be more appropriate than the words "under this Constitution"?

SHIMAMURA: The language of H.R. 49 is "under this Constitution."

FUKUSHIMA: We may have in the future a new local government, maybe the County of Lanai, and if you have elective or appointive officers there, perhaps those officers will not be covered because they are not part of this Constitution. They'll be a legislative organ.

BRYAN: I'd like to ask that we dispose of the other amendments before we come down to that one, if that's all right.

HEEN: I think the point raised by Delegate Fukushima is worthy of some thought. Reading the language as it now appears, "under this Constitution," it seems at first hand it means offices created by this Constitution, or employment created under this Constitution. I amend further by deleting the words "under this Constitution" appearing at the end of that section and substituting for those words, the words "of or under the State."

ANTHONY: I would suggest "under the State or any political subdivision thereof." And by the elimination of the words "trust and profit," I might point out to Delegate Trask, that is an all-inclusive provision. In other words, no person, whether it's office of trust or profit or otherwise, could hold any office under the State or any political subdivision thereof.

ASHFORD: I am in accord with the suggestion to strike the words "under this Constitution," but I don't see the necessity of adding "under or by authority of the State" or whatever words were used by Judge Heen. When you say "public office," it means public office in Hawaii, and under the aegis of the State.

CHAIRMAN: What is the - - Delegate Heen.

HEEN: I withdraw my motion to amend in that connection and make this amendment. Place a period after the word "employment" in the last line of this section, and delete the words "under this Constitution."

CHAIRMAN: Delegate Heen, you were the movant of the motion to delete the words "of trust or profit." This last motion you make to amend, do you wish to incorporate in the original motion, so we'll get this together?

HEEN: Yes, Mr. Chairman, make it a package deal.

CHAIRMAN: Is there any more discussion on the amendment?

DELEGATE: Question.

CHAIRMAN: All those in favor of the amendment please say "aye." Opposed, "no." Motion is carried. Is there any other amendment to be made to Section 1? If not - -

A. TRASK: I move for the adoption of Section 1 as amended.

DOWSON: Second the motion.

CHAIRMAN: It has been moved and seconded that Section 1 be adopted as amended. Is there any discussion? All those in favor of the motion please say "aye." Opposed, "no." Carried. Section is adopted.

WOOLAWAY: I move for the adoption of Section 2.

A. TRASK: Second that motion.

CHAIRMAN: It has been moved and seconded that Section 2 be adopted.

HEEN: I move for the deletion of the words "or her mode of" in the third line of that section.

CHAIRMAN: Could you read your amendment again, please?

HEEN: In the third line of that section, delete the words "or her mode of" because "his" refers to both sexes, and in another provision that has been agreed to.

A. TRASK: Second that motion.

CHAIRMAN: It has been moved and seconded to delete the words "or her mode of" in the third line of Section 2. Is there anybody who wishes to speak on this question?

WIRTZ: I don't know if I understood the amendment. Do you mean to strike the word "mode," too? Then it would read "of his of religious worship."

CHAIRMAN: Delegate Heen, could you please clear the question.

HEEN: By deleting those four words.

WIRTZ: Oh, all four.

HEEN: All four, yes. How many did you have, three?

FUKUSHIMA: I'd like to ask the chairman of the committee what the purpose of this section is. We have a Bill of Rights which prohibits any legislature to pass any act curtailing the right of religious freedom. Now, this is merely an ordinance. What is the purpose of this section?

SHIMAMURA: That's a good question. However, this is made mandatory under H.R. 49 and many of the western states which received statehood under a similar enabling act have provisions in the Bill of Rights section ensuring religious freedom, but also at the same time have a provision such as this which their enabling act, as well as ours, makes mandatory. They have included both sections.

J. TRASK: I notice in H.R. 49—there is some talk here about being consistent with H.R. 49. I noticed the words "toleration" and "sentiment" were stricken out, and it's not in our particular proposal.

SHIMAMURA: After this first amendment of Delegate Heen was voted upon, I was going to amend, and I have it ready.

CHAIRMAN: All right, just a second. I didn't get the closing remarks of Delegate Shimamura.

SHIMAMURA: I have amendments to propose, that "toleration" be stricken, "freedom" inserted; "sentiment" be stricken, "worship " inserted; "that" be stricken in two places; and that "perfect" be capitalized.

TAVARES: May we have that read as proposed by Delegate Shimamura, so that we can - - reread slowly so we can make the changes in the right places.

CHAIRMAN: Delegate Shimamura, could you please read it slowly.

SHIMAMURA: The first "that" to be deleted; "perfect" to be capitalized; "toleration" to be deleted and "freedom" to be inserted in its stead; "sentiment" on the first line to be deleted, the word "worship" to be inserted; on the second line, the word "that" following "and" to be deleted.

HOLROYDE: I'd like to ask the chairman another question, along the same line as Delegate Fukushima. Admittedly the H.R. 49 says specifically that there should be a clause in similar to this one, but if that is covered elsewhere in our Constitution, is it necessary to repeat it again?

ANTHONY: I don't think that we ought to adopt this section in this schedule at all. We have got a section in the Bill of Rights, as pointed out by Delegate Fukushima, that complies expressly with the - - compares identically with the section of the Federal Constitution. The only purpose of this thing was to require an ordinance. Now, why do we need another section in the ordinances when we already have it covered in the Bill of Rights? I therefore move that this section be deleted.

HOLROYDE: I second the motion.

CHAIRMAN: It has been moved and seconded to delete Section 2. Is there any more discussion? Ready for the question?

A. TRASK: I think it should be deleted also, but I think the report should express the statement of the chairman that this section, although deleted, was done for the reason that there is such a provision in the Bill of Rights, so that the congressmen will - - or Congress, which is going to approve this thing, under the present state of H.R. 49, will not feel a little too edgy about it.

SHIMAMURA: I know that there is a general clause in the Bill of Rights section on freedom of religion; but I'm wondering if the second clause is in the Bill of Rights section also, namely that "No inhabitant of this state shall ever be molested in person or property on account of his mode of religious worship."

ANTHONY: The Section 8 of the Bill of Rights is all-inclusive. It relates to aliens; it relates to citizens. We have an equal protection of the laws clauses, and I don't think there is any occasion for putting this in the Constitution. Certainly the framers of H.R. 49 didn't expect us to do something more than was incorporated in the Bill of Rights of the United States Federal Constitution.

FONG: As I understand, Section 1, Section 2 and certain of the other sections in this Committee Proposal No. 24, more or less reiterate what is contained in H.R. 49. Now, we have previously in the - - as far as the Hawaiian Homes Commission Act, incorporated by reference, did we not? Now, is it possible here to incorporate it by reference rather than to repeat the same things that are in H.R. 49 and repeated in our Constitution? I was wondering whether that was discussed in the committee.

CHAIRMAN: Delegate Shimamura, did the committee give any thought to the question raised by Delegate Fong?

SHIMAMURA: If I understand the last speaker's question, he asked whether or not it will be wise to incorporate by reference.

FONG: Yes, due to the fact that we have already done it as far as the Hawaiian Homes Commission Act is concerned, whether we couldn't in this instance incorporate by reference to the various provisions.

SHIMAMURA: You mean refer back to H.R. 49?

FONG: Yes.

SHIMAMURA: Well, that may be done, but I personally, in my humble opinion, do not think it's good draftsmanship to refer to a document which may not come into existence. It's all right if H.R. 49 has been passed, and that's good draftsmanship to incorporate in an existing document or an existing law, but where it hasn't passed yet, I personally believe it's not very good policy or draftsmanship.

TAVARES: I think we can safely delete this section, provided we put in our report explaining the deletion that we consider it fully covered in every respect by the Bill of Rights. I wouldn't tie it down to any specific provision because there are several provisions in the Bill of Rights that touch on this, and we should state that the sum total of the protection granted by the Bill of Rights covers everything that this section would cover, and then I think we can explain to Congress and have the reasons why we did it so clear that I don't think they will object to it.

CHAIRMAN: Are you ready for the question? Motion is to delete Section 2. All those in favor of the motion please signify by saying "aye." Opposed, "no." It's carried. Section 2 is deleted.

H. RICE: Same motion, that Section 3 be deleted.

ANTHONY: I second that motion; that's expressly covered in our own Bill of Rights.

CHAIRMAN: Does the chairman - -

SHIMAMURA: No objection.

CHAIRMAN: It has been moved and seconded that Section 3 be deleted. Is there any discussion?

FUKUSHIMA: To make it conform to order, I move at this time the adoption of Section 3.

BRYAN: I second the motion.

KELLERMAN: To supplement Mr. Anthony's statement for the purpose of the records, Section 3 is covered in the Bill of Rights and in the article on education.

CHAIRMAN: The Chair would like to clear up a little question. The Chair is under the impression that a motion was made to adopt the entire Committee Proposal No. 24. If that is the case, there is no necessity for adopting Section 3 first and then moving for a deletion. Such being the case, the question on the floor before this committee right now is the motion to delete Section 3.

TAVARES: Again I think it should be done with the understanding that the committee report will state the reasons given by Delegate Kellerman for striking this.

SHIMAMURA: What I'm saying may not be apposite to this particular section, but in the Wyoming Constitution, from which state comes Senator Mahoney, the chairman of the Committee of the Senate on Interior and Insular Affairs, Section 18 of that Constitution, under the Bill of Rights section, provides for religious liberty. "The free exercise and enjoyment of religious profession" and so forth. Then under the schedule, under ordinances, Section 2, "Perfect toleration of religious sentiments shall be secured and no inhabitant of this State shall ever be molested in person or property on account of his or her mode of religious worship." That same statement would apply to the section on education.

CHAIRMAN: Is there any more discussion on the motion? Ready for the question? All those in favor of the motion to delete Section 3 please say "aye." Opposed, "no." Motion is carried. Section 3 is deleted.

SHIMAMURA: May I go to Section 4 now?

CHAIRMAN: Yes.

SHIMAMURA: I move for the adoption of Section 4.

DELEGATE: Second the motion.

AKAU: In Section 4, when we mention the words, "debts and liabilities," shouldn't we also mention "obligations"? Or would obligations include all those? It seems to me that obligations is something separate and apart from debts and liabilities. I don't know. I just raise the question.

CHAIRMAN: Will Delegate Shimamura please attempt an answer?

SHIMAMURA: In my opinion, obligations would be included in debts and liabilities. This is the exact language of H.R. 49. Before the question is put, may I move to amend by striking out the word "that" and capitalize "the" in the first line.

CHAIRMAN: Is there a second to the amendment?

TAVARES: I second it.

HEEN: You might put that question as to the amendment just offered by Delegate Shimamura, to delete the word "that."

ANTHONY: Style Committee can do that. We don't have to waste our time on those things.

HEEN: Well, would it make less work for the Style Committee if you do it right here.

CHAIRMAN: Delegate Heen, is it your request that we put the question first and then proceed later? All those in favor of the motion to amend by crossing out the word "that" and capitalizing "T" of the word "the," please say "aye." Opposed, "no." The motion is carried. Section 4 is amended.

HEEN: I'd like to ask the chairman of this standing committee as to whether or not the matter of the debts and liabilities of the political subdivisions have been considered.

BRYAN: I'd like to speak to that point.

CHAIRMAN: Delegate Bryan is going to speak to the point.

BRYAN: I'd like to ask the chairman of the committee. We haven't passed all the sections of Proposal No. 23, but I think much of the subject covered by this Section 4, Proposal No. 24, is covered by Section 4 and Section 5 of Proposal No. 23. It would also cover the point on political subdivisions raised by Delegate Heen.

CHAIRMAN: Delegate Shimamura, what is your answer?

SHIMAMURA: These are the debts and liabilities of the Territory, and the latter section was - - the last clause was inserted by the committee of the Senate. It was not in the original H.R. 49, but we've included it here to comply with H.R. 49, and I don't think any harm is done by including it here. One of the sections referred to by Delegate Bryan does not cover this particular situation.

HEEN: I think the first clause of Section 4 is in order; and the comma after the word "Hawaii" in the second line, that should be deleted and a period substituted for the comma. Then delete the rest of the words in that sentence following that period. In another article of this same standing committee, all existing claims, demands are supposed to - -

and rights, titles and so on, causes of action, are supposed to "continue unaffected notwithstanding the taking effect of this Constitution... and may be maintained, enforced or prosecuted...before the appropriate or corresponding tribunals or agencies of or under the State or of the United States, in the name of the State, political subdivision, person or other party entitled to do so, in all respects..."

CHAIRMAN: That is merely a suggestion, Delegate Heen? Is that a motion? Could you please use the mike, Delegate Heen.

HEEN: I now move, that the comma appearing after the word "Hawaii" in the second line be deleted, and a period be substituted for that comma, and delete all the words following that period.

CHAIRMAN: Do I hear a second to the motion?

HAYES: Second it.

CHAIRMAN: It has been moved and seconded to amend as recommended by Delegate Heen.

TAVARES: Everything that Delegate Heen says is correct, but we don't even need the first part of that if he's going to be consistent. However, this happens to be a provision that was stuck in by the Senate. It's surplusage, it is covered by another section, but they particularly stuck in by special amendment in the Senate this provision about collecting debts. I think it's silly to assume that we wouldn't collect our debts anyhow, owed to us, but since they have put it in particularly—as I understand it at the behest, I believe, of the Interior Department—why not leave it there and have the report show that it is surplusage but we put it in anyhow because of this recent insertion by way of amendment in the H.R. 49. It does no harm. The last clause, as well as the first. The first clause will reassure the bondholders. We are reinforcing another section in another article which does cover it by general terms by this special provision, and I see no harm in it, particularly when it involves our bonds.

CHAIRMAN: Any discussion on the amendment of Delegate Heen? The amendment will insert a period after the word "Hawaii" in the second line and cross out all the words that follow in the section. All those in favor of the motion to amend please say "aye." Opposed, "no." The noes have it; the motion fails.

SHIMAMURA: May I now go to Section 5, and I move for the deletion of Section 5.

BRYAN: I second the motion.

J. TRASK: Point of order.

CHAIRMAN: Just a second.

J. TRASK: Point of order.

CHAIRMAN: Point of order is well taken.

J. TRASK: I move that Section 4 be adopted as amended.

WOOLAWAY: I'll second the motion.

J. TRASK: The first word - -

CHAIRMAN: Section 4 was amended.

J. TRASK: - - "that" was deleted. Wasn't the first word, "that," deleted, Mr. Chairman?

CHAIRMAN: That's right. All those in favor of Section 4 as amended please say "aye." Opposed, "no." Carried. Section 4 as amended is adopted.
Section 5 is in order.

SHIMAMURA: May I now move to delete Section 5.

CROSSLEY: Second that motion.

CHAIRMAN: It has been moved and seconded to delete Section 5. Any discussion?

HOLROYDE: In doing so I suggest they refer to the Committee on Taxation, Section 9, and give that as their reason for deleting.

TAVARES: That is correct.

CHAIRMAN: Is there any more discussion?

CROSSLEY: I don't know that that is the correct section on finance and taxation as it has come through Style. Is that - -

HOLROYDE: It may be changed.

CROSSLEY: Yes.

HOLROYDE: That's correct.

CROSSLEY: So I think it would be better not to refer to a section, simply to taxation and finance.

ROBERTS: That's correct, Mr. Chairman. That's Section 2 now in the article.

CHAIRMAN: All those in - - Are you ready for the question? All those in favor of the motion to delete Section 5 please say "aye." Opposed, "no." The motion is carried. Section 5 is deleted.

SHIMAMURA: May I now go to Section 6, and move to delete that section inasmuch as it's covered by Committee Proposal No. 27 .

HOLROYDE: Second the motion.

CHAIRMAN: It has been moved and seconded Section 6 be deleted. Are you ready for the question? All those in favor of the motion to delete Section 6 please say "aye." Opposed, "no." Motion carried. Section 6 is deleted.

SHIMAMURA: May I now move to delete Section 7?

HOLROYDE: Second the motion.

SHIMAMURA: The reason for that is that the entire provision has been deleted from H.R. 49.

CHAIRMAN: Is there any discussion? All those in favor of the motion to delete Section 7 please say "aye." Opposed, "no." Motion is carried. Section 7 is deleted.

BRYAN: I move to delete Section 8 on principle.

CHAIRMAN: What's that motion?

BRYAN: I think my motion was clear.

ANTHONY: That section serves no useful purpose. The document speaks for itself. If something is irrevocable - -

SHIMAMURA: I rise to a point of order.

CHAIRMAN: I'm not arguing about it.

SHIMAMURA: I rise to a point of order.

CHAIRMAN: It has been moved and seconded that Section 8 be deleted.

SHIMAMURA: I agree to that deletion.

CHAIRMAN: Is there any more discussion on that motion?

WIRTZ: I don't know, I've examined several constitutions and this is a compact with the United States. I think we ought to study it a little bit more before we decide to delete it. It appears in all the western states that I have examined, the constitutions of the recent states.

ASHFORD: The reason it appears in the western states is that the lands were given to the states by the United States. These are our lands.

BRYAN: I'd like to say further that this refers to things that we have deleted, and if we want it put in here that our Bill of Rights is irrevocable without permission of the United States that's one thing, but we've deleted the things it refers to.

ANTHONY: I think Delegate Wirtz has specific reference to the Hawaiian Homes Commission Act. Now, as to that section of the Constitution, there is a compact, and it's irrevocable without the consent of the United States, so that renders this particular section unnecessary here.

ASHFORD: I have a difference of legal opinion with my brother in law. I think it's absolutely invalid.

CHAIRMAN: The motion is to - - the question is to delete Section 8. Ready for the question? All those in favor of the motion to delete Section 8 please say "aye." Opposed, "no." Carried. Section 8 is deleted.

Section 9 is before the body.

SHIMAMURA: Since no one wishes to rise for the adoption of Section 9 that we renumbered 5, I move for its adoption.

TAVARES: I'll second the motion.

MIZUHA: I believe the committee report and proposal is before all of the delegates. I did not concur with Section 9 because of the fact that it gives the governor, the land commissioner, and the president of the board of agriculture and forestry too much power. At the time it was discussed in committee the suggestion was made that perhaps a portion of the 180,000 acres could be selected by any two of those Territorial officials mentioned in Section 9. To give them the power to select 180,000 acres with a single stroke of the pen within the interim period is granting too much authority. I believe, although it may not come to pass, it may, and that probability is such that we cannot take that chance. I believe when the selection of the 180,000 acres is made, it must be by a representative commission, agreed by the State legislature as to who those members are, and a selection made on that basis before we can insure to the people of the Territory the best choice of 180,000 acres. It is my suggestion that perhaps about 50,000 of the 180,000 acres could be selected instead of all of the 180,000.

TAVARES: That word about deletion sounds very good, but it also is dangerous. Here's the situation that can happen. If you have a governor of Hawaii—who is going to be appointed, remember, until we become a state, until we're actually admitted—and he doesn't like special sessions as some governors don't like, and he refuses to call a special session of the legislature before we elect our people and go into statehood, you are going to have a situation where, until the legislature acts, nobody is authorized to select any land. And remember, under the Organic Act as we are continuing it, there is still some possibility that the President or the governor may set aside some lands to the use of the United States. If they are threatening to do that, and we don't select those lands right away, we may lose them. Now, if I am wrong in my understanding of that, I'd like to be corrected, but that's my understanding. There is a slight possibility that the President might at the last minute, even after we become a state, set aside some lands to the use of the United States. If we could select those lands in time, we would take away his power to set them aside for the use of the United States, and we'll have nobody to do it. That's all I want to say.

A. TRASK: What is before the committee, please?

CHAIRMAN: The motion to adopt Section 9.

A. TRASK: In other words, the motion of Mr. Delegate Mizuha has not been seconded?

CHAIRMAN: Did you make a motion, Delegate Mizuha?

MIZUHA: I just made a suggestion as to the reasons why I did not concur with Section 9 in its entirety. May I reply to the delegate from the fourth district? It is my understanding from reading Committee Print C of H.R. 49 that there are several mandatory provisions in H.R. 49 that call for the election of state officers, and the convening of the first general session of the state legislature within a very short period of time after Congress accepts the State Constitution of Hawaii. If it is just a short interim, at most I believe it's about six months, I see no necessity and urgency for us to grant that authority to Territorial officers, to make that selection of 180,000 acres all within a period of six months. I do not believe that the Congress of the United States or the duly constituted authority of the federal government will say to the Territory of Hawaii, you must make this choice today or tomorrow. It will give us ample and sufficient time to make that choice, but I cannot conceive of them saying that you must choose 180,000 acres tomorrow. They might ask us, do you want 10,000 acres of these lands, or 15,000 or 25,000, but they won't just say to us 180,000 at one stroke of the pen. That is why I believe that the choice of the 180,000 acres must be made by the representatives selected by our State legislature and not by two - - any two men as this Section 9 says. Any two of them can make the selection, which is an odd way of placing this power.

BRYAN: I'd like to call the attention of Delegate Mizuha to the words "unless the legislature shall otherwise provide." If it is the feeling of the delegates present here that that provision or the authority to set those lands or to designate those lands must be granted prior to the meeting of the first legislature, then I think that this provision or one similar to it is necessary. If it is the feeling of the delegates that that provision need not be made until the first legislature meets, we could easily delete this and put the word "legislature" in there and amend it in that form.

ANTHONY: It doesn't depend upon the feeling of the delegates. The provision of the act of Congress gives us five years within which to make this selection, after admission. So why do we rush in and give this power to the governor and the board of agriculture. We've got five years. What's the haste? The very purpose of the five year period was to give ample consideration of what lands we wanted to select.

TAVARES: That statement illustrates the danger of speaking without adequate information. For the information of the delegates, and the one who last spoke, on page 13 of the amended H.R. 49, I want to read the second sentence of sub-paragraph B about public lands. This is during the five year period. "Such land and public property shall continue to be administered in accordance with the laws applicable thereto immediately prior to the admission of said State, until otherwise provided by Congress." And one of the sections of the Organic Act says that the President by executive order may set aside any of this public land for the use of the United States. Now, when your legislature meets, they have a little time to get organized—if they are split 50-50, they may take three weeks—and we are about to enter into a war maybe, and somebody will want 5,000 acres of our land on Oahu for a training ground, and the President will be asked to do it, and unless we select it quickly, there will be 5,000 acres taken as it was during the war. Now, that's not a flight of my imagination. That's actually what happened recently, and we're having a heck of a time getting it back.

ANTHONY: Brother Tavares, read far enough. Page 15, Committee Print C: "The State of Hawaii, upon its admission to the Union, shall be entitled to select, and the Secretary of the Interior is authorized and directed to issue patents to said State, for 180,000 acres of public lands. . .The selection of such lands. . .shall be made and completed within five years from the admission of said State into the Union." Now, the whole purpose, the entire purpose of the debate that centered around the five year provision was that in all likelihood Congress wouldn't take any of this land; it wanted to give

us ample time within which to select our 180,000 acres. So we are getting excited over nothing and trying to rush into something which there is no occasion for any rush.

HEEN: May I ask the speaker before the last a question?

CHAIRMAN: Delegate Tavares, will you - -

HEEN: Does not the Organic Act also provide that the governor may set aside public lands for the use of the Territory of Hawaii?

TAVARES: That is correct, but remember that until the date when the United States grants us statehood and we actually become a state, the governor is going to be appointed by the President of the United States. It takes a little time, even for a governor elected by us to get to know the ropes and to get to act, and I can't see the governor, when there is a war on, and the military asks the President to set aside some land, even if he's elected by the state, absolutely with certainty saying, "Oh, I'm going to select that for some fictitious use of the Territory of Hawaii just to avoid the President setting it aside." I can't see that. Unless he's got a bona fide use for the Territory to make of that particular land at that time, he's going to look awfully unpatriotic to set it aside for the use of the Board of Water Supply, maybe, where it has no water, or for the use of some other department that has no use for it, just to keep the President from setting it aside for the use of the military. It's pure, what one of our attorney's used to call, "superfuge."

H. RICE: I agree; I think that this section should be deleted. There's nothing like the school of hard knocks, and I remember when they selected the Hawaiian Homes Commission lands. A lot of those that were selected, nobody but a few residents on those particular islands knew those lands. They went over and just said, "Well, here's Kahikinui, 10,000 acres, we'll take that." Why, they put Hawaiians on that land there to starve. That's the way they went around, you know that. Why select these lands quickly?

CHAIRMAN: Delegate Rice, is that a motion?

H. RICE: I so move. Delete that section.

DELEGATE: Second that motion.

CHAIRMAN: It has been moved and seconded to delete Section 9.

BRYAN: I'd like to speak against deletion. I think the same purpose could be accomplished by amending the paragraph to empower the legislature, rather than to delete the paragraph entirely. I think that would be my second choice, rather than deletion.

TAVARES: I'm going to say one thing more and then quit, but I am greatly concerned about this. This section does permit the legislature, if it acts in time, to take away the power of selection from the governor or anybody else. It only provides for the possibility that if the legislature hasn't acted in time, and we have to act hastily, that the governor and these other designated officials may select.

Now, Delegate Mizuha had a provision. If you don't want the governor to select it all, cut it down to 100,000 acres or 50,000 acres or something like that, so that he'll have enough leeway to save that much in case the legislature hasn't quite acted in time. We had a provision like that worked out in the committee—I don't know if I have it here—but I think it could be taken care of by a proviso which can be changed by the Style Committee, because some people don't like provisos reading something like this. At the end of the section insert a semicolon instead of the period and say, "Provided that no such selection shall cover more than say 25,000 acres." That would give enough leeway to take care of any emergency.

ANTHONY: That has no relevance to the issue before the house. The issue in question before the house is on the deletion of the section.

CHAIRMAN: The point is well taken.

TAVARES: I beg to differ on that point of order. I am giving reasons why this shouldn't be deleted. It's very relevant.

CHAIRMAN: Yes, it may be, your statements are.

C. RICE: I'd like to say that any two members of this Convention can select 180,000 acres. There are so few good acres, it wouldn't be any trouble. You can't find 180,000 acres that are worth taking. I want to see this section left in because there won't be any dispute about it.

ASHFORD: Is it not possible that we might not be able to select piecemeal? That is, one year say, well, we'll take this 25,000 acres and leave the rest to be selected later. And we'd be in a jam if we did that.

CHAIRMAN: Is there any more discussion?

A. TRASK: I am against deletion of this section. I believe that the people most competent to know and determine where the good lands are, are these officers we have at the head of our government today. It seems they're most - - more qualified. I wonder whether or not those who are for deletion are saying, as they are certainly saying in fact, that there are other people more qualified and more to be trusted. It seems to me that the record and the evidence shows in this argument that we should trust those who are empowered and those most qualified with the situation.

CHAIRMAN: Is there any more discussion on the question to delete? You've heard reasons why it shouldn't be and you've heard reasons why it should be. Any more discussion on this is welcome. All those in favor of the motion to delete Section 9 please say "aye." Opposed. Noes have it.

SHIMAMURA: I'm somewhat amazed that in all this discussion no one has moved to delete a certain portion of this section. I refer to Section - - rather line 6 on page 4 of this section - - of this article rather, starting with the words "and interests in property, not disclaimed [or encumbered by the provisions of.]" I move the entire deletion on that line and the next line - - on the next line, the words down to "this Constitution." And on the fifth line the insertion of the word "in Hawaii " period, after "public property."

DELEGATE: May that be restated?

SHIMAMURA: First, on the fifth line, the insertion of the words "in Hawaii" period; deletion of the entire sixth line and on the seventh line up to the words "this Constitution."

TAVARES: I don't seem to find that, those amendments.

SHIMAMURA: Page 4.

TAVARES: Page 4. What line?

SHIMAMURA: Line 5. After the words "public property," insert the words "in Hawaii" period. Delete all of line 6 and the seventh line the words down to "Constitution."

TAVARES: What is the purpose of deleting the words "claims in the lands and other public property"?

SHIMAMURA: Well, H.R. 49 as amended, Section 2, paragraph numbered 7, provides for certain disclaimers to be made by the State of Hawaii and I don't think it's advisable for us in the light of that provision to speak of any disclaimer.

TAVARES: I agree, but the disclaimer comes after the words "lands and other public property and interests in pro-

perty." I don't see any harm in leaving that in and just take out the words about disclaimer. I'm in hearty sympathy with that.

SHIMAMURA: All right, "interest in property" might be left in, and the words subsequent to that, "not disclaimed or encumbered by the provision of this Constitution" to be deleted; that's all right.

TAVARES: I'll second that amendment.

CHAIRMAN: Where did the words "in Hawaii" go?

SHIMAMURA: Delete that.

CHAIRMAN: Is there a period after the words "interest in property"?

TAVARES: I don't get that, "in Hawaii."

CHAIRMAN: That was his original motion to amend.

SHIMAMURA: I inserted that, but I've deleted it at this time.

CHAIRMAN: The amendment is in this form. In line 6, change the comma after the word "property" to a period and delete the rest of the sentence. Those words will be "not disclaimed or encumbered by the provisions of this Constitution."

SHIMAMURA: I move we recess till 1:30.

CHAIRMAN: The Chair will declare a recess till 1:30.

Afternoon Session

CHAIRMAN: Delegate Shimamura, do you care to defend your amendment?

SHIMAMURA: I take it that's Section 9, is that correct?

CHAIRMAN: That's right, Section 9.

SHIMAMURA: Proposal 24?

CHAIRMAN: That's right.

SHIMAMURA: The sixth line in the - - portions of the sixth and the seventh lines were deleted, were they not?

CHAIRMAN: That's right.

SHIMAMURA: Isn't that what was proposed to be deleted?

CHAIRMAN: Yes. We haven't voted on that yet. That was only a motion by you.

SHIMAMURA: Yes.

CHAIRMAN: Is there any discussion on the amendment? Question. All those in favor of the motion to amend please signify by saying "aye." Opposed, "no." Ayes have it. Motion is carried, motion to amend.

Is there any further amendment - - discussion on Section 9? If not - -

HEEN: I move that the words "or any two of them" appearing in the second and third lines on page 4 be deleted.

AKAU: Second it.

CHAIRMAN: It has been moved and seconded that the section be amended in the second line on page 4 by deleting the words "or any two of them."

SHIMAMURA: I take it that that amendment goes to the fourth line from the bottom also? Same thing there.

HEEN: Also included in that amendment, I move that the same words "or any two of them" appearing in the eleventh line on page 4 be deleted.

CHAIRMAN: It has been moved and seconded that those words, "or any two of them" appearing in the second and the eleventh line be deleted. Is there any discussion on the proposed amendment?

MIZUHA: May I address myself on the entire Section 9 and some of the procedures involved with reference to the admission of Hawaii into the Union. Now, I believe there is some misconception at the present time here as to the procedure involved and I think it is essential that the delegates know about it, I know that many do not. Under the latest draft of Committee Print C—if anyone wants to rule me out of order at this time I'd be glad to accept that ruling, but I wish to make this point because it's an important point with reference to this general Section 9.

HEEN: I rise to a point of order.

CHAIRMAN: The Chair didn't get just exactly what Delegate Mizuha was speaking about.

HEEN: I understand it's generally about this whole Section 9.

CHAIRMAN: He wants to what? Delete?

HEEN: Talk generally about Section 9 and I think with a view of having it deleted altogether; so at the moment I think he's out of order.

CHAIRMAN: That's right. The Chair rules you're out of order. Is there any discussion? All right, the Chair would entertain the motion to adopt the Section 9 as amended. All those in favor of the motion - -

ARASHIRO: Does this mean then this official can immediately upon the assenting of statehood go ahead and submit their proposition immediately, even before the legislature meets?

CHAIRMAN: Delegate Shimamura, could you answer the question?

SHIMAMURA: What was that, Mr. Chairman? I didn't quite hear him.

CHAIRMAN: Delegate Arashiro, could you direct the question to - -

ARASHIRO: Immediately upon accepting by Congress and the President of the United States to make Hawaii as a state, can this official as designated over here immediately go into the dealing of the land, to set aside the land for the Territory - - for the State of Hawaii, even before the legislature meets?

HEEN: May I answer that question. They cannot do so until after Hawaii is admitted into the Union. Then they can act in making a selection of the 180,000 acres.

ARASHIRO: Thank you.

HEEN: I might state this, that as I understand H.R. 49, Committee Print C, after the Constitution, ratified by the people of Hawaii, is approved by Congress, then the governor of the Territory of Hawaii, shall by...[part of speech not recorded.]...things will happen before Hawaii becomes a State. The result of that election, notice of the results is given to the President, then the President by proclamation admits Hawaii into the Union. It's on the date of that proclamation when Hawaii becomes a State.

CHAIRMAN: Are you satisfied, Delegate Arashiro?

ARASHIRO: Then immediately upon the admission to the Union, this representative of the board or commissioner of public lands and commissioner of agriculture can immediately act upon this?

HEEN: In H.R. 49, Committee Print C, on page 22, after the election is held, the "governor of said Territory shall certify the result of said election, as canvassed and certified as herein provided, to the President of the United States,

who thereupon shall immediately issue his proclamation announcing the result of said election as ascertained, and, upon the issuance of said proclamation by the president of the United States, the proposed State of Hawaii shall be deemed admitted by Congress into the Union." So the election takes place before Hawaii becomes a state.

CHAIRMAN: Are you ready for the question on the motion? Motion is to amend Section 9 by deleting in the second line on page 4 the words "or any two of them" and also on line 11 same words. All those in favor of the motion please signify by saying "aye." Opposed say "no." Carried. Section 9 is amended.

J. TRASK: No further amendment. I move that Section 9 be adopted as amended.

BRYAN: I'll second that motion.

CHAIRMAN: It has been moved and seconded that Section 9 be adopted as amended.

HEEN: I rise to a point of information. I'd like to know if the clause in the last -- in the fourteenth and fifteenth line has been deleted, the clause reading "as and at the times directed by the Congress of the United States."

CHAIRMAN: No, those words haven't been deleted.

HEEN: I move that those words be deleted. As I understand H.R. 49, we don't have to wait for any further action on the part of Congress.

AKAU: I second that.

CHAIRMAN: Could you repeat your motion again, please?

HEEN: My motion is to delete the words, "as and at the time directed by the Congress of the United States," appearing in the fourteenth and fifteenth lines, the last two lines of this section on page 4, and put a period after the word "Hawaii" in the fourteenth line, put a period there instead of a comma.

CHAIRMAN: It has been moved and seconded to --

J. TRASK: Mr. Chairman.

CHAIRMAN: You care to withdraw your motion?

J. TRASK: I'll withdraw my motion to adopt Section 9 as amended.

BRYAN: I understand the second to that motion has been withdrawn. I'll second the motion made by Delegate Heen if necessary.

CHAIRMAN: It has been seconded by Delegate Akau. The motion before the floor is to amend Section 9 by deleting at the end of the section on page 4 the words, "as and at the times directed by the Congress of the United States," and inserting a period after the word "Hawaii."

ROBERTS: I have a question on this. As I understand it, the selection of the lands doesn't mean anything until such time as the Congress decides to give them to us. The section as it provides now with this deletion, it would merely go to the selection of the land.

TAVARES: May I answer that question. H.R. 49 in all of its forms has -- latest forms has provided that we have five years after the admission of the State within which to select 180,000 acres and present our claim for the rest of the land to Congress. We have an absolute right to select 180,000 acres at any time after we have become a state; and as to the rest of the land, we have a qualified right to appeal to Congress to give all the rest of it to us.

I think there is no objection to that amendment, but I believe that there is one other flaw which could be cured. If a special session of the legislature is called before we become a state, that would mean the legislature of the territory, it could pass a law which would direct otherwise as to the method of selection and the people who could select. To make that clear, I think we can do that by a further amendment in the eleventh to the twelfth lines from the top of page 4 where it reads, "The legislature shall otherwise provide," or really, "until and unless the legislature shall otherwise provide." I move to amend that by deleting the words "the legislature shall" and --

HEEN: Point of order.

CHAIRMAN: Just a second; let's get this straight.

TAVARES: -- and have the last, the next two following words "otherwise provide" read "otherwise provided," and insert "by law" thereafter; so it will read, "until and unless otherwise provided by law." Then it will be clear; either the territorial legislature or the state legislature can change it.

HEEN: Point of order. There is an amendment pending? I believe --

TAVARES: Well, I asked --

CHAIRMAN: We will first vote on the amendment offered by Delegate Heen, and then go back to yours, Delegate Tavares.

TAVARES: I thought perhaps the delegate would accept that as part of his amendment. I am agreeing with the rest of his amendment.

HEEN: I would accept it, but I don't quite understand it at the moment.

CHAIRMAN: If that is the case, let us first dispose of the amendment proposed by Delegate Heen.

MIZUHA: I would like to speak in opposition to the amendment. At the previous time when I sought recognition from the chairman, I was speaking on the general process of admission to the Union which was covered -- which Section 9 relates to, and the delegate from the fourth district ruled me out of order. But subsequently he rose and spoke on that same point that I was speaking, and I hope at this time that I shall have the opportunity to present my views on the subject.

PORTEUS: I'd like to offer, as the Secretary, my services to the delegate from Kauai in negotiating a treaty with those of us in the rest of this row to give him equal rights with the rest of the attorneys.

MIZUHA: Delegate Tavares just raised a point about the governor of the Territory or the governor of the State making this selection and so forth; but may I point out to the delegates present that my understanding of Committee Print C, H.R. 49, does not create the State of Hawaii until such time as Congress first approves our Constitution as ratified by the people of Hawaii. After the Congress approves our Constitution, under H.R. 49, we must hold a state election and when we elect our senators, our representatives, our governor and the officers of the State, then that governor, the governor of the Territory of Hawaii, must certify to the President as to the results of that election. Upon that certification, then the President of the United States will issue the proclamation admitting Hawaii into the Union as a state. Only until such time as we are admitted into the Union as a state can this selection of those lands be made.

Now it is apparent at this time, and there is nothing in the election -- in the ordinance submitted by the Committee on Continuity calling for a mandatory, special session the day after Hawaii is admitted into the Union by presidential proclamation, and it is proper that it should be done at that time. When the President issues that proclamation

admitting Hawaii into the Union, under constitutional authority, we must hold our first session of the State Legislature of Hawaii. Then, the point that Delegate Tavares raised that if no provision is made, if we follow the provisions in our legislative article, or whatever article in which is contained the provisions for the general sessions of the legislature, we might wait a year or a year and a half before that legislature meets. That is why the point I raised that if we have that special session of the legislature convening in Iolani Palace, or whatever place it must convene, the day after we are admitted into the Union, legislation can be passed to secure a special commission to select these lands, the 180,000 acres. Certainly the gap that Delegate Tavares has in mind, which may be only one day or three days, to get a law passed by the State legislature is too short a time for us to be fooling around in a Constitution with a section like article -- Section 9. We have heard this body remark about the simplicity of a constitution, and we want a good document here; but making a provision like this here is asinine because of the provisions in H.R. 49. We can take care of it with a special ordinance that mandates the first legislative session of the State legislature meeting the day after the President issues the proclamation admitting Hawaii into the Union.

ANTHONY: Mr. Chairman, could you enlighten me as to the status of Committee Print C that has just -- that is dated June 26. There has just been distributed and placed on the desk of the delegates, H.R. 49 which bears the date of June 29. I wish that somebody would tell us if there's any difference between that and Committee Print C.

CHAIRMAN: Could Delegate King, President King?

KING: I received yesterday the copies of H.R. 49 as filed in the Senate and on the Senate calendar, Calendar No. 1931. I haven't checked this H.R. 49 against Committee Print C. There might be some minor changes, but my understanding was that Committee Print C was the form in which the committee approved it, and when they filed it, it dropped the committee print and it comes out in the final form. This is the form in which it is pending on the Senate calendar.

ANTHONY: One further question of the President then. In our discussions, I then assume we should be referring to the printed copy now distributed and on the desks of the delegates. Is that correct?

KING: We should now refer to H.R. 49, Senate Calendar No. 1931.

CHAIRMAN: That's right.

TAVARES: I think that the argument of the speaker before -- the speaker from Kauai, is aimed at the adoption or non-adoption of the entire section. At the moment we are only adopting -- considering an amendment made by Delegate Heen, which I think is unobjectionable, namely deleting the words, "as and at the times directed by the Congress of the United States." That would be implied anyhow if Congress does direct any special time. Otherwise why it would take care of itself without those words. In any event I don't think there is any objection to deleting them. They are technical amendments, and after we take care of that, then I think -- and other amendments, then I think the basic provision of whether we shall adopt or not adopt this section would still be in order.

CHAIRMAN: Are you ready for the question? On the amendment offered by Delegate Heen, all those in favor of the motion to amend please say "aye." Opposed, "no." Motion is carried.

TAVARES: I now renew my motion. In the fifth line from the bottom of that section and the fourth line from the bottom, substitute for the words "the legislature shall otherwise provide," the words "otherwise provided by law."

CHAIRMAN: Do I hear a second to the motion?

APOLIONA: I second that motion.

TAVARES: It's been called to my attention that a similar amendment should be made on the first page, on page 3, in the third line from the bottom, and I also move to amend the words, "the legislature shall otherwise provide" to read "otherwise provided by law." Does the second accept that?

APOLIONA: I do.

TAVARES: Now, I'd like to explain. I think that, leaving aside the question of the merits of the whole section --

HEEN: Point of information. What was that amendment again on page 3?

TAVARES: On page 3, in the third line from the bottom, delete the words "the legislature shall otherwise provide," and substitute therefor the words "otherwise provided by law." And a similar amendment as I've already made on the fifth and fourth lines from the bottom of page 4.

CHAIRMAN: Is there any discussion on the amendment?

TAVARES: May I explain the reason for that? As this stands now without amendment, it might be contended that the word "legislature" there means the legislature under the new State, and by saying "otherwise provided by law," I am making it read so that if a legislature before we become a state passes a law saying that this group of three officers shall not have power to make this choice and selecting other people to do it, or providing whatever the legislature wants to do, it will then supersede this temporary provision. My concern is that a special session might not be called before we become a state and there might be a few days there where something could be lost; and this amendment actually assists Delegate Mizuha's contention rather than detracts from it, I submit.

MIZUHA: There is one point that bothers me, and I'd like to ask the previous speaker a question. Wouldn't it be possible in this ordinance to have that special session called immediately after the President issues his proclamation?

TAVARES: I don't see how we can do that unless Congress in H.R. 49 puts in an amendment mandating such a special session. At the present time we operate under the Hawaiian Organic Act, under which only the governor in his discretion can call a special session. If we adopt this Constitution, it is still not effective until Congress -- under the act of Congress we become a state. Therefore, until that time our Constitution, as I see it, has no efficacy and during that time a special session can't be mandated on the governor.

MIZUHA: It is my contention, under H.R. 49, that we can have our Constitution approved by the Congress of the United States and we won't be a state of the Union then. But if H.R. 49 provides that after approval of the Constitution of the State of Hawaii, special elections must be held in the territory providing for the election of all the officers provided for in our State Constitution, and for two senators and two representatives to the Congress of the United States, then the governor of the Territory of Hawaii must certify to the President as to the results of this election, and then he will issue the proclamation admitting Hawaii into the Union. The day he issues that proclamation admitting Hawaii into the Union, we will change over to a state status, and the governor who was elected in the interim will assume the office of governor and all the other state officers will assume their offices. My contention then is that is the time that we should

have our session of the legislature automatically being called by some ordinance provided for in our Constitution.

ASHFORD: I am not in agreement with Delegate Tavares that that can't be done by this Constitution. I think we can write into our temporary provisions that immediately upon admission as a State, the legislature shall meet in special session.

TAVARES: I agree entirely with that. The delegate misunderstood what I said. I said that before that moment, we cannot mandate the governor of the Territory appointed by the President to call a special session, and I think the delegate will agree with me.

HEEN: That provision by way of an amendment can be made to the article on election ordinance. There you -- I have an amendment as to how long the members of the legislature shall serve after their election, at the initial election. And Delegate Okino has one in reference to the term of the governor and lieutenant governor, after their election at the initial election. Right there, following those two sections, or proposed sections, can be inserted another section providing that the governor of the State shall immediately call the legislature, the State legislature into special session.

ARASHIRO: I cannot think of a word to carry out my thinking, but I want to have something in this line -- in this thought, I mean. Where we put it in a way that, when the legislature has failed to provide, then we can authorize this representative to go ahead and deal with the land. But I do not want to see these people act before the legislature has the opportunity of acting on this matter.

TAVARES: It seems I still haven't made myself fully understood. Let me try again. This Constitution, in my humble opinion, will not take effect as a Constitution until the day when the President certifies that we are a State; he admits us to statehood. Well, now we all admit that in this Constitution we can mandate a special session after that. That's clear. But what I'm thinking about is the interim between now and the time we are actually admitted as a State, as to whether, if there is not a regular session in the meantime, we may be able to persuade a governor appointed by the President to call a special session of the territorial legislature to pass some laws to take care of this situation. If he doesn't call such a special session, I don't think we can mandate him before the date we become a State, unless Congress amends H.R. 49 to put that mandate in, in which case it would supersede our Organic Act and make it mandatory. Now we haven't done that, and I don't think at this late date we can ask the Congress to make that drastic change. So there is just this interim between now and the time when we are admitted as a State when, if there is no regular session of the territorial legislature, the governor may refuse to call a special session, and we can't make him.

Now after we become a State, if we put it in our Constitution, it is true the governor then will have to call a special session if we have said he must, because at that date the Constitution will become effective and binding. Now my amendment are these few words, which again is only a technical amendment and doesn't relate to the merits of the whole section, will make sure that if a regular or a special session of the territorial legislature happens to be held before we become a State, that that legislature can supersede this provision by making another provision. So my amendment actually aids Delegate Mizuha and Delegate Arashiro in taking care of that interim situation. It gives the territorial legislature power to make laws changing this, as well as the State legislature after we become a State, because on the date we become a State, if our territorial legislature has passed such a law, it will be carried over under ordinances as an existing law and be effective.

ROBERTS: I am more and more convinced as we go into this article that it ought to be deleted. We don't get the 100,000 acres -- 180,000 acres until we become a State. When we become a State, we have our legislature. After we -- they are properly elected, it seems to me that they have five years in which to do their job. We don't have to make any provisions or ordinances. I think the section as amended ought to be deleted.

CHAIRMAN: Would you care to make a motion?

ROBERTS: I will so move.

ANTHONY: I second that motion.

MIZUHA: I am in sympathy with Delegate --

ANTHONY: Mr. Chairman, do I have the floor?

CHAIRMAN: Just a second till I get this motion cleared.

ANTHONY: There's been a motion made, and I'd like to second it.

CHAIRMAN: The motion is to reconsider --

ANTHONY: No, motion is to delete.

CHAIRMAN: There was a motion previously to delete Section 9.

ROBERTS: Mr. Chairman.

ANTHONY: That was prior to the amendment.

CHAIRMAN: It was repeated. That's right, that's right.

ROBERTS: This is a motion to delete as amended.

CHAIRMAN: There is a motion on the floor at this time to delete Section 9 as amended --

MIZUHA: I rise to a point of information.

CHAIRMAN: -- and that motion has been seconded. Delegate Mizuha.

ANTHONY: I thought I --

MIZUHA: Mr. Chairman.

ANTHONY: Mr. Chairman, didn't I have the floor? I moved to second it and I asked for the floor.

CHAIRMAN: Delegate Anthony.

ANTHONY: I think we are wasting an awful lot of time about this section, and it all arises over whether or not we've got to select the 180,000 acres within the next 15 minutes. Congress has given us five years within which to do that thing, so why should we fool around with the minutia of how it should be done here. We've got five years to do it. Everybody knows upon admission of this State to the Union, the legislature is going to be promptly called into session, and appropriate legislation will be enacted. So I therefore feel that Delegate Roberts' motion should carry.

CHAIRMAN: Is there any more discussion on the motion to delete?

TAVARES: I'm not going to say any more. I've warned this Convention, and if they want to vote that way, O.K. I'm going to vote against it.

MIZUHA: I, as the delegate who did not concur with Section 9 in committee, I wish to point -- make my point clear that there must be something in the section on continuity of laws to call for a special session the day or the day after the President admits Hawaii into the Union as a state.

SHIMAMURA: Will the gentleman yield for a moment? We have such an amendment ready.

CHAIRMAN: Are you ready for the question?

The motion is to delete Section 9 as amended. All those in favor of the motion please say "aye." Opposed, "no." Motion carries. Section 9 as amended is to be deleted.

TAVARES: Point of order. There was a motion to reconsider and not a motion to delete and it requires 32 votes.

CHAIRMAN: The Chair wishes to inform Delegate Tavares that there was no motion to reconsider. The motion was to delete Section 9 as amended.

TAVARES: We voted on that once, and it was out of order, and I make the point of order that it was wrong to put such a motion without reconsideration.

ANTHONY: Point of order.

CHAIRMAN: Delegate Anthony, state your point of order.

ANTHONY: We already straightened that out.

CHAIRMAN: I can't hear you.

ANTHONY: We already straightened the point of order out before the vote was taken, namely that the present motion to delete was on a different section, the section as amended.

TAVARES: I appeal from the ruling of the Chair to the Convention. I think it's wrong - -

CHAIRMAN: The Chair has ruled that the motion to delete Section 9 as amended was in order.

TAVARES: I appeal from the ruling of the Chair to the Convention.

CHAIRMAN: All right. Those of the - - How shall I state this?

SAKAKIHARA: I move for a recess.

DELEGATE: Second the motion.

CHAIRMAN: All those in favor of a recess say "aye." Opposed. Motion is defeated.

SAKAKIHARA: Then I demand roll call.

CHAIRMAN: The Chair declares a short recess for five minutes.

(RECESS)

TAVARES: I withdraw my appeal from the ruling of the floor on the point of order.

CHAIRMAN: That being the case, Section 9 as amended is deleted.

J. TRASK: I wonder if it would be in order at this time, to renumber the sections, if we are through with the entire proposal. So I move at this time, if there's no other amendment - -

CHAIRMAN: I see one on my desk here. Delegate Shimamura, do you have an amendment to propose to Committee Proposal No. 24?

SHIMAMURA: Yes, Mr. Chairman. I should like to have a new Section 6.

CHAIRMAN: Could that be numbered 10?

SHIMAMURA: Pardon me?

CHAIRMAN: Could that be numbered 10?

SHIMAMURA: Yes, as originally proposed it's No. 10, but in the light of the deletion of several paragraphs this will be a new 6. The 9 deleted would be - - oh, the 9 having been deleted, this will be 5. A new Section 5, but I have circulated it prior to the deletion as number 6.

CHAIRMAN: Let's call it number 10 because number 5 was another section.

SHIMAMURA: I've had this circulated as - -

CHAIRMAN: Number 6.

SHIMAMURA: - - relating to Committee Proposal No. 24, a new Section 6, but it might be called 10. It's on the desks of all the delegates. This refers to taxes. This reads as follows, if I may read it:

> No taxes shall be imposed by the State upon any lands or other property now owned or hereafter acquired by the United States, except as the same shall become taxable by reason of disposition thereof by the United States or by reason of the consent of the United States to such taxation.

This tries to - - I move for the adoption of this amendment first.

CHAIRMAN: Do I hear a second?

J. TRASK: Second the motion.

CHAIRMAN: It has been moved and seconded that the section just read by Delegate Shimamura, Section 10, be an amendment to Committee Proposal No. 24.

SHIMAMURA: The purpose of this amendment is, as the delegates see, to try and comply with a portion of paragraph 7, Section 2 of H.R. 49.

CHAIRMAN: Is there any more discussion on the proposed amendment?

TAVARES: All this does is to state what the law is anyhow. We can't tax lands of the United States but we can tax them after they dispose of them. It's simply a statement of what the law is and there's no harm in it. We don't go as far as the literal language of the H.R. 49 - - amended 49 would do, and I think it's as far as Congress has a right to ask us to go, and I think they'll recognize that.

RICHARDS: I raise the question, I understand that there has been considerable work done in Congress by certain of the states that have large federal installations, trying to get Congress to permit the taxation of those. Will this preclude the State being able to tax, if this is in the Constitution?

H. RICE: The Delegate Monte Richards is dead right, and it would make a big difference to particularly the City and County of Honolulu. If any provision like this went through, it would mean a difference of $8,000,000 a year, I understand.

TAVARES: If the delegates would only read the amendment, they would see the answer to their question. The amendment says, "No taxes shall be imposed by the State upon any lands or other property now owned or hereafter acquired by the United States, except as the same shall become taxable by reason of disposition thereof by the United States or by reason of the consent of the United States to such taxation." That answers itself.

HEEN: Instead of the words "now owned or hereafter acquired by the United States," I would suggest that you use the word "while." "While," w-h-i-l-e; substitute the word "while" for the word "now" in the second line and delete the words "or hereafter acquired"; so that clause will read: "No taxes shall be imposed by the State upon lands or other property while owned by the United States."

CHAIRMAN: Is that amendment acceptable to Delegate Shimamura?

SHIMAMURA: The committee attempted to comply as far as possible with H.R. 49. I don't have any particular objection to that; the sense of it becomes the same.

TAVARES: There is a grave defect. Lands while owned by the United States can be leased and they are still owned by the United States and then we won't tax them. The other amendment took care of it better; this way exempts totally lands while owned by the United States.

RICHARDS: There is another point involved - -

CHAIRMAN: Is that on the same point? Delegate Richards, is that on the same point?

RICHARDS: It's on the same point - -

CHAIRMAN: Raised by Delegate Heen?

RICHARDS: Yes, the fact is the United States might acquire the property in the middle of the year, and according to our laws here and the way the tax office operates, taxes are still payable up to the end of that calendar year.

CHAIRMAN: Delegate Heen, do you still insist on making that your amendment?

HEEN: I think my suggestion or motion is not in order. In order to take care of leases that might be made of these lands, I withdraw my motion.

CHAIRMAN: Delegate Anthony, did you - - are there any more amendments? Any discussion? Are you ready for the question? All those in favor of the motion to amend Committee Proposal No. 24 by adding a new Section 10, as read by Delegate Shimamura, please signify by saying "aye." Opposed, "no." Motion is carried. We'll add a new Section 10 to Committee Proposal No. 24.

If there is no other amendment to Committee Proposal No. 24 - -

J. TRASK: I move for the adoption of Committee Proposal No. 24 as amended.

DELEGATE: I second that.

CHAIRMAN: It has been moved and seconded that Committee Proposal No. 24 be adopted as amended.

SHIMAMURA: Prior to the time that the Chair put that question, I'd like to serve notice that I have two other amendments to those sections, and at this time, if the movant will withdraw his motion, I'd like to move for another amendment.

J. TRASK: I withdraw my motion.

CHAIRMAN: The motion to adopt as amended is withdrawn.

SHIMAMURA: At this time I'd like to propose an amendment of a new section to Proposal No. 24, which would in the order of numbering at present would be number 11, but would be a new Section 7.

CHAIRMAN: Section 11 is the title given here.

SHIMAMURA: A copy of the amendment is on the desks of all the delegates. It reads as follows, to identify it:

> All provisions of the act or resolution admitting this State to the Union, or providing for such admission, which reserve to the United States jurisdiction of Hawaii National Park, or the ownership or control of lands within Hawaii National Park, are consented to fully by the State and its people.

J. TRASK: I second the motion.

CHAIRMAN: It has been moved and seconded that Committee Proposal No. 24 be amended by adding Section 11 to it. Is there any discussion?

ASHFORD: I'm inclined to think that that is covered by a provision in the agriculture section, referring to all lands set aside for the use of the United States.

CHAIRMAN: Delegate Richards, would you care to answer the question? Could you use your mike, please.

RICHARDS: I believe that's taken care of in both Part II and Part I of the agriculture, conservation and land.

CHAIRMAN: Delegate Shimamura, have you checked on the question raised by Delegate Ashford?

SHIMAMURA: That may be correct, I may be under misapprehension, but I thought Hawaii National Park was not specially covered by Part II. I may be mistaken.

CHAIRMAN: What is your desire, Delegate Shimamura?

SHIMAMURA: Might we do this to facilitate matters. If the Convention is willing - - If the Committee of the Whole is willing, why don't we adopt this and if there is a duplication, then strike it out in Style.

ROBERTS: The article which we adopted on agriculture and conservation provides in Part II that, "The United States shall be vested with or retain title to or interest in or shall hold the property in the Territory of Hawaii set aside for the use of the United States." I think that is covered.

TAVARES: I respectfully differ with the last speaker. This relates to jurisdiction more or less for court purposes and things like that, and I don't think it's covered by that language; jurisdiction for service of process and passage of laws regulating, the municipal legislation of the area, and so forth. I believe that it's a little different. H.R. 49 has a special provision about that for national park lands, and I don't think it's covered by the merely ceding title to the United States. We can cede title and still reserve jurisdiction to serve process.

ROBERTS: The full article, Section 1 says: "...set aside for the use of the United States and remaining so set aside immediately prior to the admission of this State, in all respects as provided in the act or resolution admitting this State to the Union." It's already covered in that section.

TAVARES: It's a question of title there, but we are talking about jurisdiction of courts and so forth. They are two entirely different things and merely transferring title to the United States does not do that. I might point out some history here, and that is, the territory today has a right to serve process in Pearl Harbor although the United States owns that land. There are certain lands owned by the United States where we actually have jurisdiction to serve process even though the United States owns that land, and only to the extent that Congress takes away that jurisdiction should we agree to it. If we don't agree to it, the laws will carry over, and we will still have that jurisdiction which is very important, the jurisdiction to tax and the jurisdiction to serve process.

SHIMAMURA: I think the last speaker is correct. I think we should adopt this section.

CHAIRMAN: Are you ready for the question? All those in favor of amending Committee Proposal No. 24 by adding the new Section 11 please signify by saying "aye." Opposed, "no." The amendment carries.

SHIMAMURA: At this time, I'd like to ask leave to add another section, No. 12 I think in the present order. I have circulated it as new Section 8. I move for the adoption of that new section.

> All those provisions of the act or resolution admitting this State to the Union, or providing for such admission, which reserve to the United States judicial rights or powers, are consented to fully by the State and its people; and those provisions of said act or resolution which preserve for the State judicial rights and powers are hereby accepted and adopted, and such rights and powers are hereby assumed, to be exercised and discharged pursuant to this Constitution and the laws of the State.

DELEGATE: Second.

CHAIRMAN: It has been moved and seconded that Committee Proposal No. 24 be amended by adding a new Section 12. I believe copies of this amendment have been circulated. Delegate Shimamura, would you care to discuss this amendment?

SHIMAMURA: H.R. 49 reserves certain judicial powers and rights to the United States and this section consents to that, to such reservation; and we also state that as to such rights to be exercised by the State, that is, judicial rights and powers to be exercised by the State, we accept them.

ANTHONY: Point of information. What is this designed to accomplish, I'd like to know?

CHAIRMAN: Delegate Shimamura.

SHIMAMURA: I didn't hear that.

ANTHONY: You can't take the jurisdiction away from the United States upon admission to the Union. I'd like to know what this is designed to accomplish.

SHIMAMURA: We're trying to comply as far as possible with Section 2, paragraph numbered 7, which contains a disclaimer which we have rejected. We have as far as possible to comply with paragraph 7, insofar as it does not prejudice the rights of the people of Hawaii. This reservation of powers is contained in H.R. 49 and we're just accepting it. I don't think - - perhaps it isn't necessary but we want to show Congress that we're trying to comply as far as possible with the requirements of the seventh paragraph of Section 2. It doesn't do any harm.

ANTHONY: There are a lot of things that don't do any harm, but that doesn't mean we should say it two or three times. We said once that we - - in the conservation and lands article, that we will comply in all respects with the provisions of the act or resolution admitting this State to the Union. Now thus far I've heard nothing that would lead me to the conclusion that this will do anything different than we've already agreed upon.

SHIMAMURA: If the last speaker would read the new Section 8 as proposed, it has nothing to do with lands.

ANTHONY: The other section didn't either. We said that we would comply in all respects to the provisions of the act of Congress admitting us to the Union.

CHAIRMAN: Any more discussion on this amendment? Are you ready for the question?

TAVARES: I think, if I'm not mistaken, this amendment was very carefully prepared by the assistant attorney general. Am I correct? She feels that it is important and complies as far as we properly can, with due regard to the interests of the people of this territory, with the requirements of that Section 7 as proposed to be amended in H.R. 49, Calendar No. 1931, and I see no objection to having it adopted here.

CHAIRMAN: Are you ready for the question? All those in favor of the motion to amend Committee Proposal No. 24 by adding a new Section 12 please say "aye." Opposed, "no." Motion carried.

SHIMAMURA: Now may I move for the adoption of the entire Proposal No. 24 as amended?

HOLROYDE: Second the motion.

CHAIRMAN: It has been moved and seconded that Committee Proposal No. 24 be adopted as amended. All those in favor of the motion, please say "aye." Opposed, "no." Motion carries.

SHIMAMURA: If it's agreeable with the body, I should like to go into the consideration of Committee Proposal No. 25, where we left off.

CHAIRMAN: Is there any objection?

A. TRASK: Move for recess.

SAKAKIHARA: Second.

CHAIRMAN: Chair declares a recess of five minutes.

(RECESS)

CHAIRMAN: Committee come to order. We are now considering Committee Proposal No. 25.

SAKAKIHARA: What is the status of Section 1 of Committee Proposal No. 25 and the various amendments?

CHAIRMAN: The amendments made by persons other than Delegate Nielsen were being discussed and not yet voted on, and we agreed to hold off the amendment made by Delegate Nielsen until the other amendments are voted on.

SAKAKIHARA: So the amendments proposed by Delegate Tavares and others have not been acted upon?

CHAIRMAN: That is correct.

SHIMAMURA: Point of information. May I inquire if the words on line 4 at the end, and line 6, "election or," were those words deleted?

CHAIRMAN: Line 4. Are you talking about page 2?

SHIMAMURA: Page 1, section 1, fifth and sixth lines, at the end, "and"; on the next line, "election or."

CHAIRMAN: No, that question hasn't been - - There was no amendment to that question raised by - -

SHIMAMURA: I move at this time to delete the word "and" on line 5 at the end of the line, and the words, "election or" on the following, sixth line. And also to delete the words on the sixth line, "as may be required," and insert in their stead, "as hereinafter provided."

CHAIRMAN: And insert what words?

SHIMAMURA: "As hereinafter provided."

ASHFORD: I'll second that motion.

CHAIRMAN: It has been moved and seconded to amend further Section 1 by deleting the words in the fifth line, the word "and"; and in the sixth line, the word "election or," at the beginning of the line; and in the sixth line, delete the words "as may be required" and insert in lieu thereof, "as hereinafter provided."

TAVARES: May we have that read now so that everyone can see how the whole thing reads.

CHAIRMAN: Yes.

> Section 1. In case the people of the Territory of Hawaii ratify this Constitution and the same is approved by the duly constituted authority of the United States whose approval thereto may be required, the governor of the Territory of Hawaii shall, within 30 days after receipt of official notification of such approval, issue his proclamation for primary and general elections, as hereinafter provided, at which officers for all elected offices provided for by this Constitution and laws of this State shall be chosen by the people; but the officers so to be elected shall in any event include two senators and two representatives in Congress, and unless and until otherwise required by this Constitution or laws of this State, said representatives shall be elected at large.

DELEGATE: Question.

CHAIRMAN: Are you ready for the question? All those in favor - -

HEEN: In the article on suffrage and election we have a provision there on general election and special election. Now this initial election is to take place at a time other than the general election provided for in the article on suffrage and election, it would not be a general election. It would be something else. It will be a special election or perhaps an initial election.

ASHFORD: The words used by the chairman of the committee, "as hereinafter provided," had that in mind; and the words "general election" it is contemplated will be defined for the purposes of this article in that subsequent section, so that it may be either a general or a special election.

TAVARES: I think, carrying out Delegate Ashford's explanation a little further, just in case it happened that this election could be called to coincide with a general election, it would be in fact a general election. In case it came at another time, it would be possibly a special election. I think that's what Delegate Ashford meant and that's why it calls for a later definition. But I think there would be no objection under those circumstances.

HEEN: Perhaps it's not at all right at this moment, but in the general statute relating to primary and general elections, when a special election is held, then the law relating to primary elections does not apply. Nominations must be made in some other manner, and I'm just wondering whether they have taken care of that situation.

TAVARES: We are providing for a primary election expressly; that takes care of it. The election following it naturally is not a primary. I think by taking the - - expressly mentioning primary election, we've taken care of that situation.

ARASHIRO: I have a question to ask. On page 2, line 3, what is the necessity of the insertion of the word "in any event"?

CHAIRMAN: Whether we should keep those words?

ARASHIRO: Yes.

CHAIRMAN: Delegate Shimamura, a question has been raised. On page 2, line 3, at the end, whether it is necessary to keep those words "in any event."

SHIMAMURA: That follows the language of H.R. 49. The previous clause provides for "officers for all elected offices provided for by the Constitution and laws of said State." Now Congress contemplated the situation that we might not elect some other officers, then they say, in any event such officers to be elected shall include two senators and two representatives to Congress.

CHAIRMAN: Are you ready for the question?

HEEN: Line 2 on page 2, you have the words "shall be chosen." Just wondering whether or not, in view of the fact that you are going to have a primary election, that those words should read "shall be nominated and chosen."

CHAIRMAN: Delegate Shimamura, what is your - -

SHIMAMURA: I have no objection. H.R. 49 says "chosen"; but I'd just as soon have - -

HEEN: It seems to me this would be an improvement on H.R. 49 because you don't choose at a primary election; you nominate at a primary election. I move that after the word "be" on line 2, on page 2, the words "nominated and" be inserted.

CHAIRMAN: Delegate Heen, I believe you made the original motion to amend this section; therefore, if you wish to incorporate this further amendment, it would be all right. To facilitate matters.

SHIMAMURA: Point of information. What was the exact amendment now of Delegate Heen?

CHAIRMAN: Delegate Heen's amendment was on the second line, page 2. After the words "shall be," insert the words "nominated and."

HEEN: That's a new motion, altogether. I have no previous motion pending.

CHAIRMAN: You have one motion made this morning, I believe. The motion to amendment - - amend was made early this morning and subsequent amendments have been added to it and you've accepted it.

TAVARES: Why can't we vote on one at a time?

CHAIRMAN: All right.

TAVARES: In connection with Mr. Shimamura's amendment, I'd like him to set forth a statement - - a suggestion made by Delegate Kellerman- thought she wasn't going to get up and mention it—it's use the word "final" for "general" election. I wonder how the chairman feels about that. "Final election" instead of "general election."

SHIMAMURA: That's all right, I have no objection. The Act 334 uses the word "final" instead of "general," but H.R. 49 uses the word "general."

TAVARES: Well, my suggestion would be then that we define the word "final" to mean what we are going to define "general" to mean later on. That would include either a general election, if it came at the date of the general election, under the suffrage article, or a special or some other kind of an election, as long as it was the final one by which these people were to be elected.

SHIMAMURA: That may be less confusing, to use the word "final."

CHAIRMAN: Agreed to use the word "final."

BRYAN: I'd like to ask the last two speakers if they wouldn't rather use the words "nominated and elected." In other words, "for a nomination and election." I think that would be more precise.

CHAIRMAN: How does it strike you, Delegate Shimamura?

SHIMAMURA: I have no objection, but I think we are putting undue emphasis on nomination and election because the statute usually speaks of election and not nomination.

CHAIRMAN: Delegate Tavares, how does it meet with you?

TAVARES: Again, aren't we mixing up two amendments; the nomination and election comes on the next page, does it not?

CHAIRMAN: That's right.

TAVARES: Couldn't we leave that till later? I think that's a good suggestion and I don't see on page 1 where that will come in.

CHAIRMAN: In lieu of the words "primary and general," Delegate Bryan suggested the words "nomination and election." Is that correct?

BRYAN: "Issue his proclamation for nomination and elections"?

TAVARES: No; you've got to designate the primary election day and the final election day. I think it wouldn't be appropriate.

BRYAN: Primary election is not an election. That was my point.

TAVARES: It is a primary election, if it's called such; and if you say nomination, it wouldn't mean what a primary election would mean. You have to define it further.

HOLROYDE: Under the legislative article, they can only be finally elected at a general election. Why don't we stick to this term "general" right through. That's the only suggestion that I have.

CHAIRMAN: The Chairman will rule that we'll take a vote first on this amendment made by Delegate Heen, to facilitate matters. The amendment is on page 2, second line. After the words "shall be," the following words are inserted, "nominated and." All those in favor of the amendment, please say "aye." Opposed, "no." Amendment carried.

Now as to the amendment offered by Delegate Tavares. What is your final amendment?

TAVARES: I think Delegate Shimamura made the motion, and I don't know if he accepted the word "final" in place of "general" or not.

SHIMAMURA: I accept that. I think it's an improvement and I think that does away with some confusion.

CHAIRMAN: The word "final." All those in favor -- are you ready for the question, the amendment made by Delegate Shimamura that would change the word "general" in the fifth line to "final." All those in favor of the motion to amend please signify by saying "aye." Opposed, "no." The motion is carried.

TAVARES: Had we already voted on the deletion of the other two portions? I didn't know that we voted on it. Delegate Shimamura moved to delete on page 1.

CHAIRMAN: No, as I stated at the beginning of this session this afternoon, consideration of Committee Proposal No. 25, I believe we did not. Then there is some insistence that we clear matters step by step. Therefore, that's the procedure we've been following.

TAVARES: Well, Mr. Chairman, as we started this afternoon, the first part of Delegate Shimamura's motion was to delete the words "an election or" in the fifth line and "as may be required" in the same -- in the fifth and sixth lines, and "hereinafter required" in the sixth line.

CHAIRMAN: The Chair will put the question now. Delegate Shimamura's amendment, motion to amend in line 5, by deleting the words "and" at the end of the line; and on line 6, deleting the words "election or"; and in the same line 6, deleting the words "as may be required" and inserting in lieu thereof the words "as hereinafter provided." All those in favor of the motion, please say "aye." Opposed, "no." Motion carried.

J. TRASK: I move for the adoption of Section 1 as amended.

CHAIRMAN: Delegate Trask, with this understanding, that Delegate Nielsen will be given a chance to make his motion to amend the very last clause of Section 1. Is that agreed on?

J. TRASK: I accept that proviso.

CHAIRMAN: To clear the floor.

APOLIONA: I second that motion to adopt.

CHAIRMAN: Section 1, with leave for Delegate Nielsen or the floor for consideration of the last portion of the section.

HEEN: Before we get to that stage, I would like to bring up this question. As the section now reads with all the amendments which have been made, it provides for the election of "officers for all elective offices provided by this Constitution and laws of this State." Now the laws of this State provide for the election of members of the board of supervisors and other city and county officials. Will they have to be re-elected or elected again under this provision? Seems to me that they'll have to run, be nominated and elected under this provision.

TAVARES: I don't think that follows. The laws of the State will be carried over, and what those laws say will be -- will have their effect, if they don't say to run at this election, people won't run. That's the situation; I don't think there is any trouble at all.

HEEN: It says "for all elective officers under this Constitution and laws of this State," and the laws of this State provide for the election of city and county officials.

CHAIRMAN: Is there any more discussion on the section as amended so far? Care to make a motion?

HEEN: Personally, I don't think they need to run for election, under this particular section. I would suggest this amendment to the last line of page 1, before the word "elective" insert the word "State." I move that as an amendment.

CHAIRMAN: Is there a second to it?

HAYES: I second it.

CHAIRMAN: It has been moved and seconded that on line 7, between the words "all" and "elective" insert the word "State." Ready for the question?

J. TRASK: For the sake of the record, I'll withdraw my motion.

CHAIRMAN: Ready for the question? All those in favor of the motion please say "aye." Opposed, "no." Carried.

J. TRASK: I renew my former motion.

CHAIRMAN: It has been moved and seconded that Section 1 be adopted as amended, with leave for consideration of the last portion of this section to be left open.

BRYAN: Point of information. Why is it necessary to give leave for further amendment? Is the amendment not ready now? Is that the complication?

CHAIRMAN: The amendment is ready, but there is some question as to whether the amendments made this morning have been really adopted. Therefore, we would like to clear the floor, make it definite and adopt those amendments made, and then proceed to the consideration of Delegate Nielsen's amendment.

BRYAN: O.K.

CHAIRMAN: That is merely to facilitate matters, to clear any ambiguities. Are you ready for the question? All those in favor of the motion please say "aye." Opposed, "no." The motion is carried.

NIELSEN: I move that the following amendment be made to this section. You all have printed copies on your desks. On the last line of the last sentence, delete the words "said representatives shall be elected at large" and substitute therefor the following: "said senators shall be elected at large; and said representatives shall be elected in the following manner, one from that area comprising representative districts 11 to 17, inclusive, and one from that area comprising all other representative districts in the State."

LUIZ: Second the motion.

NIELSEN: The reason that I have offered this amendment is that if we do not do something like this, all -- both senators and the two representatives will all be elected from Oahu without hardly any question, on account of the registered votes. Now if we split it in this manner we gain two

things. We do district for representatives as most states do, and on a fairly equitable basis because districts 11 to 17 have approximately 65,000 registered voters and all the other districts about 60,000. Also it will give us rural representation in the Congress, and I think that's very necessary because of the rural development and the agricultural nature of a large part of our territory. While the other senators and representatives will give us kokua, I think that a man that is definitely elected by the rural areas will be vitally interested in serving them.

HEEN: I believe that under the law with reference to election of representatives to the Congress, representatives and senators to the Congress of the United States, they are elected on the basis of population, straight population. I'm not too certain about that. I know this, if it is on the basis of population, the districts 11 to 17 inclusive will have a population, under the 1950 census, of 347,440 and the rest of the state would have 145,908. I don't know whether that will meet the requirements of the method of equal proportions.

NIELSEN: So far as equal proportions, the states are left to set up their own districts. There's no law on that. According to the population of the states, equal proportion is set up but not as to the districting within the states; they have never been successful in doing that in the national Congress.

CHAIRMAN: Is there any more discussion on the proposed amendment?

BRYAN: I've been very much in favor of rural representation all the way along. I think I'm going to draw the line on this one. My reasoning is this. The actions taken and the representation that the citizens of the State would want is on an over-all basis, and I think that there's very little concerning the territory in Congress that would go to local, or strictly local, problems. For that reason, I would rather have a toe-hold on two representatives, even if it was a small toe-hold, than I would have an arm-lock on one of them, if you get what I mean.

ASHFORD: Like the delegate who has just spoken, I'm very much in favor of the rural areas, but unlike him, I think it highly desirable to have a representative in Congress from those areas. The necessity for harbor developments and various conservation projects are apt not to receive the full value of need and of service to the territory unless we have somebody specifically representing us.

CHAIRMAN: Is there any more discussion?

KING: One difficulty about putting congressional districts in the Constitution is that we never know how many congressmen we are going to have in the future. Reapportionment of the Congress of the United States might decrease our representation in the House of Representatives from two to one, or might even increase it from two to three. Now ordinarily all of the states have allocated to them a certain number of representatives; then they leave it to the state legislature to apportion or redistrict the states. Many states have in the past two years, that is when I was in Congress in 1940, gained two or three representatives, and in some cases, lost one or two. Right after 1950 there'll be another reapportionment and there'll be a further allocation of representatives to the 48 states and to Hawaii, if we are a state by that time.

Now H.R. 49 arbitrarily allocates us two representatives at this time and says that those two shall be in addition to the present fixed number of representatives of 435 for the whole 48 states, but immediately after the reapportionment that will take place in the next Congress, we might very easily be reduced to one, particularly in view of the recent shrinkage in population of the territory. As I recollect, the ratio was 300,000 people or a major fraction thereof for each representative, but we are right on the edge now. They may raise the ratio from 300,000 to 350,000 or a major fraction thereof, and we would lose one in the reapportionment that will take place in 1950. I therefore feel that this matter is a statutory matter and not a constitutional matter. The number of representatives allocated to the State of Hawaii should be apportioned by the legislature of Hawaii as they are made.

ASHFORD: May I call to the attention of the delegates the fact that this really is just a representation at first. It is subject to subsequent action by the legislature.

CHAIRMAN: Are you ready for the question? Roll call.

ROBERTS: I wonder whether an amendment to the amendment would be in order.

CHAIRMAN: Chair rules it's in order.

ROBERTS: In the third line of the amendment -- sorry, the second line at the end after the word "elected," delete all of the material in that amendment and substitute the words, "at large, unless and until otherwise provided by law." So that the amendment would read, "said senators shall be elected at large and said representatives shall be elected at large unless and until otherwise provided by law," which would make sure that if subsequent increases or decreases are brought about, it will be possible to allocate on the basis of the suggestion made by Delegate Nielsen for representation to other areas. I'd like to move that as an amendment.

CHAIRMAN: Do I hear a second?

ASHFORD: I was hoping to speak before a second came in. I hoped that the second wouldn't then be necessary. The way it reads now is, "and unless and until otherwise required by this Constitution or laws of this State"; so that provision is in the section already.

CHAIRMAN: Delegate Roberts, what is your reaction to the point of Delegate Ashford?

ANTHONY: Beyond that, you can't change the districting in the senate which Delegate Roberts would endeavor to do by statute.

ROBERTS: If I may answer the first question, first. This does not apply to senators, state senators. The proviso in the Constitution applies only to state senatorial districts; there's no application to senators to the Congress of the United States. On the -- I yield, Professor.

HEEN: I wasn't going to ask a question, but I was going to point out under the Federal Constitution the senators to the Congress of the United States are elected at large in any event.

ROBERTS: That's the reason I repeated the language which applies only to representatives. I don't intend it to apply to senators. The senators must be elected at large. "Said representatives shall be elected at large unless otherwise provided by law." That's the purpose of my amendment, to separate senators from representatives.

ANTHONY: Aren't we getting a little complicated here? We've got an amendment on an amendment. I understand that's not in order.

CHAIRMAN: The Chair ruled that it was in order.

ANTHONY: That's contrary to the previous rulings of the Committees of the Whole, as I understand it.

CHAIRMAN: I think that an amendment on an amendment is proper under rules of parliamentary law.

ASHFORD: I would like to ask Delegate Nielsen if he would accept an amendment to his amendment, striking out

the words "said senators shall be elected at large and," then the rest of it would fit in with the remainder of the paragraph which cares for the senators before this provision which he has deleted.

NIELSEN: Yes, that's satisfactory.

PORTEUS: I hope we don't introduce too many elements of confusion. It's my understanding that when somebody has suggested an amendment and someone else has in turn proffered an amendment to that amendment, I think the subject matter is beyond the power of the original maker of the motion.

CHAIRMAN: That is correct.

CROSSLEY: It seems to me that if we could vote on the issue, that the language could then be worked out. In other words, if we could vote on the issues as to whether or not we want to give Oahu one senator and Hawaii one senator -- I mean representative, then we could settle this, we can settle the language.

SAKAKIHARA: I don't think that's correct. What delegate Crossley meant to say was one delegate to Oahu, and part of Oahu together with the neighbor islands.

HEEN: The delegate from Kauai said one was to be elected -- one representative was to be elected from Oahu and the other from Hawaii. I'd rather have him elected from Kauai.

CHAIRMAN: The present status of the amendments are -- I'll call on Delegate Lyman.

LYMAN: Sometime ago I think there was a little bit of misinformation to the effect that districts 11 to 17 control the population of 350,000. That is not true. Eleven to 17 is the City of Honolulu, and that is approximately 50 per cent of the population of the present territory.

CHAIRMAN: The status of the amendments are as follows: Delegate Nielsen amended Section 1 by deleting the words "said representatives shall be elected at large," and inserting in lieu thereof, "said senators shall be elected at large, and said representatives shall be elected in the following manner, one from that area comprising representative districts 11 to 17 inclusive, and one from that area comprising all other representative districts in the State." Then Delegate Roberts amended Delegate Nielsen's motion to amend by deleting in the second line of the proposed amendment the words, "in the"; and in the third line following "manner" and all the rest of the words that followed; and in lieu thereof inserted the words, "at large unless and until otherwise provided by law," period. Are you ready for the question? We are voting on the amendment proposed by Delegate Roberts. All those in favor of the motion please say "aye." Opposed, "no." Motion to amend fails.

PORTEUS: May I ask for a division of the house? I'm afraid we weren't quite prepared on that. I wasn't sure exactly when to join in on the yes vote. I wonder if the Chair --

CHAIRMAN: The Chair will call for a division of the house. All those in favor will please stand. Delegate Roberts' motion. Opposed. Stand please. Motion fails.

We have now before us Delegate Nielsen's motion. Ready for the question?

SAKAKIHARA: Wasn't that amendment, Mr. Nielsen's amendment, further amended by Delegate Ashford?

CHAIRMAN: No.

ASHFORD: That suggestion which was accepted by Mr. Nielsen would strike out the words in his quoted amendment, all the first line.

CHAIRMAN: Could you renew that suggestion?

ASHFORD: I suggest that the first line of the proposed amendment be stricken out, with the result that there is substituted in the section for the words "said representative shall be elected at large," the words "said representatives shall be elected in the following manner," and so forth.

CHAIRMAN: Is that acceptable to Delegate Nielsen?

NIELSEN: Yes, it's acceptable.

CHAIRMAN: Are you ready for the question?

DELEGATE: Call for a division of the house.

CHAIRMAN: I beg your pardon.

DELEGATE: Call for a division of the house.

CHAIRMAN: All those in favor of Delegate Nielsen's motion to amend Section 1 will please rise.

SAKAKIHARA: Roll call.

DELEGATE: Show of hands.

CHAIRMAN: Request for roll call. Will the Clerk please call the roll. All those in favor of Delegate Nielsen's motion to amend Section 1 of Committee Proposal No. 25 will say "aye," and those opposed will say "no."

Ayes, 21. Noes, 32 (Akau, Anthony, Apoliona, Bryan, Castro, Cockett, Corbett, Crossley, Dowson, Fong, Fukushima, Hayes, Heen, Holroyde, Kam, Kanemaru, Kauhane, Kellerman, King, Lai, Larsen, Noda, Ohrt, Porteus, H. Rice, Richards, Shimamura, St. Sure, Tavares, A. Trask, J. Trask, Wist). Absent, 10 (Gilliland, Kage, Kometani, Lee, Loper, Mau, Mizuha, Okino, Phillips, White).

CHAIRMAN: Motion fails. Section 1 as amended is still before this committee.

ASHFORD: I move its adoption as amended.

CHAIRMAN: Is there a second to it?

HAYES: I second it.

CHAIRMAN: It has been moved and seconded that Section 1 as amended be adopted. All those in favor of the motion please say "aye." Opposed, "no." Motion carried. Section 1 is adopted as amended.

PORTEUS: Just as a matter of the record, what was the vote? 21-30 what?

CHAIRMAN: The vote was --

CLERK: 21-32-10.

CHAIRMAN: 21-32-10.

PORTEUS: Thank you.

CHAIRMAN: Section 2. Shall we proceed?

SHIMAMURA: I move for the adoption of Section 2.

DELEGATE: Second the motion.

SHIMAMURA: I move to amend Section 2 by inserting after the word "said," first line, first word, the word "primary"; and that from line 3 on to 6 the words starting with "or if the primary election" down to the word "governor" on line 6, be deleted.

CHAIRMAN: Could you repeat that again?

SHIMAMURA: From the third line, after the words "ordering the same," the words "or if a primary election is to be held" and so forth down to the word "governor" on the sixth line, line 6.

CHAIRMAN: Be deleted?

SHIMAMURA: Yes. And also, while I'm on my feet, to strike out the word "general" on line 6 and insert the

word "final" to comply with the former amendment as originally suggested by Delegate Kellerman.

AKAU: Did somebody second that already?

CHAIRMAN: Would you hold -- He's still amending it.

SHIMAMURA: On line seven, after the word "such," delete the words "election or"; and on the second to the last line, in that section, the word "hereinbefore" should be deleted.

BRYAN: I'll second that motion.

SHIMAMURA: And insert the words after -- or before "with respect to," second to the last line, Section 2, "by Congress."

CHAIRMAN: After the words "respect to"?

SHIMAMURA: Before the words "with respect to."

CHAIRMAN: "By Congress"?

SHIMAMURA: Yes. And to conform to H.R. 49, on line 10 and on line 11 down through line 12, the word after "except," starting with the words "as otherwise provided" down to "ratified by the people" to be deleted.

TAVARES: As I understand it, the word "except" also goes out?

CHAIRMAN: Is that correct? Delegate Shimamura, does that word "except" also go out?

SHIMAMURA: Yes, that's right.

TAVARES: And the comma?

SHIMAMURA: Leave that in for the time being. I have another amendment to make which is a little more involved than the others, so I shan't make it at the present time, but I should like to have the word "except" in.

CHAIRMAN: Would you care to insert those words now; otherwise that paragraph won't make any sense.

SHIMAMURA: Very well, that may be. After the word "except" insert "that voters shall have resided in their respective representative and senatorial districts for not less than three months immediately preceding the time at which they offer to register." May I repeat that again?

CHAIRMAN: Yes, go ahead, slowly.

SHIMAMURA: "That voters shall have resided in their respective representative and senatorial districts for not less than three months immediately preceding the time at which they offer to register."

CHAIRMAN: Is there a second to the amendment made?

DELEGATE: Second the motion.

CHAIRMAN: It has been moved and seconded that Section 2 be amended as read by Delegate Shimamura.

HOLROYDE: One suggestion to the movant. I think the words "and senatorial district" can be stricken. They can't reside in their representative district and not reside in their senatorial district, I don't believe, for three months. These are surplus words.

CHAIRMAN: What is your answer to that, Delegate Shimamura?

ANTHONY: While he's thinking that one over, wouldn't it be in order to have a rewrite of this thing? I'm sure I can't follow these piecemeal amendments here. If they've got any more like it, I suggest that we take a recess and let them rewrite it. Let's take a look at them.

SAKAKIHARA: That's why I rose. Will the Chair direct the movant of this amendment to have the amendments reduced to writing. There have been numerous deletions from this section at various points which makes it very confusing, and additions that he has inserted. I believe that in all fairness that it should be reduced to writing so that we may intelligently analyze the amendment.

CHAIRMAN: Suggestion is well taken.

BRYAN: I might ask the movant while he is having this reduced to writing, if he would think of the idea of just applying the normal election laws or requisites for voting, rather than putting that last wording in there.

SHIMAMURA: The article on suffrage and elections has no provision as to residence within a representative district, nor does the article on legislative powers and functions have the qualifications for electors to either house.

ROBERTS: That's met by the state laws dealing with qualified voters. I don't think we have to write that into our ordinance section, as long as they are qualified to vote, and we have in this section that they shall be qualified. "Qualification of voters shall be as prescribed by this Constitution and the laws of this State." As long as they are qualified voters, it seems to me we've met the problem.

CHAIRMAN: The Chair at this time would like to state, before any more debate is carried on in regards to Section 2, that the suggestion made by Delegate Anthony and Sakakihara is well taken, and would like to --

SHIMAMURA: I shall have it printed.

CHAIRMAN: The chairman shall have this printed and have the section deferred temporarily, until we have the printed form before us.

SHIMAMURA: Before we do that, may I make one observation. I don't see any definition of qualified voter in our constitutional provisions. I may be mistaken, but on the provision of the article on suffrage and elections, there is no residential requirement within a representative district. That's the only provision which was left out.

TAVARES: I think I can -- perhaps I can throw some light on that. The election laws provide for registration, and in Section 178 of the Revised Laws of Hawaii, 1945, in the affidavit on application for registration—which law will be continued in effect on the carryover—is the affidavit which has to be sworn to by the voter: "I have resided in the territory of Hawaii not less than one year preceding and in the representative district not less than three months immediately preceding this date." Now, the state is going to be substituted for the territory, and I think that will take care of it.

SHIMAMURA: I don't think it will.

CHAIRMAN: The chairman would like to entertain a motion to defer Section 2.

ANTHONY: I move we defer Section 2.

CHAIRMAN: Is there a second?

ASHFORD: Second it.

CHAIRMAN: All those in favor of the motion to defer Section 2 to the end of the calendar, please say "aye." Opposed, "no." Motion is carried.

ASHFORD: I now move for a very brief recess to give the chairman of the committee a chance to get this on the printing press.

CHAIRMAN: Chair declares a short recess of five minutes.

(RECESS)

KING: I'd like to make a motion at this time, that the committee rise, report progress and ask leave to sit again.

CHAIRMAN: It has been moved and seconded that this committee rise and report progress and beg leave to sit again. All those in favor of the motion, please say "aye." Opposed, "no." Motion is carried.

JULY 12, 1950 • Morning Session

CHAIRMAN: Will the committee please come to order.

HEEN: I move that this committee take a recess subject to the call of the Chair. During the recess I would suggest that those who are more or less familiar with the various proposals now pending before this committee to get together with the chairman and the members of the Committee on Continuity of Law. Perhaps by doing that, we can expedite the work of this committee. As you know, Mr. Chairman, yesterday we had quite a number of separate proposals to consider and I don't know just where they come in and where they are supposed to go out--all this and that. By having a small group to work on these various proposals, I think we can expedite the work of this committee.

CHAIRMAN: Do I hear a second to the motion?

CHAIRMAN: It's been moved and seconded that this committee recess subject to the call of the Chair for purposes of having several members of this committee interested in suggesting amendments and making additions meet with the Committee on Continuity and Ordinances to expedite matters.

SAKAKIHARA: I am wondering what progress we'll make. I recall a few days ago similar steps were taken by this committee. Subsequently, after the committee met, only a handful of the members or those who were interested in the matter met, and we made very slow progress. I might suggest that the Chair appoint a special committee from among the members of the Committee of the Whole, assigning those also who are interested in the matter, to convene -- meet with the Committee on Continuity of Law to work on this matter, rather than make a general statement that those who are interested in the matter meet with the committee.

CHAIRMAN: Is there any more discussion on the motion?

RICHARDS: I wonder if we can have some sort of indication as to when the Chair is apt to call.

CHAIRMAN: I cannot say.

ARASHIRO: Point of information.

CHAIRMAN: State your point of information.

ARASHIRO: What is before the house now? Is it that special committee that you are going to appoint or the voluntary committee?

CHAIRMAN: The question on the floor is the motion to recess subject to the call of the Chair.

ARASHIRO: And the people that are interested in this Proposal 23, 24 and 25 will meet. Is that right?

CHAIRMAN: That is the understanding.

CASTRO: Some of us have matters of private business which we might take care of if the recess is going to be for the balance of the morning. We would appreciate it if the Chair could state a time when the committee would be called back into session.

CHAIRMAN: The best person, the person who might know best on that question might be Delegate Shimamura.

SHIMAMURA: My personal opinion, I don't think we should take more than half an hour, or an hour at the most.

ASHFORD: It is my view that as a result of this meeting we will have a choice, and that it can be very briefly disposed of by the Committee of the Whole, that is, to choose between one thing or another. Now if that be so, the morning would be very well spent. I myself don't think a half hour is quite long enough. I would suggest that the morning be dedicated to this so that retyping can be done, and go back to the Committee of the Whole at half past one prepared to take immediate action.

CHAIRMAN: Delegate Roberts has been begging the floor.

ROBERTS: I think the setting aside of at least two and a half to three hours for this group to work on the redraft of the section on ordinances and continuity will be well spent. I think when we get back in session we can recess till one o'clock, and then go back to Committee of the Whole and take up the proposals as submitted and as printed, so that we have the opportunity to spend our afternoon completing the article on ordinances and continuity.

J. TRASK: In view of what Delegate Ashford said, I want to amend the motion to recess until 1:30, instead of subject to the call of the Chair.

CHAIRMAN: Is it acceptable to Delegate Heen, the movant of the amendment?

HEEN: That is accepted.

CHAIRMAN: The motion before the committee is for a recess to 1:30. Any more discussion? All those in favor of the motion to recess till 1:30 please say "aye." Opposed, "no." Motion carried. Committee will be in recess till 1:30.

The Chair might suggest at this time that all those interested, please work with the Committee on Continuity and Ordinances.

Afternoon Session

CHAIRMAN: Regarding Proposals 23 and 24, there is much difficulty that has to be resolved; therefore, they are taking -- they need more time. That being the case, the Chair would like to entertain a motion to recess further until 3:30, at which time we'll have all the amendments printed and ready.

SAKAKIHARA: I move at this time that we take a recess till half past three.

SHIMAMURA: I second the motion.

CHAIRMAN: It has been moved and seconded that this committee recess until 3:30. All those in favor of the motion please say "aye." Opposed, "no." Motion is carried. Recessed till 3:30.

(RECESS)

CHAIRMAN: Will the committee come to order.

KING: This committee was to reconvene at 3:30. But it's obvious that the Committee on Ordinances and Continuity of Law will not be ready at this time, so I now move that the committee rise, report progress and ask leave to sit again.

DELEGATE: Second the motion.

CHAIRMAN: It has been moved and seconded that the committee rise and report progress and beg leave to sit again. All those in favor of the motion please say "aye." Opposed, "no." Motion is carried.

Evening Session

CHAIRMAN: Will Committee of the Whole please come to order.

CROSSLEY: What preference does the Chair have in wanting to take these up, so that we can move for the adoption of the sections?

CHAIRMAN: Yes. Before we go on to that, the Chair would like to say that there have been two amendments circulated. The amendment relating to Committee Proposal No. 25 is good. That amendment relating to Committee Proposal No. 23 should be ignored because another printed form will be circulated in a few minutes. I believe at this time we should proceed with consideration of Committee Proposal No. 25.

CROSSLEY: I move the adoption of Committee Proposal No. 25.

CHAIRMAN: Is there any second to that?

DELEGATE: Second the motion.

CHAIRMAN: For purposes of clearing the record, probably we should first reconsider our previous action on Committee Proposal No. 25.

CROSSLEY: Have we taken final action?

CHAIRMAN: We have adopted one section of Committee Proposal No. 25. Therefore, the Chair would like to invite a motion to reconsider.

CROSSLEY: I move that we reconsider our action on Proposal 25.

CHAIRMAN: It has been moved and seconded that we reconsider our action on Committee Proposal No. 25. All those in favor please say "aye." Opposed, "no." The motion is carried.

ASHFORD: May I ask that the chairman of the Committee on Ordinances and Continuity of Laws have preference in recognition?

CROSSLEY: I beg your pardon, Madame Delegate. I didn't see him here at the time. I rose to expedite the work.

ASHFORD: No reproach to you, but I mean in the consideration of these amendments, I think he should be the man heard from, as the chairman of other committees have been in the past.

H. RICE: I suggest that he take the chair up here next to -- one of your chairs, so we don't all have to turn around here.

CROSSLEY: I move that we adopt—I'm almost afraid to do it—Proposal No. 25.

CHAIRMAN: Is there any second to the motion?

DELEGATE: I second the motion.

CHAIRMAN: It has been moved and seconded that we adopt Committee Proposal No. 25.

HEEN: I move an amendment to that, we adopt each section separately.

SHIMAMURA: May I explain this section, all sections?

HEEN: There is a motion pending at the present time.

WOOLAWAY: I'll second the motion of Delegate Heen.

CHAIRMAN: Could you repeat your motion, please, Delegate Heen?

ASHFORD: Delegate Heen was not recognized. Delegate Shimamura was.

CHAIRMAN: The Chair feels that the chairman of the committee should have recognition in this case. Therefore, the Chair recognizes Delegate Shimamura.

SHIMAMURA: May I explain the first section? The first section as amended --

HEEN: Point of order. There is nothing before the committee.

CHAIRMAN: There is nothing before the committee, Delegat Shimamura.

SHIMAMURA: I move for the adoption of Section 1, just to facilitate matters.

LARSEN: I second the motion.

CHAIRMAN: Your motion was to adopt --

SHIMAMURA: Section 1.

CHAIRMAN: There is a motion to adopt the whole Committee Proposal No. 25. The Chair does not feel that it is necessary.

CROSSLEY: I'll withdraw my motion.

CHAIRMAN: It has been moved and seconded.

SHIMAMURA: May I explain Section 1? Section 1 is practically identical with Section 1 as amended prior to our recess and adjournment. The only change is on the second page.

CHAIRMAN: Delegate Shimamura.

SHIMAMURA: Yes, Mr. Chairman.

CHAIRMAN: Are you speaking to an amendment that is not before the Convention yet -- committee? Nobody has made a motion to amend Section 1 as yet.

WIRTZ: To put the whole thing in order, I move the adoption of Section 1.

ROBERTS: The chairman of the committee has already moved for the adoption of Section 1, which was seconded. Section 1 is properly before us, and I believe that the problem is on the adoption of this first section.

ANTHONY: As one of those who has spent four or five hours trying to get this thing straightened out, let's not get bogged down on something that's not before us. Let's take a look at this. If there is any question about this, let's go to that

PORTEUS: I think that the point that the various delegates are trying to make is as follows. That there has been a motion to adopt Section 1. The motion to adopt Section 1 would be the section of the committee proposal as brought out by the standing committee. It is now proposed to amend that section. I think Delegate Shimamura would now be in order to move for the amendment of Section 1 because that's what you are presenting at this time, an amended Section 1.

HEEN: That's not correct. What we are doing now is this, to amend the committee proposal itself, and not attempting to amend various sections of Committee Proposal No. 25.

CHAIRMAN: The Chair would like to make a statement. The Chair understands that in this meeting of the subcommittee, the special subcommittee, it was understood that the proposed amendment to Committee Proposal No. 25 was to be proposed in its entirety to the whole Committee Proposal No. 25.

BRYAN: I think it would clear the floor if the delegates would realize that in voting to reconsider we voted to reconsider Committee Proposal No. 25, and I think the move that should have been made on the floor is to move that the original proposal be amended by this piece of paper here, and I so move. It would clear the house.

KING: It seems to me common courtesy would let the chairman of the committee present the case. After all, this special group that discussed it was headed by the chairman of the committee, and the Chair recognized Delegate Shimamura. We haven't given him a chance to explain the situation. Now I think the Chair did right in recognizing Delegate Shimamura to present the matter before the Convention. I suggest we allow Delegate Shimamura to go ahead and explain what is before the Convention.

CHAIRMAN: The status of the matter before this committee is that a motion was made and seconded to adopt Committee Proposal -- Section 1 of Committee Proposal No. 25. Now, Delegate Shimamura.

SHIMAMURA: I move that Section 1 of Committee Proposal No. 25 be amended, the amendment being on the desks of the various delegates.

SECTION 1. Elections. In case the people of the Territory ratify this Constitution and the same is approved by the duly constituted authority of the United States whose approval thereto may be required, the governor of the Territory shall, within thirty days after receipt of the official notification of such approval, issue his proclamation for primary and final elections, as hereinafter provided, at which officers for all state elective offices provided for by this Constitution shall be nominated and elected; but the officers so to be elected shall in any event include two senators and two representatives to the Congress, and unless and until otherwise required by law, said representatives shall be elected at large.

J. TRASK: I second the motion.

CHAIRMAN: It has been moved and seconded that Section 1 of Committee Proposal No. 25 be amended, as written in the Committee Proposal No. 25 proposed amendments.

SHIMAMURA: May I state that this Section 1 as amended follows substantially, almost identically, the Section 1 as amended the other day by the entire Convention.

CHAIRMAN: Are you ready for the question? All those in favor of the motion to amend please say "aye." Opposed, "no." Motion is carried.

SHIMAMURA: I move for the adoption of Committee Proposal -- Section 2 of Committee Proposal No. 25.

J. TRASK: Second the motion.

CHAIRMAN: It has been moved and seconded that Section 2 of Committee Proposal No. 25 be adopted.

SHIMAMURA: I move to amend Section 2 of Committee Proposal No. 25 according to the amendment which has been circulated to the delegates.

SECTION 2. Said primary election shall take place not earlier than sixty days nor later than ninety days after said proclamation, and the final election shall take place within forty days after the primary election. Such elections shall be held, and the qualifications of voters thereat shall be, as prescribed by this Constitution and by the laws relating to the election of members of the legislature at primary and general elections. The returns thereof shall be made, canvassed and certified in the same manner as prescribed by law with respect to the election for the ratification or rejection of this Constitution.

CHAIRMAN: Do I hear a second?

J. TRASK: I second the motion.

CHAIRMAN: It has been moved and seconded that Section 2 of Committee Proposal No. 25 be amended as written in the amended forms circulated. Is there any discussion?

AKAU: How did the committee arrive at the 40 days? Was it an arbitrary thing or did they base it on something? I'm referring to the fourth line in Section 2. "Take place within 40 days after primary election." I wonder if the chairman or somebody in the committee could tell me.

SHIMAMURA: That's in compliance with the very language and requirement of H.R. 49.

CHAIRMAN: Are you ready for the question? All those in favor of the motion to amend --

WIRTZ: Point of information. Are we voting on the amendment that's contained in the combined circular or the separate amendment?

CHAIRMAN: In the combined circular. It has three pages to it.

WIRTZ: I'm not so sure. There's another amendment here that has 40 days. The other one has 60 days.

CHAIRMAN: The one on the single page, please ignore. Are you ready for the question? Delegate Shimamura, is there anything more you would like to clear up? Is there any more discussion?

SHIMAMURA: No.

CHAIRMAN: All those in favor of the motion to amend Section 2 as written in the amended Committee Proposal No. 25 please say "aye." Opposed, "no." The motion is carried.

BRYAN: I'd like to keep the parliamentary order straight and move the adoption of Sections 1 and 2 as amended.

DELEGATE: Second.

CHAIRMAN: It has been moved and seconded that Sections 1 and 2 of Committee Proposal No. 25 as amended be adopted. All those in favor please say "aye." Opposed, "no." Motion is carried.

SHIMAMURA: I move for the adoption of Section 3 of Proposal No. 25.

J. TRASK: Second the motion.

CHAIRMAN: It has been moved and seconded that Section 3 of Committee Proposal No. 25 be adopted.

SHIMAMURA: I move for the adoption of Section 3 as amended.

SECTION 3. When said election shall be held and the returns thereof so made, canvassed and certified, the governor shall certify the result thereof to the President.

CHAIRMAN: Is there a second?

J. TRASK: Second the motion.

CHAIRMAN: It has been moved and seconded that Section 3 of Committee Proposal No. 25 be amended as is written in the amended form.

SHIMAMURA: May I just state that Section 3 as amended is substantially identical with Section 3 of the Committee Proposal No. 25. It has been abbreviated somewhat.

CHAIRMAN: Are you ready for the question? All those in favor of the motion to amend Section 3 please say "aye." Opposed, "no." Motion is carried.

BRYAN: I move the adoption of Section 3 as amended.

J. TRASK: Second the motion.

CHAIRMAN: All those in favor of the motion to adopt Section 3 as amended please say "aye." Opposed, "no." Motion is carried.

SHIMAMURA: I move to amend -- to adopt Section 4 of Proposal No. 25.

CROSSLEY: Second the motion.

CHAIRMAN: It has been moved and seconded that Section 4 of Committee Proposal No. 25 be adopted.

SHIMAMURA: I move to amend Section 4 in the form that has been circulated.

SECTION 4. Upon the issuance by the President of his proclamation announcing the result of said election and the admission of this State to the Union, the officers elected and qualified under the provisions of this Constitution and the laws of this State shall proceed to exercise and discharge the powers and duties pertaining to their respective offices.

J. TRASK: I second the motion.

CHAIRMAN: It has been moved and seconded that Section 4 of Committee Proposal No. 25 be amended in the form in which it has been circulated. Is there any discussion?

SHIMAMURA: Section 4 is substantially similar to Section 4 as originally proposed. Only thing, "ordinances" have been deleted - - references to ordinances have been deleted, and it has been abbreviated somewhat.

CHAIRMAN: Ready for the question? All those in favor of the amendment please say "aye." Opposed, "no." Motion is carried.

CROSSLEY: I move the adoption of Section 4 as amended.

DOWSON: I second the motion.

CHAIRMAN: It has been moved and seconded that Section 4 as amended be adopted. All those in favor of the motion please say "aye." Opposed, "no." Motion is carried.

DOWSON: I move for the adoption of Section 5.

CHAIRMAN: Is there a second?

DELEGATE: Second the motion.

CHAIRMAN: It has been moved and seconded that Section 5 of Committee Proposal No. 25 be adopted.

SHIMAMURA: I move to amend Section 5 in the form circulated.

SECTION 5. The governor and secretary of this State shall certify the election of the senators and representatives to the Congress in the manner required by law.

For this purpose, the lieutenant governor of this State shall be deemed ex officio secretary of state.

PHILLIPS: Second it.

CHAIRMAN: It has been moved and seconded that Section 5 of Committee Proposal No. 25 be adopted in the form in which it was circulated.

ROBERTS: I have a question on the second paragraph of this section which is the amendment. The language provides that the lieutenant governor of the State shall be deemed ex officio secretary of state.

WOOLAWAY: There is only one section in Section 5.

ROBERTS: It's been amended by the chairman of the committee to include the new section which includes a second paragraph.

SHIMAMURA: May I answer that question? H.R. 49 provides that the governor and the secretary of state shall certify to the election of the United States senator and the representatives to Congress. Now, as the delegates will recall, we have no provision in our Constitution for a secretary of state. We, however, have a lieutenant governor, and therefore, to prevent a lack here of an officer we have to designate someone to act as secretary of state for this purpose.

ROBERTS: I understand the purpose of the amendment. I just want to know why we make him an ex officio secretary. Why can't we say for this purpose the lieutenant governor of the State shall act as or be considered secretary of state. Why do you have that be an ex officio?

SHIMAMURA: My amendment as originally proposed read, "shall be designated secretary of state." But some other members of the subcommittee felt that "shall be deemed ex officio" was an improvement.

HEEN: First paragraph, Section 5, says, "The governor and the secretary of this State." I think it should read, "The governor and secretary of state," instead of "secretary of this State." "Governor and secretary of state shall certify." The next paragraph, next to "lieutenant governor," "secretary of state." I move an amendment.

ASHFORD: I think perhaps the chairman of the committee will accept that amendment.

SHIMAMURA: I'm willing to accept it, to prevent debate and argument, but H.R. 49 says exactly that.

HEEN: In the second line delete the word "this," so that that clause will read, "The governor and secretary of state" instead of "secretary of this State."

CHAIRMAN: I understand Delegate Shimamura has accepted the suggested amendment.

ASHFORD: May I refer to the language of H.R. 49? "The governor and secretary of said State."

CHAIRMAN: The question raised by Delegate Roberts is still before this floor.

TAVARES: May I offer this as my explanation. I think that whether you say that the lieutenant governor acts as a secretary of state or whether you say he is ex officio secretary of state, I think the result is the same. By virtue of his office, ex officio means by virtue of his office as lieutenant governor he is secretary of state. Whether you say he is or acts as secretary of state, he is acting by virtue of his office as lieutenant governor; therefore, ex officio I think is correct.

ANTHONY: I think it's just a matter of style. If Brother Roberts wants to change that in the Style Committee, he can.

ROBERTS: I was going to ask you if it's a matter of style.

ANTHONY: That's all it is. You're right.

ROBERTS: If it is, then we take care of it.

ANTHONY: That's all it is. That's all.

CHAIRMAN: Are you ready for the question? All those in favor of the motion to amend Section 5 in the form circulated please say "aye." Opposed, "no." Motion carried.

CROSSLEY: I move the adoption of Section 5, as amended.

DOWSON: I second the motion.

CHAIRMAN: It has been moved and seconded Section 5 be amended and adopted. All those in favor of the motion please say "aye." Opposed, "no." Carried.

WOOLAWAY: I move for adoption of Section 6.

J. TRASK: I second the motion.

CHAIRMAN: It has been moved and seconded - - rather, the Chair feels that in this particular case the Chair should call on President King.

KING: This seems to be new material. I think we could call on the chairman of the committee to explain the provisions in the proposed amendment that adds Sections 6, 7, 8 to the original proposal.

TAVARES: That's why I think if we could let the chairman of the committee make it, he'd make the motion in the proper way. We're not moving to adopt Section 6. We're moving to amend the article by adding a new Section 6.

SHIMAMURA: I move at this time to amend Committee Proposal No. 25 by adding a new section numbered 6, thereto which reads as circulated.

SECTION 6. Ten days after the admission of this State to the Union, the legislature shall convene in special session.

J. TRASK: I second the motion.

CHAIRMAN: It has been moved and seconded that Committee Proposal No. 25 be amended by adding Section 6 as circulated. Is there any discussion?

SHIMAMURA: This Section 6 was circulated as amendment to Committee Proposal No. 25 under date of July 11. It was an unnumbered section at that time. I think the delegates have read it. This is to facilitate the first session of the legislature after the election.

CHAIRMAN: Are you ready for the question? All those in favor of the motion to amend Committee Proposal No. 25 by adding Section 6 please say "aye." Opposed, "no." Motion carries.

SHIMAMURA: I move to amend Committee Proposal No. 25 by adding thereto it a new Section 7 as circulated.

SECTION 7. The governor and the lieutenant governor, elected at the first election, shall each hold office for a term beginning with his election and ending at noon on the first Monday in December following the second general election.

J. TRASK: I second the motion.

CHAIRMAN: It has been moved and seconded that Committee Proposal No. 25 be amended by adding Section 6 as circulated.

SHIMAMURA: This section - -

CHAIRMAN: Seven rather. Correction, Section 7.

SHIMAMURA: This section provides for the termination or the duration of the term of the governor or lieutenant governor after their first election.

CHAIRMAN: Are you ready for the question? All those in favor of the motion to amend Committee Proposal No. 25 please say "aye." Opposed, "no." Motion carries.

SHIMAMURA: I move for the amendment of Proposal No. 25 by adding thereto a new section numbered Section 8.

SECTION 8. The term of office of the members of the legislature elected at the first election shall be as follows:

Members of the House of Representatives shall hold office for a term beginning with their election and ending on the day of the second general election held thereafter.

Members of the Senate shall be divided into two classes. The first class shall consist of the following number elected with the highest number of votes from their respective senatorial districts: first district, 3; second district, 1; third district, 2; fourth district, 3; fifth district, 2; and sixth district, 2. Members of the first class shall hold office for a term beginning with their election and ending on the day of the third general election held thereafter. The remaining members elected to the Senate at such election shall constitute the second class, who shall hold office for a term beginning with their election and ending on the day of the second general election held thereafter.

J. TRASK: I second the motion.

CHAIRMAN: It has been moved and seconded that Committee Proposal No. 25 be amended by adding Section 8 in the form in which it has been circulated.

SHIMAMURA: Briefly this Section 8 provides for the term of the first representatives and senators of Hawaii, that is to our legislature. And the second paragraph provides, as you see, for the term of the members of the House, and the third paragraph provides for the staggered terms of the members of the Senate.

LEE: I'd like to address a question to the chairman on the last paragraph—the division of the members of the Senate in the two classes. My question is, under this theory, those who have been elected to the territorial Senate, no matter when the State - - statehood comes into actual being, even though that member was elected for the territorial Senate for a term of four years, his term would be cut short by two years. Is that right, as far as the holdover senator is concerned?

SHIMAMURA: As to the senators in the first class, I believe that they will serve slightly more than the four-year term for which they would ordinarily serve.

LEE: No, that isn't my question. My question is, as I understand it that once we become a state all people must run then. In other words all officers then - -

SHIMAMURA: That's right.

LEE: - - upon becoming a state. Is that the premise that had been accepted in this proposition?

SHIMAMURA: You mean the present territorial legislature ceases to function?

LEE: Yes.

SHIMAMURA: Yes, that's true.

LEE: So all the offices of the Territory including from the governor and all of the legislature ceases. Is that correct?

SHIMAMURA: That's correct.

LEE: Has there been a study made as comparison to the holdover senators of other states which were admitted to the Union? Was that the same practice that was followed?

ANTHONY: H.R. 49 specifically requires us to elect our senators and representatives to the State legislature. In other words, those present senators who may have a holdover term, were it not for the admission of the State in the Union, are going to get short-changed. They are going to have to run for election.

LEE: Well, that's what I wanted to know. Now, the second question.

ANTHONY: That's exactly it.

LEE: Thank you. The second question goes to this idea of creating two classes, to be designated. The first class, the highest number of votes will fall in the first class. Was there any consideration given to running for long term and running for short term? I don't think this accomplishes that because with this you run all at one time and the fellow who gets the highest vote, the highest votes fall in the first class. Is that correct?

SHIMAMURA: The senators in the higher class serve a slightly longer term than those in the second class.

LEE: I understand that, but my question was posed as to why wasn't the -- say the matter of the term of the Senate set so that those who would file for election would run for the long term and those who desire to run for the short term, for the short term. I know that was discussed by the Legislative Committee and that matter wasn't too fully considered, as far as I was concerned, but I wondered how this committee reached the same conclusion.

BRYAN: I'd like to answer that. I think that in all fairness we should say that Delegate Shimamura inherited this from the Legislative Committee. Is that not correct?

SHIMAMURA: That's right. Delegate Heen introduced this. May I state that you cannot put down a definite term because we don't know when this election will be held and by the very terms of H.R. 49, it's indefinite. It says within 30 days after the State of Hawaii is admitted to the Union, the governor shall by proclamation call the election of all such officers. It's necessarily indefinite and uncertain.

BRYAN: I think that possibly the delegate who raised the question might have been absent at the meeting when there was a vote taken in the Committee on Legislative Powers and Functions as to whether it would be run on this manner with the one receiving the highest vote going into one class and the others in another class, or whether they would declare before they filed for nomination or their papers, and the vote that carried was the vote to do it in this manner, in the Legislative Committee.

LEE: There's no such section in the legislative proposal, is there?

BRYAN: That is true, but this was referred to the Committee on Ordinances and Continuity of Law by the Legislative Committee.

LEE: Do you mean there was a mandate addressed to the Committee on Ordinances that such should be included in the ordinance?

HEEN: May I answer? There was no mandate. We had in mind that some such provision of this -- such as this should be included in the schedule. So bearing that in mind, we prepared this particular provision and then had it introduced as a proposal on the article or the schedule relating to continuity of law and so on.

WOOLAWAY: I made that particular motion in committee and it carried. I don't believe Senator Lee was present at that time.

TAVARES: May I further answer Senator Lee's query. We were shown this afternoon in the informal committee which was working out here on this redrafting that it is customary in the case of states -- senators to the United States Senate to decide by lot after the senators are elected which should be long term and short term, so this is not an unusual situation even for the United States Senate. What's good for the United States Senate, I believe, should be good enough for us.

LEE: Well, now will the learned delegate yield to this question? Did he find from his investigation that there were other states who, when admitted to the Union, ran for the long term Senate and there were those who ran for the short term Senate. In other words, it could be just as well advised so that the persons who would run would know whether or not he was running for long term as compared to running for a short term, rather than leaving it helter-skelter, depending on whether or not he would have the largest number of votes.

ANTHONY: He'll know soon enough after the returns are in. This is a very simple method. Those that get the highest number of votes are in the first class, any others will have to take second place, the short term.

LEE: Well, now, I might state this --

ANTHONY: They all have to run together.

CHAIRMAN: Will you please address the Chair when you're speaking?

ANTHONY: I was addressing the Chair.

LEE: I might state that it's very obvious that those who will get their largest number of votes will fall in the first class. That's exactly what it says; that's pretty obvious; nobody needs any explanation. My point goes to the matter of determining at the outset whether or not it would be better procedure for those who would be running for the State Senate, those citizens who are desirous of running for the State Senate would declare that they are running for the long term Senate as compared to running for the short term Senate. It seems to me that would be better practice rather than saying now we're all running for the Senate; and then for the first time, those who have the largest number of votes would fall in the first class, the ones who fall the last would fall in the second class. It seems to me you're defeating the very purpose on which elections are run. You will, when you run, declare for the office that you seek. It seems to me it's just as logical that you declare for the term of office that you seek. That's my opinion.

CHAIRMAN: Is there any more discussion? Are you ready for the question?

J. TRASK: I would like to ask the committee, how did they arrive at giving the third district two senators and the fourth district three?

HEEN: That was done at a meeting of the Committee on Legislative Powers and Functions.

BRYAN: I think that you are referring to the present fourth and fifth districts on Oahu. I believe that's what he is referring to. I think that it was the feeling of the committee that the third district -- he is talking about the fourth and fifth districts, aren't you? Mr. Chairman, may I ask that question of the last speaker?

CHAIRMAN: You may.

BRYAN: You're speaking to the fourth and fifth district? The feeling of that committee was that the fifth district with five senators got a little bit of a break and we gave the fourth district a little bit of break on this part of it to make things even.

FUKUSHIMA: I think there is considerable merit to what Delegate Lee has stated in declaring first what class of senators you want to belong to, the two-year class or the four-year class, because certainly if you were campaigning for two-year class, you wouldn't spend as much for your campaign as if you were running for four-year senator. I believe there should be some segregation made at the outset. Otherwise, you'll have all running at large, everyone trying to outdo the other, outspend the other to get the four-year term by getting the highest votes. It seems to me it's pretty inequitable.

CHAIRMAN: Are you ready for the question? Is there any more discussion?

NIELSEN: Under this I'd like to ask the chairman of the committee how many senators are going to be elected for the second district.

KING: It's stated there; there are two senators from that district, one would run for the long term and one for the short term. Whoever gets the highest vote would serve for the long term; whoever gets the second highest vote would

serve for the short term. It says "second senatorial district, one." That would be for the long term.

CHAIRMAN: Ready for the question?

C. RICE: Talking along the lines of Delegate Fukushima and Senator Lee. You know when there has been a death of a senator, take Senator Pedro died, then they had election and they had nominations for the short term and nominations for the long term. This way is all right if you want to take your chances, but there is going to be a lot of plunking. You are to vote for your favorites. I just want to point that out.

H. RICE: Do you think that - - I'd like to ask that special committee, do you think it would be too long if, for instance, you said, the first district, three should run for four years, two run for two years; and go along that way?

HEEN: Because on the first election it's not going to be four years or two years, they are going to run at a special election which will make the term a little more than two years, and the other term a little more than four years. You can't say four years and two years.

CHAIRMAN: Are you ready for the question? All those in favor of the motion to amend Committee Proposal No. 25 - -

LEE: I'd like to offer an amendment. I haven't got it prepared now, but the essence would be to amend it so that the - - I'd be satisfied with a sense vote. If we fail on this, we might as well proceed.

CHAIRMAN: I can't hear you.

LEE: In other words, I'm willing to make a motion that the last paragraph be amended so that the candidates would declare whether they would seek the longer term, as well as the short term; and if that motion passes, I will prepare the proper amendment. If, however, it fails, I'm just as willing to let this go on tonight. I make that in the form of a motion.

YAMAMOTO: Second the motion.

CHAIRMAN: If there is no objection from the committee as to the - - that Section 8 be amended in the sense so that the senators running for office will be able to select at the outset for either the long term or the short term. Is there any objection to that being put before this committee, without the language in its proper form?

KING: I have no objection to putting the motion, but I'd like to speak against its adoption. It's only for the first special election, and it just adds more language and more difficulty in the Constitution to specify that three from the first district shall run for the long term and two for the short term, one from the second district for the long term and one for the short term, right down the line to designate the whole 25 senators. It seems to me they can all run at large, 25 senators. Those who get the highest votes in their respective district will serve for the long term, and those who will get the lowest votes serve for the short term.

CHAIRMAN: Is there any discussion?

RICHARDS: I agree with the last speaker. We're only talking about the first election. We have talked about the democratic principles that we wish to follow here and the point is that you might have two or three of the most popular people. By popular I do not mean necessarily personally popular, but the most qualified people running from one section, for either the long term or the short term; and, therefore, the State would not be able to have their most qualified representatives. Therefore, I am against this amendment as I feel that the people who are most qualified will be elected if they are all running.

CHAIRMAN: Are you ready for the question? Question is to further amend the amendment, Section 8, by changing it so that the sense will be that the senators may select at the outset of the election whether they want to run for the long or the short term.

J. TRASK: Point of information. I would like to know if there is any provision in the Constitution now that might take care of an emergency outside of a special election, that Senator Rice has just spoken about. In the event that one of the senators should die, whether they should have any election for the unexpired term; I wonder if there is any section in the Constitution that takes care of that now?

CHAIRMAN: Delegate Heen, could you answer that, please?

HEEN: There is a section in the article on the legislative powers and functions. In case of a vacancy, that vacancy shall be filled as provided by law; or, in the event there is no law, then by appointment of the governor for the unexpired term.

CHAIRMAN: Are you ready for the question? All those in favor of the motion to amend the amendment which adds Section 8 to Committee Proposal No. 25 please say "aye." Opposed, "no." The motion to amend is defeated.

Ready for the question on Section 8? All those in favor of the motion to amend Committee Proposal No. 25 by adding Section 8 in the form in which it has been circulated, please say "aye." Opposed, "no." The motion is carried.

DOWSON: I move for the adoption of Committee Proposal No. 25 as amended.

CROSSLEY: I second the motion.

CHAIRMAN: What are you rising to, Delegate Fukushima?

FUKUSHIMA: To the motion to adopt Proposal No. 25 as amended.

CHAIRMAN: It has been moved and seconded that Committee Proposal No. 25 be adopted as amended.

FUKUSHIMA: I'd like to ask the chairman of the committee what observation was made as to the two United States senators. As I understand it from this proposal, both senators will run at large, but it doesn't state whether one should run for two years, the other for six; because as I understand it, the senators of the United States also have staggered terms.

CHAIRMAN: Delegate Anthony, could you answer that question?

ANTHONY: That is governed by a section in the Federal Constitution which provides that the state's legislature may provide for the method of electing senators and representatives. Now, in connection with whether one is by long term or by a short term, that is done by lot in the United States Senate. Our legislature, of course, could enact a law regulating that matter afterwards. But there is no occasion to go beyond the present status of the situation, which is as I have stated.

FUKUSHIMA: But the election of the United States senators are held before the election of the State legislators. Isn't that correct?

ANTHONY: Same time.

FUKUSHIMA: In the same election?

ANTHONY: Same election. Same election as the governor.

FUKUSHIMA: Then the legislature of that State will then provide for which senator will have a two year term and which six. Is that correct?

ANTHONY: No, the Senate of the United States will decide that.

CHAIRMAN: Is there any more discussion on the motion to adopt?

BRYAN: There are two minor points. One is that I would ask the Chair again to request that the delegates refrain from using the microphone in voting.

The second point is that I think Section 6, am I correct in my understanding that this refers to the State legislature, and that the State will not be admitted to the Union until the appearance in Washington of our representatives? Is that correct? That would clear that point.

ANTHONY: No. The State is admitted to the Union after the election has been had and the President has notified by proclamation of that -- has been notified of that fact. That's specifically in H.R. 49, page 21, I think.

BRYAN: Well, that means that this -- there'll be no doubt but what this referred to the State legislature.

ANTHONY: This is the State legislature.

ROBERTS: I don't think that Delegate Fukushima's question has been answered. I think the question is still there. We elect two senators. The answer was that the Congress determines who shall be the long and who shall be the short term?

ANTHONY: Not the Congress but the Senate of the United States. But the legislature does have the power by appropriate legislation. That can be done after the legislature convenes. But for the initial election, that will be done under the Federal Constitution by the United States Senate.

ROBERTS: I think it's perfectly appropriate for us to determine who shall be the long term and the short term, the same as we've done for our own. I think an amendment is perfectly appropriate that the person who gets the highest vote could be the long term and the person who gets the second vote be the short term.

TAVARES: The trouble is that those of us, in the short time we had, who looked this matter up, looked up different parts of the same question. I called Deputy Attorney General Watanabe to look the matter up, and he came back with a statement that there seemed to be on the one hand some provision that the legislatures of the states should fix the time of election of senators. But we were shown books by the Legislative Reference Bureau, a little later, which said that upon the initial election, the Senate determines it by lot. That's as much as we were able to get from the authorities and since it's not too clear, we just leave it that way. Apparently it has been done by lot in the United States Senate and it will take a lot of research for us to go through all the authorities to see if the state legislature actually can do that. So if we leave it that way, apparently, it has been done and will be done.

ROBERTS: I have no objection to having it done by lot.

KING: It might be pointed out that when we come into the Union of the states, it will be the first state to be admitted to the Union since the popular election of senators. Heretofore, every state had been admitted to the Union, then the new state legislature has elected the senators and has more or less designated which one shall be for the long term or the short term. So we'll be the first state that has come in since the popular election of senators and it leaves us at a little bit of a loss how to designate who shall have the long term or the short term. It does seem a simpler solution to leave it to the United States Senate to decide it by lot. We will elect two senators and they'll go there and draw lots. One will get six years, the other will get two years.

CHAIRMAN: Are you ready for the question? All those in favor of the motion to adopt Committee Proposal No. 25 as amended, please say "aye." Opposed, "no." Motion is carried.

If there is no objection, we will now consider Committee Proposal No. 23. Recollection of the Chair is that --

SHIMAMURA: May I move to reconsider Committee Proposal No. 23.

J. TRASK: Second the motion.

CHAIRMAN: It has been moved and seconded that we reconsider our action on Committee Proposal No. 23.

ASHFORD: We were told that a new version of the printing was to be issued. Has that been done?

CHAIRMAN: That is right. There are four pages to that new amended form. The wrong one has three pages.

CROSSLEY: One Proposal No. 23 of mine reads "Proposed amendments to Committee Proposal No. 23." The other reads, "Amend Committee Proposal No. 23 to read as follows."

CHAIRMAN: The latter is the correct form.

WIRTZ: Which one?

CHAIRMAN: The latter.

CROSSLEY: The one that is titled, "Amend Committee Proposal No. 23 to read as follows"?

CHAIRMAN: That's right and there are four pages in it. The other has three pages. Do we all have that? The question before the committee is to reconsider our action on Committee Proposal No. 23. All those in favor of the motion, please say "aye." Opposed, "no." Motion carries.

SHIMAMURA: I move to adopt Section 1 of Committee Proposal No. 23.

J. TRASK: Second the motion.

CHAIRMAN: It has been moved and seconded that we adopt Section 1 of Committee Proposal No. 23.

SHIMAMURA: This is identical with the Section 1 as originally proposed.

CHAIRMAN: All those in favor of the motion, please say "aye." Opposed, "no." Carried.

SHIMAMURA: At this time I move to adopt Sections 2 to 10 inclusive of Committee Proposal No. 23.

CHAIRMAN: Do I hear a second?

YAMAMOTO: I second the motion.

CHAIRMAN: It has been moved and seconded that we adopt Sections 2 to Section 10 inclusive of Committee Proposal No. 23.

ROBERTS: I think we ought to go through this thing paragraph by -- section by section, so that we can read it.

TAVARES: May I explain in seconding that motion, that we have compressed Sections 2 to 10 into the next section of the proposed amendment and that's why we are doing it. We think we've covered them all.

CHAIRMAN: Are you ready for the question?

ASHFORD: I don't know whether the chairman of the committee wants to move this amendment. I know that he felt that the expanded Sections 2 to 10 were a more satisfactory method of dealing with subject. But I believe that he is now satisfied that they are all covered by Section 2, particularly if this committee report so declares when it is filed. I, therefore, move the amendment of Section 2 of Committee Proposal No. 23 to read in the form submitted to the delegates on their desks.

SECTION 2. All laws in force at the time this Constitution takes effect and not inconsistent or incongruous

therewith, including, among others, acts of the Congress relating to the lands in the possession, use and control of the Territory of Hawaii, shall be the laws of the State and remain in force, mutatis mutandis, until they expire by their own limitations, or are altered or repealed by the legislature.

Except as otherwise provided by this Constitution, all existing writs, actions, suits, proceedings, civil or criminal liabilities, prosecutions, judgments, sentences, orders, decrees, appeals, causes of action, contracts, claims, demands, title and rights shall continue unaffected notwithstanding the taking effect of this Constitution, except that the State shall be the legal successor to the Territory of Hawaii in respect thereof, and may be maintained, enforced or prosecuted, as the case may be, before the appropriate or corresponding tribunals or agencies of or under the State or of the United States, in the name of the State, political subdivision, person or other party entitled to do so, in all respects as fully as could have been done prior to the taking effect of this Constitution.

CHAIRMAN: Do I hear a second to the motion?

ASHFORD: The amendment should be to substitute Section 2 as appears on the desks of the members of the Committee of the Whole for Sections 2 to 10 of the original committee proposal.

CHAIRMAN: Do I hear a second to that?

WOOLAWAY: I'll second that motion.

CHAIRMAN: It has been moved and seconded to amend Sections 2 to 10 inclusive by substituting for those sections the Section 2 in the form circulated. Is there any discussion on this?

SHIMAMURA: I should like to add a word to what Miss Ashford has said. The committee felt that Sections 2 to 10 as originally proposed covered adequately, fully and sufficiently the subject matters of those sections. I personally feel that the amendment has merely one merit, one improvement, and that is that it's been abbreviated and considerably. But I feel that it has been overly abridged and overly abbreviated with the result that certain sections of it are ambiguous and uncertain. But as Delegate Ashford has stated, if it is the sense of this committee that it be incorporated in this report, that Sections 2 to 10 are identical as originally proposed in meaning, I have no objection. I may add that the subcommittee that worked on this matter did not attempt to add one matter more than was originally incorporated in Proposal No. 25 [sic]. It was only attempted to assimilate the original sections proposed into this Section 2.

CHAIRMAN: Is there any more discussion? Are you ready for the question? All those in favor of the motion to amend please say "aye." Opposed, "no." The motion carries.

ASHFORD: May I ask that there be included in the report of this committee the conclusion of the committee that Sections 2 to 10 are fully covered by Section 2 as now adopted.

CHAIRMAN: If there is no objection, suggestion will be incorporated in the committee report.

WIRTZ: I'd like to amend that suggestion, "among other things that Sections 2 to 10 are included," because I think the objection originally raised was that we wanted a bigger bread basket.

CHAIRMAN: Committee report will so include.

SHIMAMURA: I move to amend, rather I move to adopt Section 11 of Committee Proposal No. 23.

DELEGATE: Second it.

CHAIRMAN: It has been moved and seconded to adopt Section 11 of Committee Proposal No. 23.

SHIMAMURA: I move that Section 11 be amended in the form it appears as Section 3 in the amendments to Committee Proposal No. 23 as circulated.

SECTION 3. Except as otherwise provided by this Constitution, all executive officers of the Territory of Hawaii or any political subdivision thereof and all judicial officers who may be in office at the time of the admission of this State into the Union shall continue to exercise and discharge the powers and duties of their respective offices until their successors shall have qualified in accordance with this Constitution or the laws enacted pursuant thereto.

DOWSON: Second the motion.

CHAIRMAN: It has been moved and seconded that Section 11 of Committee Proposal No. 23 be amended in the form in which it appears in Section 3 of the form circulated. Any discussion?

SHIMAMURA: Section 3 in amended form does not change the substance of Section 11, but merely incorporates the same matter in somewhat different language.

CHAIRMAN: All those in favor of the motion to amend Section 11 please say "aye." Opposed, "no." Motion is carried.

CROSSLEY: I move the adoption of Section 11 as amended.

YAMAMOTO: I second the motion.

CHAIRMAN: It has been moved and seconded that Section 11 be adopted as amended.

ANTHONY: Shouldn't that be, Section 11 be renumbered Section 3 and as renumbered and amended be adopted?

CROSSLEY: Correct.

CHAIRMAN: Correct. The Chair stands corrected. All those in favor of the motion, please say "aye." Opposed, "no." Motion is carried.

SHIMAMURA: At this time I move for the adoption of Section 12 of Proposal No. 23.

DELEGATE: I second the motion.

CHAIRMAN: It has been moved and seconded that Section 12 of Committee Proposal No. 23 be adopted.

SHIMAMURA: It is the feeling of the members who worked on this matter that Section 12 should be deleted, adequate provision having been made in Section 2 as amended. Therefore, I move for the deletion of Section 12.

CHAIRMAN: Do I hear a second?

BRYAN: Second the motion.

CHAIRMAN: It has been moved and seconded that Section 12 be deleted. All those in favor of the motion to delete Section 12, please say "aye." Opposed, "no." The motion carries.

SHIMAMURA: I move for the adoption of Section 13 of Committee Proposal No. 23.

DELEGATE: Second the motion.

CHAIRMAN: It has been moved and seconded that Section 13 of Committee Proposal No. 23 be adopted.

ROBERTS: I have an amendment to propose to Section 13.

CHAIRMAN: Delegate Roberts, would you - - Are you rising to a point of order, President King?

KING: Yes. I'd like to ask if the chairman has an amendment first to the section - - proposed section.

CHAIRMAN: That's what the Chair intended to ask the - -

ROBERTS: As far as I know there has been - - is no amendment by the committee.

CHAIRMAN: Delegate Roberts, would you hold your amendment off for a few minutes until we hear from Delegate Shimamura?

ROBERTS: I'll hold it.

SHIMAMURA: There is no amendment to Section 13.

ROBERTS: That was my thought.

ANTHONY: I move that it be deleted.

ROBERTS: I rose and I was recognized by the Chair. I yielded for a question. I believe that the motion to delete is out of order until I've put my amendment.

CHAIRMAN: That is correct. Delegate Roberts has the floor.

ROBERTS: Section 13 provides for the appointment of a commission dealing with revision of existing laws to conform with the Constitution which we adopt. At the time this section previously came up, I moved that at least one of the individuals appointed to that commission should be a layman. It was suggested on the floor, it would more properly be put in the form that no more than four attorneys shall be appointed to that revision commission. I will, therefore, move that no more than four attorneys be on that revision commission of five.

SILVA: Second the motion.

CHAIRMAN: It has been moved and seconded to amend Section 13 by inserting this sentence, that no more than four attorneys be on the commission.

WIRTZ: I have a question to ask the movant. Simply this. Was this amendment proposed to the committee that was appointed by the Chair to consider the question of these proposals?

CHAIRMAN: Did you hear the question, Delegate Roberts?

ROBERTS: I don't think I'm in a position to answer it. I know that there was no change proposed by the subcommittee.

WIRTZ: As I understood it, the chairman of this committee asked everybody who was interested to attend the meeting of the subcommittee of Committee of the Whole that was appointed by the Chair.

CHAIRMAN: That is right.

WIRTZ: I'm simply asking the question whether this amendment was proposed and considered by this subcommittee that met all day long in Room No. 2.

CHAIRMAN: Delegate Shimamura, could you?

SHIMAMURA: The answer is no.

ROBERTS: May I speak to that? I noted in that question an implication of criticism. It may well be that the speaker of the amendment has been negligent in his duty. I understood the function of this subcommittee was to try to bring together the many sections which could be combined. I did not think it was the intention of setting up that committee to have the movers of amendments to go in there to put them in. I thought the amendments were perfectly proper on the floor. This is not a question of drafting, it's not a matter of style, it's a matter of substance and I believe the amendment is perfectly proper here.

ANTHONY: This whole thing was a matter of substance and we worked on it now for about six or seven hours. I'd like to move an amendment to Delegate Roberts' motion that no lawyers be on this committee.

ROBERTS: I think that amendment is out of place.

CHAIRMAN: There is no second to the amendment.

TAVARES: I was the strongest supporter of this section and I believe I was the one responsible for getting it in originally. It was shown to me in the committee, informal committee, that since we were providing for a mandatory special session to be called immediately after we became a State, the legislature could act very soon. It would take several years for the commission to act anyhow. Therefore, I agreed that I would withdraw my support of the entire section and agree to it going out entirely. That's why the motion is going to be made to delete it, leave it to the legislature.

ROBERTS: I believe that the commission is still in order. No special session of the legislature which meets ten days after is going to be in a position to revise and to amend all of the laws to conform to the Constitution. A commission is needed and desirable. I'm not speaking against that. I think it ought to be done. The only point I make is that laws are written for people, not for lawyers. It seems to me that it is perfectly proper that the people who are governed by these laws understand them; and in order to understand them, it seems to me that layman ought to know and ought to have some understanding of them and ought to see to it that the people understand them as well.

HEEN: Mr. Chairman. It seems to me that - -

ROBERTS: Mr. Chairman, I haven't finished.

CHAIRMAN: Delegate Roberts has the floor.

KING: Mr. Chairman.

CHAIRMAN: Delegate Roberts has the floor.

ROBERTS: Thank you, Mr. Chairman.
I believe that the point has very well been presented that lawyers serve a useful function, most of the time. I believe that lawyers have a tremendous amount to contribute to the orderly function of government. But there is one responsibility which it seems to me they are short of, and that is a realization that the operation of laws and their proper functioning depends on a full and complete understanding by people, normal people, by people who are not generally accustomed to dealing with detailed and complicated statutes. It seems to me that lawyers ought to welcome the opportunity to work with laymen and to see to it that the laws are properly understood and sold to the people. I am at a loss to understand the attitude of some attorneys that the laws belong to them. These aren't their laws. They are laws belonging to people and governing them. It seems to me that they ought to welcome the opportunity to have some laymen serve with them, though the task may be extremely difficult and perhaps undesirable from the point of view of a layman.

BRYAN: I'd like to ask several points of information. One is, did the Chair rule that amendment of the present motion made by Dr. Roberts, to the effect that the section be deleted, would be out of order?

CHAIRMAN: No, I think that is in order.

BRYAN: I feel that if the motion to delete carried, the present discussion regarding lawyers and laymen would be more or less academic. Therefore, I move that we delete the section or I amend the motion to read that we delete the section.

DELEGATE: I'll second that motion.

CHAIRMAN: It has been moved and seconded that we delete Section 13.

NIELSEN: If we vote to delete this, does this mean that we're putting a rubber stamp on everything that happened

in that special committee this afternoon? We can't make amendments from the floor?

TAVARES: Not to prolong this, the point is, I was responsible for getting this thing in the article, and it was pointed out to me that two things can happen. Either the territorial legislature, if it gets a chance to meet before we become a state, can pass a law creating such a commission, which will then be some use and be able to do some work beforehand; or if the legislature doesn't get to meet and do that, the territorial legislature, then we are not saving much time if we wait till the State legislature does it because it will take about two years to do this job, and the State legislature meeting at the first session will only set up a commission. That's the point I make, and the commission will still have to work for two years. Now if we could in this Constitution, before we become a state, mandate such a commission, I'd still be for it because then the commission could get to work right away and start working now and by the time we become a state have something to offer to the State legislature. But since we can't do that, I think we might as well leave it to the legislature and, therefore, I agreed to the deletion.

KING: I wanted to call attention to the fact that Delegate Roberts' amendment was quite in order. Section 13 was before the Convention. No motion to delete had been made. There is no proposed amendment stated in this four page sheet of amendment, so I think that Delegate Roberts had every right and the Chair ruled correctly to recognize his amendment. Now the motion to delete is going to be made. Perhaps we should vote on that first. Nevertheless, if the motion to delete fails, then I certainly would like to support Delegate Roberts' motion. When this was pending originally, our Proposal No. 23, Delegate Roberts made that point and his amendment was discussed on the floor, then the motion to defer action was accepted. So that his proposed amendment is certainly in order unless it's superseded by a motion to delete.

I would, however, like to call attention to one more fact. We have pending, perhaps in the very next legislature, another commission to revise the laws. Our present Revised Laws of the Territory of Hawaii are dated 1945. If I recollect correctly, they are revised every five years. Is that correct? May I ask one of these attorneys. Every ten years? Well then, that point doesn't pertain. But, in any case, certainly if the motion to delete fails, the motion offered by Delegate Roberts is in order.

WIRTZ: I don't want anybody to construe my question or my remarks as intending to rule Delegate Roberts out of order nor to carry the implication that this is a rubber stamp Convention. I address the question solely on this premise, that in an effort to save time this special committee was formulated and sat and worked all day long, and that was the only reason I asked the question whether that amendment had been suggested to this committee for their consideration.

WOOLAWAY: There are two motions before the assembly. One is to amend, the other is to delete, and I'm rising on a point of information. Does the motion to delete carry precedence over motion to amend?

CHAIRMAN: The motion to delete will be put first.

ROBERTS: I'd like to speak in opposition to the amendment to delete. It seems to me that the purpose of this section when originally introduced, regardless of who introduced it, that the purpose of this section is still valid, and I believe that it ought to remain in the Constitution. If we make no provision for a commission to examine carefully over a period of a number of years existing laws and assuring that those existing laws are examined in the light of the Constitution, it seems to me that we will have an opportunity to permit piecemeal modification and amendment and changes of the law without careful consideration and study by individuals who are assigned the specific job of dealing with the revision of the laws. There is no indication that the legislature, when they meet, will create such a commission. Constitutions that have been adopted recently have very carefully made reference to such action and have assured that the laws would be integrated with the amendments or revisions of specific constitutions. The section, it seems to me, has a very definite place in our Constitution, and I, therefore, urge the delegates to vote against the amendment to delete.

ANTHONY: Delegate Roberts, speaking as to what there is indication of the legislature doing, apparently doesn't realize that the legislature had continuously appointed just such commissions. This is a piece of statutory matter pure and simple. It has no place in the Constitution.

CHAIRMAN: Ready for the question? The motion is to delete Section 13. All those in favor of the motion to delete please say "aye." Opposed, "no." The motion carries.

SHIMAMURA: I move at this time to add a new Section 4 to Committee Proposal No. 23, as circulated.

> SECTION 4. All acts of the legislature of the Territory of Hawaii authorizing the issuance of general obligation bonds by the Territory of Hawaii or its political subdivisions are hereby approved, subject however to amendment or repeal by the legislature, and such bonds may be issued by the State and its political subdivisions pursuant to said acts. Whenever in said acts the approval of the President or of the Congress is required, the approval of the governor shall suffice.

DELEGATE: I second the motion.

CHAIRMAN: It has been moved and seconded to amend Committee Proposal No. 23, by adding Section 4, in the form circulated. Is there any discussion?

TAVARES: I am sorry that after having worked with the committee and been responsible for inserting the words "general obligation" in lines two and three, I have now lost heart and believe that it was a mistake, and we ought to take the words "general obligation" out because it casts an implied doubt on other bond acts that are not general obligation bonds. It's been pointed out to me that it might cast doubt on our revenue bond acts, and therefore, I move to delete the words "general obligation" in lines two and three, with apologies to the other members of this committee.

SHIMAMURA: I second the motion.

CHAIRMAN: It has been moved and seconded to further amend Section 4 by deleting the words "general obligation" in lines two and three of Section 4. Is there any further discussion?

SHIMAMURA: May I just briefly point out that this Section 4 substantially incorporates the suggested alternative, amendment 14, which was previously circulated.

BRYAN: I think if the chairman of the committee would accept this amendment, we wouldn't have to vote on it.

CHAIRMAN: Would the chairman of the committee accept the amendment made by Delegate Tavares?

SHIMAMURA: I do.

CHAIRMAN: If that is the case, there is only one amendment before us. That is Section 4. Are you ready for the question? New Section 4. Ready for the question? All those in favor of amending Committee Proposal No. 23 by adding a new Section 4 in the form circulated, please say "aye." Opposed, "no." The motion carries.

SHIMAMURA: I now move that a new Section 5 be added to Proposal No. 23, and I so move.

SECTION 5. Unless otherwise provided by law, the lieutenant governor shall exercise and discharge the powers and duties of the secretary of the Territory of Hawaii.

DELEGATE: I second the motion.

CHAIRMAN: It has been moved and seconded that Committee Proposal No. 23 be amended by adding a new Section 5 in the form circulated. Are you ready -- Is there any discussion?

SHIMAMURA: This section was inserted to take care of the situation where in our Constitution for the State of Hawaii, we have provided for a lieutenant governor, but have not provided for his functions or his duties or powers; whereas, in our present territorial form of government, we have a secretary of state, so called.

HOLROYDE: I have a question of the committee. Doesn't this Section 5, if adopted, make the second paragraph of Section 5 in No. 25 unnecessary? No?

SHIMAMURA: I didn't quite hear the last statement.

CHAIRMAN: Delegate Holroyde.

HOLROYDE: O.K., never mind.

FUKUSHIMA: Why is that the secretary of the Territory of Hawaii?

SHIMAMURA: At present, we have a Secretary of Hawaii who is equivalent to the lieutenant governor in the mainland states, in several states that have the lieutenant governor; for example, in Massachusetts. Now, as I said, there is no provision made in our Constitution as to the powers, duties and functions of the lieutenant governor.

WIRTZ: A question of the movant. Does the scope of the duties of secretary of the Territory of Hawaii include being president of the Senate?

SHIMAMURA: No.

HEEN: As you know, under the provisions relating to the first election, that first election will take place before Hawaii becomes a state. The secretary of the territory had various duties in connection with elections. Therefore, someone will have to perform that duty.

CHAIRMAN: Delegate Bryan, did you care to speak?

BRYAN: I'd like to make a note. Perhaps the Style Committee can take care of it. I think it should read, "the powers and the duties heretofore delegated to the secretary of the Territory."

SHIMAMURA: I'm sorry, I didn't quite get that.

BRYAN: Under the Constitution, there will be no secretary, and no duties of the Territory of Hawaii.

FUKUSHIMA: I was made to understand earlier in the evening that all the elections would be held together. The governor's election, the legislators' elections, and also the United States representatives and senators. I think it's all twisted around as it appears now.

SHIMAMURA: I didn't quite hear the last speaker's remarks, but I said, our Constitution provides for a lieutenant governor and not for a secretary of state. We have not defined anywhere in our Constitution, State Constitution, the duties and the powers and functions of lieutenant governor, whereas we now have a secretary of the Territory of Hawaii with certain defined powers and functions.

FUKUSHIMA: I understand that. The article on executive powers and functions states that the lieutenant governor shall perform such duties as may be prescribed by law. Now this Section 5, as I get it, is merely to take care of the first election, certification of the first election, does it not?

ASHFORD: I think the purpose of Section 5 is not to take care of the first election solely. That has been taken care of in earlier matters. That is, the first election is handled by the secretary of the territory, but the certification of the election of the senators and representatives are to be by the newly elected governor and secretary of state, and as we have no secretary of state, the lieutenant governor is made ex officio secretary of state. But this provision is to transfer those duties and functions which now exist in the secretary of the territory, the largest, the most important of which, in my opinion, are those of caring for the elections. In other words, if this transfer were not made, if we became a state, and before those functions were committed to the lieutenant governor, if they were not so committed here, and we had for any reason to have an immediate special election, there would be nobody to look after it.

FUKUSHIMA: If what the delegate just said is the intent of Section 5, I believe it's a proper section.

ANTHONY: Well, if Delegate Fukushima will look at Committee Print 23, seventh line, I think he'll find his answer.

CHAIRMAN: Are you ready for the question?

GILLILAND: When Hawaii becomes a state, we won't have any more Territory of Hawaii or secretary of the territory, so reading this Section 5, I take it, reads as if we shall also have a secretary of the Territory of Hawaii and a lieutenant governor at the same time.

CHAIRMAN: Delegate Gilliland, that is the very point Delegate Bryan just spoke to.

BRYAN: I spoke to the chairman of the committee a minute ago, and he says that he believes that can be taken care of in the Committee on Style.

ASHFORD: I think so. I think, for instance, if the language were used, "shall succeed to the powers and duties," it would be taken care of.

TAVARES: May I add a further explanation? As I see it, this provision, "unless otherwise provided by law," was purposely made very broad so that even before we become a state, if the territorial legislature sees fit to pass a law saying that the duties of the secretary of the territory shall be exercised by some other officer than the lieutenant governor when we become a state, that will then supersede this provision. But if they don't do that, we have no provision in the Constitution to take care of the secretary's duties, then this will take care of it. But the legislature before we become a state, or the state legislature afterwards, can change it to allow the lieutenant governor -- I mean to allow somebody other than the lieutenant governor to perform those duties. In the meantime, however, to be dead sure that the certification to Congress, and so forth, of elections will be carried out, we have another provision, which we've already approved, that for the purpose of certifying those elections, the lieutenant governor shall be deemed secretary of state. So we've covered two different things there.

CHAIRMAN: Are you ready for the question?

GILLILAND: This is double talk. Why should we have it in the Constitution?

CHAIRMAN: All those in favor of the motion to amend Committee Proposal No. 23 by adding new Section 5 in the

form in which it was circulated, please say "aye." Opposed, "no." The motion carries.

SHIMAMURA: At this time, I move to amend Committee Proposal No. 23 by adding a new section numbered 6, thereto.

SECTION 6. The legislature shall within three years from the time the first legislature convenes, allocate and group the executive and administrative offices, departments and instrumentalities of the State government and their respective functions, powers and duties, among and within the principal departments pursuant to Article

If such allocation and grouping shall not have been completed within such period, the governor, within one year thereafter, by executive order, shall make such allocation and grouping.

DELEGATE: Second the motion.

CHAIRMAN: It has been moved and seconded to amend Committee Proposal No. 23 by adding a new Section 6 in the form in which it was circulated. Any discussion?

SHIMAMURA: This section substantially follows the proposed amendment to this proposal numbered 16, which was circulated to the delegates on July 10, day before yesterday. This section provides for the consolidation, grouping and allocation of departments, which was discussed at the time the matter of the, I believe, either the executive powers or the legislative article, the executive powers and functions, yes, was discussed.

CHAIRMAN: Are you ready for the question? All those in favor of the motion to amend Committee Proposal No. 23 by adding a new Section 6 please say "aye." Opposed, "no." The motion carries.

SHIMAMURA: I move to amend the Committee Proposal No. 23 by adding thereto a new section numbered 7.

SECTION 7. Requirements as to residence, citizenship or other status or qualifications in or under the authority of the State prescribed by this Constitution shall be satisfied pro tanto by corresponding residence, citizenship or other status or qualifications in or under the authority of the Territory.

DELEGATE: Second the motion.

TAVARES: Before we go into that, I think - - may I ask unanimous consent. The Committee of the Whole report should show that notwithstanding, in case the legislature slips up on some of this apportioning under Section 6 within the three year period and the governor does make the apportionment, notwithstanding that, the legislature of course, can always change it. That's understood. We agreed in the committee that that was implied under the legislative powers.

CHAIRMAN: If there is no objection, the statement or the suggestion made by Delegate Tavares will be inserted in the Committee of the Whole report.

BRYAN: May I also ask the unanimous consent to ask one question on that section which was passed. These sections which go in under schedule or ordinance, can the legislature amend them?

CHAIRMAN: Will somebody please answer the question? Delegate Ashford.

ASHFORD: I think the answer is clearly no, but this is, for example, this is not a - - this requires certain things to be done, but after they are done, there is nothing to prevent the legislature, for example, to make a reallocation, but it must be, as I see it, within that number of departments which is required by the Constitution.

SHIMAMURA: This Section 7 provides that wherever there is any residence requirement or requirement of citizenship or any other qualification for office or otherwise, that the period during which the candidate or the person was residing in the Territory of Hawaii shall be tacked on to the period required under the statute for residence, etc.

TAVARES: For further purposes of the record, this would include, for instance, such provisions as that in order to be appointed a judge, a person must be admitted to the bar of the State for say either five or ten years, I forget which. Now that would mean, under this, that would be a status, and the status under the territory of having been admitted to the bar for say six years could be added to four years more under the state; or if you have ten years under the territory already, why it would count as admission to the bar of the State - - supreme court for that period. That would be included among other things under this section.

CHAIRMAN: You ready for the question?

ASHFORD: May I say something that I think should go into the report on this section? This starts out very simply, and was drafted and redrafted to meet the intent of the committee and what we felt would be the intent of the Committee of the Whole. It is directed primarily to time; that is, time of residence, time of status and time of citizenship required as qualification. The Style Committee may be redrafting it to emphasize that element of time and I think the element of time might well be mentioned in the report.

CHAIRMAN: Are you ready for the question?

BRYAN: One more bugaboo. Shouldn't that also carry the words "until otherwise provided by the legislature," then?

ASHFORD: No, I think not, because, for example, we have fixed certain requirements under the Constitution. The classic example, of course, is the period of ten years membership of the bar. Now the legislature can't change that. But if it referred only to membership of the bar of the State, we couldn't have any judges.

CHAIRMAN: Are you ready for the question? All those in favor of the motion to amend Committee Proposal No. 23 by adding a new Section 7, the form in which it was circulated, please say "aye." Opposed, "no." The motion carries.

SHIMAMURA: I move to amend Committee Proposal No. 23 by adding thereto a new section, Section 8.

SECTION 8. Until the legislature shall otherwise provide under Article ____ of this Constitution, the chief justice, justices of the supreme court and judges of the circuit courts shall receive as compensation for their services the sums of $17,500, $17,000 and $15,000 per annum, respectively.

DELEGATE: I second the motion.

CHAIRMAN: It has been moved and seconded that Committee Proposal No. 23 be amended by adding a new Section 8 in the form in which it was circulated. Is there any discussion?

ANTHONY: This is a section that is absolutely necessary to incorporate in the schedule for this reason. If we didn't have this in the schedule, if we did not fix the salaries of judges in the judiciary articles, and if we did not have this in the schedule, our judges would not get paid for the simple reason that their salaries come from appropriations from the federal government, like the salary of the governor and the salary of the secretary of the territory. The only thing that is contributed to the salary is something like $250 a month. So it is absolutely essential that we have this in the schedule to preserve the salaries of our judges.

I invite the body's attention to the fact that it is wholly within the legislative discretion to alter or amend the amount of the compensation when the legislature meets.

NIELSEN: I'd like to ask a question. Why those salaries? Are those the present salaries of the judges in the different courts?

CHAIRMAN: Delegate Anthony, will you please answer the question?

ANTHONY: What was that question again?

NIELSEN: Are the salaries mentioned in Section 8 the present salaries of these different justices?

ANTHONY: No, it is not.

NIELSEN: How much smaller are they?

ANTHONY: They are larger.

NIELSEN: How much larger then?

ANTHONY: The present salary of the chief justice is $12,500, and the present salary of circuit judges is $10,000.

TAVARES: Mr. Chairman.

CHAIRMAN: Just a second, Mr. Tavares. Are you through, Delegate Nielsen?

ANTHONY: Twenty-five hundred of that is contributed out of the territorial funds; $10,500 of the chief justice's salary is payable by act of Congress. Now what happened is this. When there was a general increase in judicial salaries by the Congress of the United States—in which the justices of the Supreme Court of the United States got $25,000; justices of the Circuit Courts of Appeals, $17,500; and judges of the Federal District Courts, that is the trial courts, got $15,000—our own judges were completely left out in the cold. In other words, they took in the Virgin Islands and Puerto Rico, I believe, but left out Hawaii. This will simply bring us, more or less, on a parity with the federal system.

NIELSEN: One other question. If we set these salaries, can the first session of the legislature change them? I understand these judges, some of them are elected for eight years.

ANTHONY: They can't increase or decrease the particular judges that are appointed, but the legislature after the term, of course, can change the salaries of the judges.

NIELSEN: But if they are in for a term of eight years, then it would be eight years before the legislature could change the salary here.

ANTHONY: Six and seven.

NIELSEN: Six and seven. They will be - -

ASHFORD: May I answer that question?

CHAIRMAN: You may.

ASHFORD: I don't think that that is quite a correct statement. I think the first legislature could fix those salaries at anything they wanted to, they could fix them at $8,000 a year if they wanted to, but that $8,000 fixing would not apply to the judges who had been appointed by the first governor before the legislature passed such legislation. If one of those justices or judges resigned, that act fixing a salary would instantly apply to his successor.

FUKUSHIMA: I believe the statement made by Delegate Anthony is partly correct. I believe that circuit judges in the outlying islands get a little less, don't they?

TAVARES: Yes, I think they get only $7,000 or at least it's something like that. It's less than the circuit judges in the first circuit.

FUKUSHIMA: In line with that, I have an amendment to offer which reads:

> Until the legislature shall otherwise provide, the chief justice, justices of the supreme court, circuit judges of the first judicial circuits, and circuit judges of other judicial circuits shall receive as compensation for their services the sums of $17,500, $17,000, $15,000, and $12,500 per annum respectively.

I move the adoption of the amendment.

DELEGATE: I second the motion.

CHAIRMAN: It has been moved and seconded to amend Section 8. Could you please read that amendment over, Delegate Fukushima, slowly?

FUKUSHIMA:

> Until the legislature shall otherwise provide, the chief justice, justices of the supreme court, circuit judges of the first judicial circuits, and circuit judges of other judicial circuits shall receive as compensation for their services the sums of $17,500, $17,000, $15,000, and $12,500 per annum respectively.

CROSSLEY: Will the last speaker yield for a question.

CHAIRMAN: Will you state your question?

CROSSLEY: Does that amendment mean that the circuit judges on the outside islands, the neighbor islands, would get the lower figure? Is that what the amendment is?

FUKUSHIMA: That is the amendment; that is the intent of the amendment.

CROSSLEY: I'd like to speak to the amendment. I'm opposed to that amendment because the qualifications for office still remain the same regardless of whether he serves on a neighbor island or here, and I think that it's pure discrimination against the judges on the neighbor islands, and I'd be against the amendment.

ASHFORD: I would like to speak against the amendment because of what has seemed to me a gross and growing injustice. I think all of us, particularly all of us who are members of the bar, have observed how often the judges either of the supreme court or of the first circuit bench are absent from the bench by reason of illness, by reason of vacancy or some other reason. And what happens? The judges from the other circuits are summoned away from their homes to live in Honolulu and do the work of those first circuit judges or the supreme court judges for a pay that is less than the circuit judges here. Now I think all of us who know the judges of the other islands know how often they have been imposed upon in the last two or three years particularly.

SILVA: I'd like to point this out to Fukushima who probably does not realize that in Oahu we've got more than one circuit court judge. If it was true that Oahu would have just one circuit court judge as compared with the outside islands, then I'd probably say maybe the circuit court judge down here does a little more work. But they have about five or six circuit court judges on Oahu as compared with the outside islands of one judge apiece. Now, I've seen the reports—the reports come before the legislature—and I can assure you that the circuit judge of the circuit of the County of Hawaii, known as the third circuit, does about twice as much work as the individual judge in Honolulu does, and I say it is unfair. I think that in all probability that the outside circuit judges should receive more compensation than those of Oahu for the work done.

TAVARES: Leaving aside the question of discrimination against the outer islands, let's look at it from a more realis-

tic standpoint. Every circuit judge presides in cases meaning life and death to somebody, and you want the best man you can get to preside over cases that are going to help decide whether a man shall hang or not, and I say that a man who has that responsibility should be the best man you can get for the money, and I don't like to see you hold down the outer islands to a $12,000 man to put a man to death and pay $15,000 to a man in Honolulu to preside over the same kind of case. They may do more cases, but the responsibility is there.

Under this Constitution, as it is under our present laws, the outer island circuit judges can be assigned to duty on Oahu, and they are assigned to do that. They can be kept busy and made to earn every bit of their salary, and they are being made to do it now and have been in the past.

Under those circumstances, I think it most unfair, first, to the people who are going to come before those judges, to try to put inferior men in their place—and they haven't been inferior, thank God, in the past—but if you're going to make a discrimination like that, you have the implication that a man in the outer islands is not worth quite as much as a man in the first circuit; and, secondly, as I say, he's going to earn his money plenty.

Now let me show you the one -- reemphasize again the disparity between the federal salaries today and our salaries. In the courts of Alaska, the district court judges appointed by the President do the work of our circuit courts. They are not only federal courts, they do circuit court work, too, so they correspond to our circuit judges here, and they get 15,000 a year. Down here in Honolulu, these U.S. district court judges, and I mean no detriment to them, don't want to distract from them, who do the work for the United States that corresponds to the work our circuit courts do for the states, are getting 15,000 a year today. They are certainly not doing more important work than our supreme court. Our supreme court justices ought to be paid more than a U.S. district court judge, because our supreme court, after we become a state, is the court of last resort in murder cases of life and death, because from those cases you can only appeal to the United States Supreme Court if there is a federal question. Today, because we are a territory, you have an automatic appeal to the ninth circuit court and then a chance to get up to the United States Supreme Court from there, but, after we become a state, you will not appeal to the ninth circuit court of appeals, you will only go up to the United States Supreme Court if there is a federal question, and many, many of those cases do not involve federal questions. Therefore, as I say, the amount should be -- we shouldn't object to that amount. It should be higher than the federal district judges are receiving today.

AKAU: While comparisons may be odious, the judges and the lawyers consider themselves in a category up here. I'd like to say that the teachers who go to the rural section and go to the other islands are trained as well as our teachers who teach here in the city, and they receive the same salary, and that is a unique aspect of Honolulu and the Territory of Hawaii. Now I think that the same thing might prevail as far as the judges are concerned, although I know the lawyers are probably turning up their noses.

RICHARDS: I have a couple of suggestions here. This $17,500, $17,000, $15,000, the governor is only going to get $18,000. Now we just have listened to the last appeal for a man's life as being a judge. I am afraid that that is incorrect. The governor is the last appeal, and now there is only $500 difference. There is something here that stinks as far as I'm concerned, as far as this particular salary scale is concerned. If you want to put down this kind of a salary here, the governor should get $25,000 and the lieutenant governor $20,000, instead of 18 and 12.

FUKUSHIMA: I think that whether you hang by a judge who is getting paid $15,000 or 12,500 feels the same. I therefore at this time withdraw my amendment.

PORTEUS: Insofar as the compensation of judges is concerned, I don't believe that we have as yet correct information. My recollection is that under the Organic Act, the chief justice of the supreme court of the Territory of Hawaii is entitled to a salary of $10,500. I think the justices are entitled to salaries of $10,000. I think the judges of the circuit courts of this island are entitled to $7,500, and the judges of the circuit courts of the other islands are entitled to $7,000—$7,500 on this island and 7,000 on the other islands.

Now then, to go back to what the legislature has done. The legislature recognized that not sufficient compensation was being paid a number of officers, including the office of the governor, the judges, chief justice and the judges of the supreme court, the judges of the circuit courts, and the secretary. I think you will find, if you look at the Session Laws of 1945, that you will find that an act on page 358, the particular act being Act 261, Series E, 216, in subsection 3, it is provided that the treasurer of the Territory "is authorized and directed to pay to the several judges of the supreme court and to the several judges of the circuit courts ...upon warrants...the sum of $250 a month as additional compensation for their services." That makes a total of $3000 a year. Therefore, the chief justice of the supreme court of the Territory of Hawaii is entitled to $13,500, the other judges -- If the Organic Act provides for $10,500, and if the legislature provides for $250 a month, $250 a month according to my arithmetic is $3000 a year, and $3000 a year plus $10,500, in my arithmetic is $13,500 despite the gentleman from the fourth district who told me "no" and still shakes his head. Oh, he shook his head up and down now. Well, that's much better.

Now then, quite apart from the governor and his perquisites, which the attorney who arose seems much concerned about, I'd like to go on with my own speech, if I may. That is that I want to find out whether under this amendment, when I agree that a designation of compensation is fair enough, since the compensation is set by the Organic Act—I thought we continued the Organic Act until we're able to repeal or change some of the sections—but quite apart from that, there is the question of whether or not the judges will receive anything more than $250 a month when we become a state. Now that's a gap that should be filled in. I agree, but I do not agree that we should specify amounts in this schedule so that when the first state legislature meets, and the governor says "Senate, let us proceed with the appointment of the chief justice of the supreme court of the Territory and the justices of that court, and proceed with the appointment of justices of the circuit courts," that we then find, those that are in the legislature, that for the next six or seven years, depending on the term, that the legislature is powerless to decrease the compensation from $17,500 or $17,000. It's fair enough to write in to this schedule what the compensation will be until otherwise changed by the legislature, but it is not right to tie the hands of the legislature if you intend really to permit the legislature to fit or set a fair schedule of compensation.

Now, I want to know whether under this, as suggested, if the state legislature fails to pass a salary bill for judges before the judges are appointed, whether those judges then sit for the next six and seven years, receiving the compensation designated here, or do they get the compensation provided by law of the state legislature? If they are to get the compensation as designated here, then we had better know that fact and debate whether or not we wish to set for the first six or seven years compensation in the amounts as specified in this amendment. I think that we are entitled to an answer as to whether or not in that first six and seven

years, the legislature has the right to change these amounts. If it has the right to change them, I think we could safely go ahead, but if it has not, I'm against this amendment.

TAVARES: In order to make that clear—I think that's reasonable—I move an amendment to Section 8 as proposed by adding - - by changing the period to a comma at the end thereof and adding the following words: "which may be initially increased or decreased by the legislature during the terms of office of the initial appointees to said office, notwithstanding the provisions of Article blank," meaning the judiciary article.

FONG: I'd like to make an amendment to the amendment proposed by Delegate Fukushima to read as follows - -

CHAIRMAN: The amendment made by Delegate Fukushima has been withdrawn, and the amendment proposed by Delegate Tavares has as yet not been seconded.

DELEGATE: I second the motion.

CHAIRMAN: It has been moved and seconded - -

WOOLAWAY: May we have that amendment read again before we - -

CHAIRMAN: We would like to have Delegate Tavares' amendment stated clearly. Will you please read it slowly?

TAVARES: Change the period to a comma at the end of the section, and add thereafter the following words: "which may be initially increased or decreased"—it's been suggested I say "diminished." I will change that word "decreased" to "diminished" and read it again. "Which may be initially increased or diminished by the legislature during the terms of office of the initial appointees to said offices."

I understand Delegate Ashford has a suggestion. I'll yield to Delegate Ashford.

ASHFORD: My suggestion of the amendment is as follows: "which shall - -"

KAUHANE: I rise to a point of order.

CHAIRMAN: What is your point of order?

KAUHANE: A delegate behind here was trying to get recognized so that he could insert an amendment. The delegate just got through reading his amendment - -

CHAIRMAN: The Chair understands that - -

KAUHANE: - - and then he yielded his position to another delegate to fill in something.

CHAIRMAN: The Chair understands - -

KAUHANE: There is nothing before this house so that he can yield such a position.

CHAIRMAN: The Chair understands that Delegate Ashford is only attempting to perfect Delegate Tavares' amendment, and that Delegate Fong has an amendment which is different in substance from that proposed by Delegate Tavares. Therefore, I believe Delegate Ashford is in order.

KAUHANE: But, Mr. Chairman, I believe when you asked the delegate from the fourth district to restate his amendment, and that's what he was supposed to do, restate his amendment, which - -

CHAIRMAN: That's right.

KAUHANE: - - he did restate his amendments. Certainly a delegate who has asked recognition, was once recognized by you, and you in turn allow the delegate to read his amendment into the records here, which he has done, he certainly cannot yield a position to someone else.

CHAIRMAN: The Chair will rule that some informality will be allowed.

ASHFORD: Mr. Chairman, have I the floor?

CHAIRMAN: Delegate Ashford, will you please make your suggestion?

ASHFORD: I make - - This is the suggestion I make for the amendment: "which shall, notwithstanding the provisions of Article blank of this Constitution"—and that would be the article on judiciary permitting the increase or decrease of salary during term of office—"which shall, notwithstanding the provisions of Article blank of this Constitution, be subject to increase or diminution by the first session of the legislature of the State."

TAVARES: I accept the amendment.

CHAIRMAN: May we have it read slowly?

ASHFORD: Changing the period at the end of - - after "respectively" to a comma and adding the following words: "which shall, notwithstanding the provisions of Article blank of this Constitution, be subject to increase or decrease - - diminution"—but decrease is better—"subject to increase or decrease by the first session of the legislature of the State."

TAVARES: I second the amendment if that is - -

FONG: Mr. Chairman.

CHAIRMAN: For purposes of clarity, the Chairman would restate the motion, then we'll recognize Delegate Fong. Will that be O. K?

FONG: It hasn't been seconded yet, has it?

CHAIRMAN: It has been moved and seconded - -

FONG: Has not been seconded.

CHAIRMAN: Has been seconded.

FONG: Under those circumstances, you will preclude me from making an amendment, won't you?

CHAIRMAN: The Chair will allow - -

FONG: I rose specifically to intervene the second from jumping up.

CHAIRMAN: The Chair still will allow Delegate Fong to amend if he desires. Would you state the reasons why you made this point of order, in effect?

FONG: Due to the fact that if I were not recognized, judging from previous rulings, I would not be able to make an amendment to an amendment.

CHAIRMAN: Because of the peculiar situation we are in, the Chair, I think with the consent of the whole committee, will allow another amendment by Delegate Fong. If there is no other objection, Delegate Fong may make his amendment.

FONG: The amendment shall read as follows:

SECTION 8. Until the legislature shall otherwise provide under Article____of this Constitution, the chief justice, justices of the supreme court and judges of the circuit courts shall receive the same total compensation received by them on a date of the admission to statehood of the Territory of Hawaii.

CHAIRMAN: Is there a second to the motion?

KAUHANE: Second the motion.

CHAIRMAN: Now, Delegate Fong, will you restate your motion slowly?

FONG:

Until the legislature shall otherwise provide under Article____of this Constitution, the chief justice, justices

of the supreme court and judges of the circuit courts shall receive the same total compensation received by them on a date of the admission to statehood of the Territory of Hawaii.

H. RICE: It seems to me that this is ridiculous. If we're going to -- This Constitution, if H.R. 49 passes, is going back to have the Congress review it, and here the people, it says in their own Constitution, they are satisfied with the salaries they are getting at the present time, even though we have tried to get our justices raised here in the Territory. To me, if we send something back, we want to show them that they haven't been paid adequately, and we should give them adequate -- we should write in the Constitution the adequate compensation for those judges.

ROBERTS: I'd like to speak in opposition to that amendment. It seems to me that the opportunity we have here to recognize that our justices do serve a very valuable function in the community, and we ought to get the best kind of justice and we ought to attract the best people to those jobs. One of the difficulties in most of the states has been that the justices have been underpaid, and we have not been able to get the best qualified and the most competent individuals to serve in our courts. I think we ought to recognize and pay them the best salaries that we can in terms of what we pay other officers and in terms of their function to the entire community. I therefore am opposed to the amendment.

SAKAKIHARA: I beg to differ with the delegate from the fifth district. I think in the past sessions of the legislature we petitioned to the Congress for an increase in the salaries of our judges, supreme court justices, and circuit court judges, including the compensation -- an increase in the compensation for the federal judges.

ANTHONY: There are two things, Mr. Chairman and members of the Convention, that are essential to a good judiciary. One is a correct system of appointment with decent tenure. We've got that. And the other is adequate compensation. Now for the last 10 or 15 years, we have been beating our brains out at the doors of Congress trying to get decent salaries for our judges, so that we can attract and keep the highest caliber of men on the bench. On one occasion, I was one of a committee of the bar that wrote a brief and submitted it to the 79th Congress, I think it was. We had a hearing. We pointed out in that brief that historically Hawaii, on the day we became a territory, had well-paid judges. [Part of statement not recorded.] . . . appointment of judges. They held office, incidentally, during good behavior. The chief justice at that time received $12,500. Immediately upon the enactment of the Hawaiian Organic Act, his salary was cut in half. Since then, throughout the country, throughout the federal system, the salaries have gradually been gotten up to where there is a decent salary for a judge, where a man is perfectly willing to forego the opportunities of private practice and seek a judicial career. But what have they done for our judges here in Hawaii? They have done nothing. As a matter of fact, gentlemen, it's a serious question, the validity of that $250 a month, because you have a federally paid officer, and I doubt very much the competence of the legislature to add or detract from the salary of a federally paid officer. There are differences of opinion about that, but that is a question. But nevertheless, here you have judges sitting over there in the Post Office Building getting $15,000 per annum, judges right across the street getting 10,000, 7500 as augmented by the territorial legislation.

Now I think that it is only fair, it is only just that we get this Constitution started off on the right foot. Let's make no discrimination between judges in the outside islands and the judges in Honolulu. Their duties are just as important. Let's give them decent salaries, and the legislature can thereafter do what it feels proper in the circumstances. The amendment that Delegate Fong is offering here will perpetuate the gross injustice that presently exists between your judges on the outside islands and the judges of the circuit courts in Honolulu, for which there is no rhyme or reason, and I say we ought to put an end to it right here.

RICHARDS: There seems to be some slight misunderstanding regarding my remarks of a few moments ago regarding the payment of judges. I am all in favor of seeing that they are adequately compensated, but I do not feel that the executive branch of the government should be discriminated against. I feel that this particular amendment does discriminate against the executive branch of the government because with a salary of 18,000 for the governor, 12,000 for the lieutenant governor, and your department heads are going to have to get less than your associate justices and your judges of the circuit courts, because of the way the laws work as far as the head of the department getting so much and getting so much on down. If this goes through, I'm perfectly willing to vote for it, but I want to see the executive department's salaries reconsidered.

CHAIRMAN: Delegate Kauhane, did you --

ANTHONY: Will the last speaker --

KAUHANE: That's right --

ANTHONY: I wanted to explain something, Mr. Chairman, to the last speaker, if I may. I just want to --

CHAIRMAN: You'll be next recognized. Mr. Kauhane was asking for recognition for some time.

KAUHANE: I just want to bring a word of caution to this Convention, that it's the taxpayers who are going to carry the load in the increase of salaries. The salaries that they receive today could be well carried out until the first session of the legislature, and whenever the taxpayer, the common man, is able to meet the increase, then only can the legislature accord the judges the increases that are now being asked. If we are going to increase the judges' salary so that we may have qualified and capable men, inducing them because of the salaries to take the position of chief justice, then certainly the governor's salary should be increased, as mentioned by Delegate Richards, to the sum of $25,000 and your lieutenant governor to 20,000. So, too, we can have the best man run and seek office as governor of Hawaii. We have to consider the taxpayer who is going to carry the load.

CHAIRMAN: The Chair will declare a recess of 10 minutes. The clerks are just worn out.

(RECESS)

WIRTZ: I'd like to have the Clerk note in the record that since discussion has begun on this section, Section 8, I have been off the floor; and I wish to further note that I do not wish to participate in the deliberations nor the vote and I ask leave of the Chair to leave the floor because of my peculiar situation in the matter.

CHAIRMAN: You are granted the leave you beg for. Delegate Lee, I believe was begging for recognition.

LEE: I wanted to raise the question, there were two amendments. Which one will the Chair put first?

CHAIRMAN: Delegate Fong's amendment first.

LEE: I see. Well, I'd like to speak against the amendment. I believe that the proposal which sets out the salaries and provides the legislature with power to increase and decrease after their term of office is proper. I believe we've heard enough debate on the matter, and I believe we're ready to vote on the question. I might state that my reference to the legislature was during the term of the judge's appointment.

HEEN: The statement made by the last speaker as to change by way of increase or decrease after the term -- during their term of office is not correct.

LEE: It's absolutely correct. You can't change it during the term of their office.

HEEN: But under the amendment made by Delegate Tavares that may be changed by way of increase or decrease during their term of office.

LEE: At the first session.

HEEN: That's correct.

FONG: I understand Miss Ashford has a new amendment. Is that right, Miss Ashford?

ASHFORD: Yes, I was having it run off so it could be shown to the delegates. In this amendment, as a result of the suggestions from numbers of the delegates, the amount is slightly diminished and the amendment I suggested is also written in.

FONG: Under those circumstances, I withdraw my amendment.

CHAIRMAN: Delegate Fong's amendment has been withdrawn. Delegate Ashford, do I understand you wanted to modify your --

ASHFORD: Yes. May we have this deferred for a few minutes, Mr. Chairman, and go on to something else until this amendment comes in?

CHAIRMAN: Yes.

KING: The amendment being suggested by Delegate Ashford or the one that was already offered by her, and I think accepted by Delegate Tavares, had some language that would exempt this initial salary from ban on an increase or decrease. Delegate Ashford is having that typed and it has been suggested that included in that proposed amendment be a change in the salary rate from 17,500, 17,000 and 15,000 to 15,500, 15,000 and 12,500, and that would be a minimum to start off with. Then it would be up to the legislature to raise it if it seems desirable to do so.

TAVARES: Mr. Chairman.

KING: I haven't yielded the floor.

CHAIRMAN: President King has the floor.

TAVARES: Point of order, though. I did not accept that amendment and I do not accept it.

KING: I didn't say you had accepted the figures. I said you accepted the amendment suggested by Delegate Ashford with regard to the ban on raising or lowering the scale, and that additional amount has come in and Delegate Tavares can do as he pleases. But I'd like to suggest that we stick to a figure that's comparable to what is being paid now, or not in excess of what we have asked Congress to pay our territorial judges. No one seems to know exactly what the sum was that we asked Congress to pay our judges, but the assumption is that it was somewhere in the neighborhood of $15,000.

Now, the ratio between 17,500 and the governor's pay is too low, and at present the governor gets approximately $16,000 and the chief justice with territorial and federal pay combined gets, I believe, 15,000 or 15,500. The schedule in here leaves a ratio -- a difference of only $500 which seems a little bit as between the chief executive and the chief justice. It seems to me that the sum of 15,500, 15,000, and 12,500 as a minimum to start off with, with the legislature empowered to raise it if it sees fit to do so at its first session, might be more agreeable.

I'd like to call attention to the fact that we have argued this question already about three quarters of an hour, and the only thing is to bring it to a head and vote the lower figure or the upper figure and go on about our business.

HEEN: I would like to point out that the governor will receive not only $18,000, but he will receive perquisites in the way of a home, and about $5,000 a year tax-free money as allowance. As far as the lieutenant governor is concerned, he will receive $12,000, but he is only in office as a matter of decoration only.

ANTHONY: Delegate King said there has been an awful lot of debate on this. The first mention that I've heard of the sum of $15,000 was by himself, and I am opposed to it. Now what that's going to do is to perpetuate the inequality between federal judges and our territorial judges. There is no getting around it, the judges in the United States District Court for Hawaii do the same kind of work, they are trial judges, as the circuit judges. Therefore, our state circuit judges ought to get the same pay.

Moreover, the supreme court judges are of a higher grade in a hierarchy of the judiciary than the Federal District Court, so it is certainly reasonable and proper that they should get an increased salary over what the circuit judges get, over the $15,000, over what circuit and federal court judges get. I would like to invite the delegates' attention to the fact that justices in the Supreme Court of New Jersey get the sum of $24,000 per annum, and the governor of the State of New Jersey gets $20,000 per annum.

The governor's salary in Hawaii is only a minimum. It can be increased. The judges' salaries in Hawaii cannot be increased during their term in office. They cannot be diminished during their term in office, and what we're fixing here is the initial salary. Now let's get this thing off on the right foot. We've been trying to get our salary schedule fixed up for years. This is a chance to do it, and let's get started off right, and if the legislature wants to change it as soon as they meet, let them go ahead and do it.

RICHARDS: I think the last speaker made a slight misstatement. He said that the other salaries could be changed. The governor's salary cannot be increased or decreased during the first four years, as this Convention states. Therefore, the governor is frozen at 18, and the supreme court justice will be -- chief justice will be at 17,500, and the supreme court justices at 17. The justices of the supreme court will remain for six years or seven years, and the chief justice will remain for seven years, and the governor will remain for four years, regardless of what the previous speaker said. Now, if they wish to have the governor's salary a chance to up, the supreme court's salary a chance to up, I'll go along with it, but I do not feel that one branch of the government should be subservient to another.

KING: While the amendment is being printed, I'd like to reply to two points made by the two previous speakers before Delegate Richards. In the first place, the governor's perquisites exist now. The difference that I was pointing out was the differential between the governor and the chief justice today is about $3000, and they are now making it less, say $500. There is no argument about the perquisites. He's going to get those with the increase in pay as he gets now. The governor gets from the federal government 12,500 and from the territorial government -- [Inaudible statement made from the floor.] Not from the federal government? Well, he gets 15,000 from the federal government and a small sum from the territorial government, and the differential between the governor and the chief justice is even greater than I thought, so the argument of perquisites has no point in it.

Now, the other thing. I have no particular brief about this. I don't care if it's 17,500 or a larger sum or a lower sum, but there has been expressed a good deal of opposition to the larger sum, and I suggested this lower sum and re-

commended it to Miss Ashford to be incorporated in her amendment, giving the legislature the authority to raise or lower it in that first term, which the legislature will not have with regard to the governor. And if the legislature raises it, splendid. There's certainly no reason why I should protest it. The point is that if it goes in here now as 17,000, it's going to be frozen at that for seven years. That's the point.

CHAIRMAN: The Chair would like to state that the status of the question on Section 8 is presently the Tavares amendment. Delegate Ashford as yet has not offered any amendment. I believe a form is being circulated at this moment.

ASHFORD: I will offer the amendment that is being circulated at the present moment.

SECTION 8. Until the legislature shall otherwise provide, the chief justice, justices of the supreme court and judges of the circuit courts shall receive as compensation for their services the sums of $15,500, $15,000, and $12,500 per annum, respectively, which shall, notwithstanding the provisions of Section ___ of Article ___ of this Constitution, be subject to increase or decrease by the first session of the legislature of the State.

FONG: I second the motion.

CHAIRMAN: It has been moved and seconded that Delegate Tavares' motion be amended in the form in which you find it in the Section 8 which is being circulated at this time.

ANTHONY: Point of order. What is before the house is Section 8 which fixes the salary of the chief justice at 17,500, associate justices at 17,000, and circuit judges at 15,000. To that has been made an amendment. Now I don't think it's proper for us to have any more amendments. Let's vote on Delegate Tavares' amendment, and then if that is carried, that will clear the parliamentary situation.

CHAIRMAN: The point is well taken.

SHIMAMURA: Point of order. This amendment incorporates Delegate Tavares' motion. Therefore, it is not an amendment on an amendment.

ANTHONY: Point of order. Point of order.

CHAIRMAN: The point Delegate Anthony just stated is well taken. Question will be first put as regards Delegate Tavares' amendment.

KING: Since Delegate Anthony is going to make a point of order, an amendment to an amendment has been accepted right along here. If Delegate Ashford doesn't want to sponsor this, I propose this as an amendment to Delegate Tavares' amendment. Let's vote on the lower figure first, and if that fails, then we can vote on the higher.

CHAIRMAN: The Chair understands and recalls that only Delegate Fong was given leave to put an amendment on an amendment on an amendment, and, therefore - -

KING: May I speak to that point of order? There's no necessity for our heat, I suppose. The only argument is whether the sum shall be 17,500, 17,000, 15,000; or 15,500, 15,000, and 12,500. Delegate Fong only withdrew his amendment to make way for this. Now, if this is not going to be accepted, then Delegate Fong's amendment is accepted as an amendment to Delegate Tavares' amendment. I ask Delegate Fong if that's not correct.

CROSSLEY: Would you please state the question on which we are voting. As I understand it, we're voting on a new section which is Section 8. That's not an amendment, that's a new section.

CHAIRMAN: The Chair will again rule that we are voting on Delegate Tavares' motion to amend the previous amendment, which was Section 8 as circulated, and the amendment - - Delegate Tavares' amendment reads: "Until the legislature shall otherwise provide under Article blank of this Constitution, the chief justice, justices of the supreme court, and judges of the circuit courts shall receive as compensation for their services the sum of $17,500, $17,000 and $15,000 per annum respectively, which shall, notwithstanding the provisions of Article blank of this Constitution, be subject to increase or decrease by the first session of the legislature of the State." All those in favor of the motion - -

J. TRASK: It is my understanding that outside of the figures mentioned here, that Delegate Tavares had accepted the amendment stated by Delegate Ashford.

CHAIRMAN: Delegate Tavares - - The Chair would state Delegate Tavares had only accepted the suggestion made by Delegate Ashford to perfect his amendment.

TAVARES: That's correct, and my amendment was to an amendment already proposed by, as I understand it, Delegate Shimamura, and I simply added to it. My amendment was an addition, so my amendment is an amendment to the amendment, and this is a further amendment, proposed amendment to it.

CHAIRMAN: Delegate Fong, did you want recognition?

FONG: I want to ask a point of information. Now if we vote on the Tavares amendment and that carries, does that preclude the amendment by Miss Ashford?

CHAIRMAN: Right.

FONG: I want a ruling on that before I vote.

CHAIRMAN: The Chair will rule yes. If you do not agree with the sums stated, then vote no because the only difference between the Delegate Ashford's amendment and Delegate Tavares' amendment is the amounts.

BRYAN: Mr. Chairman, I'd like to talk to that, please.

FONG: May I ask again that if the Tavares amendment carries, that will preclude amendment by Miss Ashford?

CHAIRMAN: That is correct.

FONG: Then, in order to get Miss Ashford's amendment on the floor, we'll have to vote against Mr. Tavares' amendment.

CHAIRMAN: That's right.

PORTEUS: I believe the situation is that Delegate Tavares has only offered an addition of words. I think his amendment is a good one. It is, "notwithstanding the provisions of Section blank of Article blank of this Constitution, be subject to increase or decrease by the first session of the legislature of the State." I think that is an amendment that is pending to an amendment. If we vote on that, that is eliminated. There will then only be an amended amendment before the house. There will be one amendment pending. In that case, I think it will be in order to make further amendments to the amendment.

KAUHANE: Point of order.

CHAIRMAN: It would appear that further amendments would be permissible and yet the Chair feels that the subject matter of the amounts would have been already passed on. Therefore, it will be out of order.

PORTEUS: Mr. Chairman, may I point out that Delegate Tavares' amendment does not set any change in amount; it only adds words.

FONG: Will Mr. Porteus yield?

PORTEUS: I do.

SHIMAMURA: In order to facilitate matters, I accept Delegate Tavares' amendment to allow Miss Ashford to move on hers if she wishes.

CHAIRMAN: That clears the deck. Delegate Ashford.

ASHFORD: I now offer the amendment to Section 8 that has been distributed and is on the desks of the delegates.

NIELSEN: I second the motion.

CHAIRMAN: It has been moved and seconded to amend the amendment which was Section 8, in which Section 8 was amended to add to Committee Proposal No. 23. Roll call has been requested. How many of you are desirous of a roll call? More than ten "roll calls." We are voting on Delegate Ashford's amendment

SAKAKIHARA: I rise to a point of information. That amendment proposed by Delegate Ashford fixes the compensation for the supreme court, 15,500, 15,000 and 12,500 for circuit court judges?

CHAIRMAN: That is correct.

Ayes, 20. Noes, 31 (Akau, Anthony, Apoliona, Castro, Corbett, Crossley, Fukushima, Heen, Kage, Kawakami, Kellerman, Kometani, Lai, Larsen, Lee, Loper, Lyman, Okino, C. Rice, H. Rice, Roberts, Sakai, Serizawa, Shimamura, Silva, Smith, Tavares, J. Trask, White, Wist, Doi). Not voting, 12 (Absent: Arashiro, Hayes, Holroyde, Ihara, Kawahara, Luiz, Mau, Mizuha, Phillips, St. Sure, A. Trask. Excused from voting: Wirtz.)

CHAIRMAN: The amendment fails.
Are you ready for the question on the Tavares amendment? The motion is to amend the Committee Proposal No. 23 by adding a new Section 8, which Section 8 is as accepted by Delegate Shimamura.

H. RICE: Second the motion.

CHAIRMAN: All those in favor of the motion please say "aye." Opposed, "no." Motion carries.

SHIMAMURA: At this time, I move for the adoption of Section 14 of Proposal No. 23 - -

CROSSLEY: Second the motion.

SHIMAMURA: - - amended to be numbered Section 9.

SECTION 9. The provisions of this Constitution shall be self-executing to the fullest extent that their respective natures permit.

CHAIRMAN: It has been moved and seconded to adopt Section 14, Committee Proposal No. 23, amended to be Section 9.

SHIMAMURA: May I state briefly that the purpose of this section is to make the Constitution self-executing without the necessity of passing any enabling acts by the legislature. In other words, where there is doubt as to the effectiveness of any constitutional provision without any supplemental legislation, it is the expressed intent of this section that the Constitution shall be construed as being self-executing without an enabling or supplemental legislation.

CHAIRMAN: All those in favor of the motion please signify by saying "aye." Opposed, "no." Motion carries. Section 9 is adopted.

SHIMAMURA: I move for the adoption of Section 15 of Proposal No. 23, to be renumbered Section 10.

SECTION 10. This Constitution shall take effect and be in full force immediately upon the admission of Hawaii into the Union as a state.

CROSSLEY: I second the motion.

CHAIRMAN: It has been moved and seconded to adopt Section 15 of Committee Proposal No. 23, to be renumbered Section 10. Is there any discussion?

SHIMAMURA: This section obviously provides for the effective date of the Constitution, and it is the date upon the admission of Hawaii to the Union as a state. Under H.R. 49 the State of Hawaii is admitted into the Union upon the issuance of a proclamation by the President of the United States after the election of all state officers.

CHAIRMAN: All those in favor of the motion to adopt Section 10 please say "aye." Opposed, "no." Motion carries.

SHIMAMURA: I move for the adoption of the entire Proposal No. 23 as amended.

DELEGATE: I second the motion.

CROSSLEY: May I amend that? The way it previously was, "and renumbered."

CHAIRMAN: Is that acceptable, Delegate Shimamura, "and renumbered"?

SHIMAMURA: Yes.

CHAIRMAN: It has been moved and seconded that the committee adopt Committee Proposal No. 23 as amended and renumbered. All those in favor of the motion please say "aye." Opposed, "no." Motion is carried.

J. TRASK: If there is no other business - -

CHAIRMAN: I believe not.

J. TRASK: I move that we rise - - the committee rise and report progress and beg leave to sit again.

CROSSLEY: Second the motion.

CHAIRMAN: It's been moved and seconded that the committee rise, report progress and beg leave to sit again. All those in favor please say "aye." Opposed, "no." Motion is carried.

JULY 14, 1950 • Morning Session

CHAIRMAN: Will the committee please come to order? The Chair will now declare a recess of five minutes. We might be able to have committee reports circulated in the meantime.

(RECESS)

CHAIRMAN: Will the committee please come to order. It is now ten past twelve. I suppose - -

LEE: I move that we recess until 1:30.

SAKAKIHARA: I second it.

CHAIRMAN: It has been moved and seconded that the Committee of the Whole recess till 1:30. All those in favor of the motion - - The motion now on the floor is to recess till 1:30. All those in favor of the motion please say "aye." Opposed, "no." Motion carries.

Afternoon Session

CHAIRMAN: Will the Convention - - rather, will the committee please come to order. The Convention resolved itself into the Committee of the Whole to consider Committee Reports 68, 70 and 73 and Committee Proposals 23, 24 and 25. You will find on your desks the Committee of the Whole Report No. 25 relating to Committee Report No. 68. You will find Committee of the Whole Report No. 26, Committee of the Whole Report No. 27 relating to Committee Re-

port 70 and 73 respectively. Now what is the desire of the Convention - - committee, rather?

SAKAKIHARA: I move for the adoption of the committee report and pass on second reading.

H. RICE: Second the motion.

CHAIRMAN: What committee report are you referring to?

SAKAKIHARA: Committee Report No. 25, Committee Report No. 26 respectively.

CHAIRMAN: And 27?

SAKAKIHARA: Twenty-seven.

CHAIRMAN: It has been moved and seconded that Committee of the Whole Report Numbers 25, 26 and 27 be adopted and that it pass second reading.

ASHFORD: The reports have just been placed upon our desks and for reasons of which the Chair is aware, I think we should have the chance to read those reports before they are adopted. I therefore move for a brief recess.

SAKAKIHARA: Second it.

CROSSLEY: Before we take the recess could we amend the last motion to take these up—for reasons which you would appreciate—to take these up individually? I think there might be some changes in one or two and there is no use holding up those that are - - will go through. I'd like to amend the - -

CHAIRMAN: Is that acceptable to the movant?

SAKAKIHARA: I want to go home.

CROSSLEY: That we take them up individually? Thank you.

CHAIRMAN: Delegate Sakakihara, would you care to rephrase your motion so that it will be to adopt Committee Report No. 25?

SAKAKIHARA: Will the chairman of the Committee on Submission rephrase it for me. I wasn't paying attention to his remarks.

CROSSLEY: I second Delegate Sakakihara's motion that we take up Committee Report No. 25 at this time.

TAVARES: I think it's in order to have the recess requested by Delegate Ashford. I think that's reasonable.

CHAIRMAN: The Chair will declare a short recess of about five to ten minutes.

(RECESS)

CHAIRMAN: When we recessed we had a motion before us, which motion was to the effect that we take up Committee of the Whole Report No. 25. Before we proceed any further with any discussion on this report, I would like to inform the delegates of one mistake in the proposal section of Committee of the Whole Report No. 25. The proposal section is numbered Committee Proposal No. 23. If you turn to page 3 of Committee Proposal No. 23, you will find in Section 6 that the first sentence should be deleted and that the sentence should read - - the sentence that follows that should read: "The legislature shall within three years from the time the first legislature convenes allocate and group the executive and administrative offices, departments and instrumentalities of the State government and their respective functions, powers and duties among and within the principal departments pursuant to Article _____ ." The "Section ____" is deleted.

TAVARES: May I explain that mistake. In preparing the report for this - - the draft for this report I felt - - I was assisting Delegate Doi and I felt that there was an omission in Section 6 which ought to be supplied and I intended to move to reconsider this at this time to insert that extra sentence and revise the section to read as it now reads by mistake in the printed proposal. Unfortunately, that was used as the final draft instead of what the Committee of the Whole had already approved. But to bring that to a head, I move to reconsider our action in order that I may present this amendment and have the consensus of the Convention as to whether it's needed or not.

NODA: I second the motion.

CHAIRMAN: It has been moved and seconded that we reconsider our motion on Committee Proposal No. 23.

TAVARES: Just Section 6, Mr. Chairman.

CHAIRMAN: And particularly to Section 6. Is there any discussion on it? All those in favor of the motion to reconsider please say "aye." Opposed, "no." Motion carries.

TAVARES: I now move to amend Section 6 to read as set forth in the proposed amendment of Committee Proposal No. 23 which is being or has been just circulated.

> SECTION 6. The provisions of Section ____ of Article_____ shall not be mandatory until four years from the date of admission of this State to the Union. The legislature shall within three years from said date of admission allocate and group the executive and administrative offices, departments and instrumentalities of the State government and their respective functions, powers and duties, among and within the principal departments pursuant to said Section ____of Article____.
>
> If such allocation and grouping shall not have been completed within such period, the governor, within one year thereafter, by executive order, shall make such allocation and grouping.

NODA: I second the motion.

TAVARES: The reasons for that, I might state - -

CHAIRMAN: Delegate Tavares, just a second. It has been moved and seconded that Section 6 be amended to read as printed before correction. Delegate Tavares.

TAVARES: I now move to amend that section to read as set forth in the—is that it?—in the printed - -

CHAIRMAN: You have already made the motion and it was seconded.

TAVARES: I might explain to the members of the Convention, the attorneys are not all in agreement with me on the need for this. I'm just warning the delegates and I'm not going to argue too long. I just want to present the problem. The executive article in one of the sections—I think it's Section 6—provides that the various executive and administrative departments and instrumentalities of the government shall be grouped in 20 principal departments by law. Now, in the Committee of the Whole report on that article it was stated that the Committee on Ordinances and Continuity of Law would make provision in a special section to give the legislature four years or to allow four years to comply with this article. Well, the Committee on Ordinances and Continuity of Law produced what was approved as Section 6 of Proposal 23 at our last meeting under the belief that it did comply with that Committee of the Whole report on the executive article. My own feeling is that it did not quite and that there is a hiatus there and that we should say - - we should add the first sentence which I proposed to add that this provision should not be mandatory until four years from the date of admission of this state to the Union.

Now, the difference I think is this. I was afraid that it might be contended that if the legislature didn't group those

departments immediately there would be some sort of invalidity to some department that wasn't grouped in here. I don't know really what happens if the legislature doesn't do what it's supposed to do about grouping, whether the department becomes a nullity or just what happens. But at any rate, this would give us a clear four years to do it. Now other people contend that by saying the legislature, in this special section of the ordinances and continuity of law, that by saying that the legislature shall do it in three years and if they don't, then the governor shall do it in the last year, that we are taken care of by implication. If that is correct and we get a consensus vote on that I will withdraw my amendment. But I think it should get in the record.

WHITE: As a matter of information. This proposal that I have on page 3 and the amendment that has just been passed around, it seems to me are identical.

CHAIRMAN: That's right. The Chair, previous to the amendment, explained that the section -- there was an error in Section 6 insofar as the original section was concerned; that therefore the Chair informed the group that certain corrections should have been made. For example, the deletion of the first sentence and several corrections in the following sentence. Then Delegate Tavares moved and it was seconded to amend Section 6 to read as it is printed in this form before you,

WHITE: And as it is in the report?

CHAIRMAN: No, that's not correct.

WHITE: Well, on my Committee Proposal 23, it's identical.

CHAIRMAN: No, that's being -- the report does not incorporate the wording proposed by Delegate Tavares; therefore, the statement made by the Chair that the original Committee Proposal No. 23 as you see it before you should have been corrected.

ROBERTS: May I suggest that if the delegates want to see the section as it was adopted by the Committee of the Whole, that's to be found on page 7 --

CHAIRMAN: That's right.

ROBERTS: -- of Committee of the Whole Report No. 25. That is the Section 6 as we adopted it. The error came in using that in the article itself, changing it so that the amendment is to Section 6 on page 7 of the Committee of the Whole Report No. 25.

CHAIRMAN: Delegate Roberts' suggestion is well taken. If you will refer to page 7 of your Committee of the Whole Report No. 25, you will see and find Section 6 as it came out of the Committee of the Whole two days ago. Is there any more discussion on the proposed amendment? Are you ready for the question?

ROBERTS: This section was discussed off the floor. I opposed its inclusion on the ground that you place a sentence in there which says that these sections shall not be mandatory until four years later. The section that we adopted required the legislature to take action within a certain period of time. If they didn't act, then the governor had certain responsibility to carry it out. It seems to me that the requirement in our section is complete and adequate. It's just as mandatory with the sentence in as it is with the sentence out. We say that the legislature shall take this action; if they fail to take it within the period of time specified in the Constitution, then certain things flow from that. I can see no value in adding the sentence. However, if it makes some feel that there's some value in it, let's put the additional sentence in.

CHAIRMAN: Are you ready for the question? All those in favor of the motion to amend Section 6 please say "aye." Opposed, "no." Motion carries.

TAVARES: There are some slight typographical errors, one on page 4 of the report, in the eighth line of the double-spaced first paragraph on that page. That line reads, "if not continued in effect, would have a hiatus in our local or." I move to substitute for the word "have," the word "leave"; so it would say "would leave a hiatus." I think that they couldn't read our writing in typing this, or my writing. On page 4 of the Committee of the Whole Report No. 25 -- Committee of the Whole Report No. 25, page 4, the eighth line, change the word "have" to "leave."

SHIMAMURA: Would the delegate accept the word "cause"?

TAVARES: Yes, I'll accept it.

CHAIRMAN: I didn't get that suggestion.

TAVARES: The suggestion is that we substitute instead of "leave," "cause" for the word "have" in that line.

CHAIRMAN: The Chair would like to point out a point of order, and that is Section 6 as amended has not yet been adopted.

TAVARES: I move to adopt Section 6 as amended.

SHIMAMURA: I second the motion.

CHAIRMAN: It has been moved and seconded that Section 6 be adopted as amended. All those in favor of the motion please say "aye." Opposed, "no." Motion carries.

Now a motion to adopt Committee Proposal No. 23 as amended is in order.

TAVARES: I so move.

CHAIRMAN: Is there a second?

SAKAKIHARA: Second.

CHAIRMAN: It has been moved and seconded that Committee Proposal No. 23 as amended be adopted.

TAVARES: I move for the amendment of the Committee of the Whole report.

CHAIRMAN: All those in favor of the motion please say "aye." Opposed, "no." Motion carries.

TAVARES: I now move for my -- renew my motion to amend page 4 of the Committee of the Whole Report No. 25 by substituting in the eighth line the word "cause" for the word "have."

ARASHIRO: I second the motion.

CHAIRMAN: It has been moved and seconded that we amend the Committee of the Whole Report No. 25 on page 4 on the eighth line of the explanation section by deleting the word "have" and inserting in lieu thereof the word "cause." Is there any discussion on the motion? All those in favor of the motion please say "aye." Opposed, "no." Motion carries.

TAVARES: I must apologize to the Convention, but Mr. Doi and I had to work till way past midnight last night to get this out and didn't have a chance to check it before printing. I have one more typographical error on page 9 of the Committee of the Whole Report 25, in the paragraph starting in with the words, "The article referred to in this section." Near the middle of the page in the third line of that paragraph I move to insert between the words "and" and "makes," the words "this section," so that the sentence will read, starting at the beginning of that paragraph, as follows: "The article referred to in this section is the judiciary article, which prohibits any diminishing of compensation of a justice or a judge during his term of office, and this section makes it clear," and so forth.

OKINO: I second that motion.

CHAIRMAN: It has been moved and seconded that Committee of the Whole Report No. 25 on page 9 be amended in the paragraph starting with the words, "The article referred to," in the third line of that paragraph, by inserting between the words "and" and "make," the words "this section." All those in favor of the motion to amend please say "aye." Opposed, "no." The motion carries.

SAKAKIHARA: I rise to a point of information. Then Committee Proposal No. 68—Is that it?—23, has it passed final -- second reading as amended?

CHAIRMAN: I believe all the amendments have been already made.

SAKAKIHARA: I rise to a point of information.

CHAIRMAN: Could you state it over again, please?

SAKAKIHARA: Committee Proposal No. 23 as amended has not passed second reading yet, has it?

CHAIRMAN: No, it hasn't passed second reading. It has been adopted by this committee.

TAVARES: In view of the amendment adopted to Section 6 I move that page 7 of the Committee of the Whole report be amended to conform.

CHAIRMAN: Is there a second to it?

C. RICE: Second the motion.

CHAIRMAN: It has been moved and seconded that page 7 be amended to conform to the amendment made to Committee Proposal No. 23, Section 6. All those in favor of the motion please say "aye." Opposed, "no." The motion carries.

TAVARES: That page has been printed and was the one which was erroneously put in by mistake, and it can now go in properly. I now move that the committee report be adopted and that the Committee Proposal No. 23 as amended pass second reading.

OKINO: I second the motion.

CHAIRMAN: It has been moved and seconded that Committee of the Whole Report No. 25 be adopted and that it pass second reading.

BRYAN: Point of order. I think it should be that we rise recommending that action.

TAVARES: Yes, I stand corrected and I amend my motion accordingly.

CHAIRMAN: It has been moved and seconded that when the committee rise, it recommend the adoption of Committee of the Whole Report No. 25 and that it pass second reading. All those in favor of the motion please say "aye." Opposed, "no." Motion carries.

We have before us now Committee of the Whole Report No. 26.

SAKAKIHARA: I move for its adoption.

CHAIRMAN: Do I hear a second to the motion?

OKINO: I do.

CHAIRMAN: It has been moved and seconded that Committee of the Whole Report No. 26 be adopted. You ready for the question? All those in favor of the motion please say "aye." Opposed, "no." The motion carries.

TAVARES: I move that when the committee rises, it report progress and recommend the adoption of this committee report and proposal on second reading.

SAKAKIHARA: I second the motion.

CHAIRMAN: It has been moved and seconded that when the committee rise, it recommend the adoption of Committee of the Whole Report No. 26 and that it pass second reading. All those in favor of the motion please say "aye." Opposed, "no." Carried.

We have now before us Committee of the Whole Report No. 27.

SAKAKIHARA: I move the adoption of the Committee of the Whole Report No. 27.

NODA: I second the motion.

CHAIRMAN: It has been moved and seconded that Committee of the Whole Report No. 27 be adopted.

LAI: I have a very short amendment to Section 7 of Proposal 25. Therefore I move to reconsider Section 7, Proposal 25.

SAKAKIHARA: I second.

CHAIRMAN: It has been moved and seconded to reconsider Section 7 of Committee Proposal No. 25. Delegate Lai, would you care to state your purpose for asking for reconsideration?

LAI: Well, I wanted to make an amendment to the fourth line in Section 7, delete the word "second" and insert in its place "third." In other words, the line will read as follows: "In December following the third general election." I feel that the first governor and the lieutenant governor of the State of Hawaii should have the benefit of the longer term as the long term senator as we have provided in this section. This will induce more and better men to run for the -- these two offices. This being the first election of the governor and the lieutenant governor by the people, people certainly would like to pick one from the best material available. You must remember too that the campaign expenses will be very high because of the area they have to cover and a short term will not justify this high cost of campaigning. The long term will not mean very long; it will just mean about a few months to a little over a year longer than the terms we have provided for in our article on executive powers and functions. In your committee report, on page 7, it says as follows: "Although this section provides that such term shall begin with the election of each, it is quite obvious that they will not commence to exercise their official functions until the actual admission of the State to the Union. This may mean six months to a year." And we might take a chance of electing a governor and he being in office for less than two years. Now we're not sure when we're going to get statehood. I think it's justified to give the prestige to the first governor and first lieutenant governor of the longer term.

CHAIRMAN: Are you ready for the question? All those in favor of the motion to reconsider, please say "aye." Opposed, "no." The Chair is in doubt, will call the question again.

DELEGATE: Division of the house, please.

CHAIRMAN: I beg your pardon?

DELEGATE: Division of the house by hands.

CHAIRMAN: The Chair will call a division of the house. All those in favor of the motion to reconsider will stand up. All those in favor of the motion to reconsider will stand up, please. All those who want to stand up on this question, please stay up. Some of you have risen later and -- All those in favor of the motion to reconsider, please stand up.

MIZUHA: Reconsider what, Mr. Chairman?

CHAIRMAN: Committee Proposal No. 25, particularly Section 7. It has been already stated once before. All those in favor of the motion to reconsider, please stand up.

ANTHONY: Mr. Chairman, will the delegates take their seats.

CHAIRMAN: All opposed to the motion, please stand up. All opposed to the motion to reconsider, please stand up.

BRYAN: Will Delegate Anthony please take his seat?

CHAIRMAN: The motion to reconsider carries. The vote is 25 to 24.

LAI: I move to amend Section 7. On the fourth line, delete the word "second" and insert in its place the word "third."

H. RICE: Second it.

CHAIRMAN: Moved and seconded to amend Section 7 on the fourth line by deleting the words - -

HEEN: I would like to find out from the movants, how long would the governor serve if he is elected at a special election, if that term runs until the third general election.

LAI: It depends on when we get statehood. We might hold a special election say next August or September.

HEEN: Under the provisions of one of these articles here somewhere, a special election has to be called before Hawaii becomes a state. After the Constitution is adopted here, but before we become a state, we hold a special election. Therefore, if that occurs, if that election occurs, how long would the governor serve if he serves until the third general election following that special election?

LAI: If we get statehood this session and we call for a special election now, I don't think we would become a state until Congress certifies our Constitution and certifies the election of officers.

BRYAN: I'd like to answer that question. I think it simply means that the governor's term will be a minimum of four years, and a maximum of six years for the first term, that's all. If the special election comes immediately after a normal, regular general election, territorial election, or any normal period for election, it means his term will approach six years. If a special election is held just prior to a general election, then his term will be slightly over four years. So it's a little less than six or a little more than four, and anything in between.

LAI: The term will be the same as the long term senators, that we have provided for in this section. That's the same thing. I think the governor shouldn't be discriminated against that term.

HEEN: The governor does not rate as a long term senator.

LAI: What I mean is just the term.

HEEN: State senator, I mean. Now the movant stated that the governor should have a long term, that it's necessary that he should have a long term so that we will elect a competent governor. There's no assurance we're going to elect a competent governor at the special election. He might not be competent and we'd like to get him out as soon as possible.

PORTEUS: As I understand it, the governor will be accorded the same right as a long term senator. The long term senator can stay in from four to six years. As I understand the person who presents the amendment, he feels that a governor is entitled to stay in office just as long as the long term senator. Now the long term senator is given a term of four years, normally, and the governor has a term of four years, and perhaps there's not any great reason why the two shouldn't be treated consistently, except that there is only one governor, and there will be at least 13 long term senators.

LAI: Mr. Chairman.

ANTHONY: Mr. Chairman.

CHAIRMAN: Delegate Lai.

ANTHONY: He's spoken three times on this, Mr. Chairman.

CHAIRMAN: That is correct, and then he being the movant, the Chair thought probably he should - - in this case he yields. Delegate Anthony.

ANTHONY: The argument that you ought to give the governor the same as a long term senator doesn't hold water. You've got 25 senators and one bad senator might not make the whole barrel rotten. But if you get one bad governor, you don't want any long term, so I don't think the analogy is apt at all.

TAVARES: My own opinion is that this being the inception of Hawaii into statehood, we are going to elect just as good a governor as we've elected a good Convention. I think we've elected a good Convention, and I don't think there is any ground for feeling we won't elect a good man as governor. I think the longer term will enable him to carry out the difficult transitional period which we are going to have, changing from a territory to a state, in a little better way than a shorter term. I'm for the amendment.

SHIMAMURA: I'd like to except myself from the general statement made by the last speaker at this Convention, in the first place. What I especially rose for is this. That there is good reason for having the initial senators serve for a term of six years because we have staggering of terms. But that situation doesn't apply to the initial governor where one officer is elected, one executive officer is to be elected. I agree with the other speakers who have taken the proposition that we shouldn't enlarge upon the term of the initial governor. We give subsequent governors four years, and the initial governor in a transitional period, we give him six years, or almost six years theoretically.

MIZUHA: I rise to a point of information. Does the first election, the word "first election" in the second line in Section 7 refer to the special election or the first election after the State of Hawaii is admitted into the Union?

CHAIRMAN: Delegate Tavares, will you please answer the question?

TAVARES: Since each of these sections, the provisions says that the term shall start with the time of the election, I think it obviously means every general election after that is to be counted as one of the general elections intended. Otherwise, you'll give a man an inchoate term of any number of years before we get statehood. I think it obviously means that you ought to count every general election which means - - every general election under the territorial law or under the state law that's held every two years is a general election, in November. You'll have to count that; otherwise you are going to get into trouble in figuring out what you mean by first, second and third election, general election.

MIZUHA: If it is Delegate Tavares' interpretation that that first election in Section 7 means the first general election, if we have a special election for the governor prior to our admission as a state, he might serve for a year and a half before we reach the first general election. Then we will have the first general election, and then he will have two years. That makes three and a half years. Then we will have the second general election, which will be another two years, which will make five and a half years. Then we will hold a third general election which will make him eligible for election seven and a half years after we elect him in the first special election for governor.

TAVARES: I think the gentleman misunderstood me. If we have a special election, the first general election that could be held under the laws as they will be continued

over under the State or as they may be just before we are actually admitted as a state, will be the first general election. I think there is no trouble there. It can't run over six years and it might be less.

MIZUHA: I'm just pointing it out that it could be one and a half years before we have our first general election.

KING: I'd like to reduce this to a hypothetical question. Assuming that we elect our State officers and our new Congressional delegation at a special election some time next year, the middle of next year or latter part of 1951 or possibly in early 1952; and the Constitution is accepted by Congress, has been accepted by Congress; the only remaining formality is the proclamation of the President admitting Hawaii into the Union as a state. Then these new officers take office and the first general election will be the one held in the fall of '52. Then the second general election would be held in the fall of '54. A governor then elected in 1951 or the early part of '52 would serve perhaps as little as two and a half years or three years. But I see no impropriety in that. Otherwise you might give them too long a term of office in the first election. If he does his duties properly, why he can run for re-election in 1954, and catch that with the regular four year term. So I feel although the amendment is amended in good faith, and does correct a shortness in the term of the first executive, that we ought to leave it as it was and I'm opposed to the amendment.

BRYAN: First, I hope the delegate who spoke on the mathematics of this is reviewing what he had to say. Between three general elections brackets four years and no more, no less, which sets the upper limit of six years. Now I think the merit of this argument, one way or the other, lies not in the comparison between the governor and the senator but just on how long a term the first governor should have. The way it stands now, his minimum term could be two years; according to the amendment, his maximum term could be six years. I would more favor taking a chance on the six year maximum than putting up with the two year minimum, because I think two years may be too small and I don't think six years would be too large, and those are the outside limits. Therefore, I'm in favor of the amendment.

TAVARES: May I ask the delegates to read what the Committee of the Whole report on page 7 says about this, which was our understanding of what the Convention intended. If it's not, then it should be corrected. I think it explains the theory of what is the first general election and the second general election after the election of the governor, and the rather anomalous situation of saying that the governor shall hold office. We explained there that obviously he doesn't actually begin to discharge the functions of his office until we are admitted to statehood. But he does in a general sense hold an inchoate office beginning with that date of that election. We explained it that way, and I think that takes care of Delegate Heen's misgivings on the matter.

CHAIRMAN: Is there any more discussion? Delegate Lai, would you care to close the debate?

LAI: I just want to find out. Suppose we have statehood this session. All right, we'll run an election say 30 days or 60 days from now, I don't know when it's going to be. All right, your first general election this November is counted as the first. The 1952 general election would be the second. According to your committee proposal, the first governor, if we have the election this year, will hold office only for two years. And he's not going to exercise his powers of his office until maybe six or seven months or a year from the election date.

CHAIRMAN: All those in - -

SHIMAMURA: To clear up the point, did I understand the last speaker to say that the first special election will be considered the first general election?

TAVARES: No, that was not what I intended to say, and I didn't think I said it.

CHAIRMAN: That's not what Delegate Lai said.

LAI: I mean if you have a special election, say in September, then your general election falls in November, that's your first general election, that counts as first. Then your general election in 1952 will count as the second general election. So, therefore, if you have the election of governor this August or September, then his term will expire in 1952. That will be awfully short for a governor.

ARASHIRO: The next general election, as far as I can see, will come in 1952 and no other year, and then the next general election will be 1954. The coming fall election will be a territorial general election, as we should be admitted as a state. After that, then the general election will never come at an earlier year but 1952. If that is correct, then there is going to be a special election and the governor's election will come in 1954, as far as my interpretation is. If that paragraph means something else, then I'd like to have that explained to me.

TAVARES: It is obvious that we are not going to have any special election unless Congress or the President, as the case may be under H.R. 49, finds that we have complied with the statehood act and we are going to be admitted as a state. We are going to know that before we hold any election. So when we hold that election it will undoubtedly, in almost all probability, be a special election. And that special election, if it doesn't coincide exactly with the date of the territorial general election, I submit, will then make it necessary to count territorial general elections after that plus state general elections in computing the second and third election, general elections mentioned in this proposal. That is the only reasonable interpretation.

ASHFORD: I think Delegate Arashiro is quite correct. In other words, if we are not admitted as a state prior to the general election here but nevertheless we have an election, that is not the first general election that is referred to. The first general election would be in 1952.

CHAIRMAN: All those in - - The Chair will put the question. All those in favor of amending Committee Proposal - - rather Section 7 of Committee Proposal No. 25 by deleting the word "second" in the fourth line of the section, and inserting in lieu thereof the word "third," will please say "aye."

DELEGATES: Roll call.

CHAIRMAN: How many of you request roll call? Roll call will be made. The Clerk will please call the roll. All those in favor of the motion to amend will say "aye," and opposed will say "no."

Ayes, 26. Noes, 28 (Akau, Anthony, Apoliona, Arashiro, Cockett, Corbett, Fong, Heen, Ihara, Kanemaru, Kawahara, Kawakami, Larsen, Luiz, Lyman, Mizuha, Noda, Ohrt, Okino, Phillips, Roberts, Serizawa, Shimamura, A. Trask, White, Yamamoto, Yamauchi, Doi). Not voting, 9 (Castro, Holroyde, Lee, Loper, Maui, Nielsen, Smith, J. Trask, Wist).

CHAIRMAN: The motion failed.

The Chair will at this time invite a motion to adopt Committee Proposal No. 25.

SAKAKIHARA: I so move.

NODA: Second.

CHAIRMAN: It has been moved and seconded that Committee Proposal No. 25 be adopted. All those in favor please say "aye." Opposed, "no."

TAVARES: I now move that when the committee rise, it report recommending the adoption on second reading of Committee Proposal No. 25 and Committee of the Whole Report No. 27.

CHAIRMAN: Do I hear a second?

NODA: Second it.

CHAIRMAN: It has been moved and seconded that when the committee rise, it recommend the adoption of the Committee of the Whole Report No. 27, Committee Proposal No. 25, and that it pass second reading. All those in favor of the motion please say "aye." Opposed, "no." Motion carried.

The Chair would like to invite a motion to rise.

SAKAKIHARA: I move that the Committee of the Whole rise and report progress.

CHAIRMAN: Is there a second?

NODA: Second the motion.

CHAIRMAN: It has been moved and seconded that the Committee of the Whole rise. All those in favor of the motion please say "aye." Opposed, "no." Motion is carried.

Debates in Committee of the Whole on

DISQUALIFICATION OF FRANK G. SILVA

Chairman: CABLE A. WIRTZ

APRIL 20, 1950 • Morning Session

CHAIRMAN: Will the committee please come to order. We will now consider Resolution No. 25.

A. TRASK: I move the following amendment of the resolution, namely, "Resolved, that Frank G. Silva, by reason if his," insert the following words, "contumacious conduct and citations for"; then continuing, "contempt."

CHAIRMAN: Would you repeat that amendment, please.

A. TRASK: "Contumacious conduct and citations for" being the insertions, an interpolation.

In support of this amendment I would like to inform the delegates of the Committee of the Whole that the mere words, "of his contempt," does not fully express [the situation] and the evidence that came before your special committee handling this matter, because there were many evidences, including letters, statements made, oral statements made before the committee - -

HEEN: I think before making any attempt to amend the resolution, we should proceed with a hearing wherein Mr. Silva may present his views upon this resolution. And depending upon the findings to be made by the Committee of the Whole, then we can tell just how this resolution may be amended, if it is to be amended. I hope the delegate will follow that procedure.

A. TRASK: I willingly accede to Judge Heen's suggestion.

CHAIRMAN: Does the delegate from Kauai wish to present anything to the Committee of the Whole? The Chair at this time will recognize Delegate Silva from Kauai.

F. G. SILVA: The Secretary of the Convention had delivered to me a copy of the report of the special committee adopted by this Convention, stating that unless by eleven o'clock today I purged myself of contempt or showed cause for failure to do so, the Convention would act upon the resolution expelling me from my seat in this Convention upon the ground that by reason of contempt of the House UnAmerican Activities Committee I am declared disqualified to sit.

It is improper for this Convention to request me to purge myself of contempt. I am not in contempt; only Congress can say that I am in contempt, and then it becomes a case for the courts to determine whether Congress acted correctly. The House Subcommittee merely stated it would recommend to Congress that I be cited for contempt. I am not in contempt of Congress, and my lawyers advise me that what I did by refusing to testify was clearly within my constitutional rights and does not constitute contempt.

I might also add that I am informed that many a congressman has sat in the Congress of the United States, passing laws for all the people in our country, even though he was under a criminal indictment. I understand this situation existed within the last few months. If a congressman can sit in Congress even though under an indictment until the outcome of his trial, certainly I have the right to sit in this Convention when I am not charged with having done anything wrong.

When this Convention completes a draft of our Constitution, it will have a provision that no person can be required to testify against himself. Now you are saying, even before you write the Constitution, that if I exercise that same right given to me by the Constitution of the United States, I am not a fit person to sit in this Convention. The findings of the special committee has this statement:

> No witness who testifies before the House UnAmerican Activities Committee can be prosecuted for any crime which his testimony may divulge, save and except the crime of perjury.

I pointed out in the statement I previously presented to this Convention that on the basis of the false testimony of Izuka I was liable to an indictment for perjury if I stated I was not a communist before the committee, even though I am not and have never been a member of the Communist Party. Also, my lawyers say that the finding of the special committee that no witness can be prosecuted for any crime which his testimony may divulge is wholly incorrect.

I was elected to sit in this Convention by people who have known me since the day I was born. I was elected by people who have faith in my honesty and who feel in their hearts that I know what the word democracy means; that's why they sent me here.

I ask all of you before voting to again have read to you the statement that I made to the special committee and also the statement made by Delegate Trude M. Akau. Delegate Akau's statement so clearly points out that what you are about to do is wrong that in my heart I cannot believe that any of you who read her statement could possibily vote against me.

I have faithfully served my country; I have done no wrong; my conscience is clear. I am an American citizen. I have fought in the service of my country, and will fight again if need be. I have been elected by a majority of my people to represent them here in this Constitutional Convention. I have pledged myself to work toward a truly democratic Constitution for the people of Hawaii.

I came to this Convention determined to stand for, protect, defend and secure the American rights and freedoms which we have under the Constitution of the United States of America and which we must surely have under the Constitution for the new State of Hawaii, when that day comes. I will not betray those who elected me. I will not allow myself to be frightened or intimidated by the threat of expulsion. I refuse to bow to hysteria and fear. For somewhere there must be a voice of courage and honesty.

What has this Convention asked me to? Purge myself. Purge myself of what? Purge myself of my right as a free American to remain silent. Purge myself of my right as a free American to follow the dictates of my own conscience. Purge myself of my courage, my determination to defend the principles of free speech and free expression. Purge myself of the mandate of those who elected me. Purge myself of my honesty, my integrity, my sincere convictions. Purge myself of conviction in the right which carried me through the last World War and through the terrible campaigns at New Guinea and the Philippines.

I say to you today, it is not I who needs to purge myself. Remember, rather it is this Convention which must, if it is to write a Constitution with any of the traditional American rights which have made us the strong and beloved nation we are today, that must purge itself. This Convention must purge itself of fear. Fear runs through the ranks of the delegates here. Fear of the Big Five, fear of standing up in the face of pressure for those principles which some of the delegates know to be right, fear of losing jobs, fear of taking an unpopular stand at this time in our history, fear of speaking the truth, fear of acting on conviction. This Convention must purge itself of fear.

There are only two in this entire assemblage who dared to speak out. I give my thanks to those two. History will honor those two. It was an act of real courage, an act of devotion to the principles which have made democracy great.

There are those in this Convention who are not motivated by fear. They are motivated by hatred. They are the ones who have blacklisted me since my youth, when I was first fired out of the plantation for union activities. They are the ones who would blacklist anyone who would dare to stand up and speak on behalf of the working people, the majority of the people of Hawaii. They are the plotters, the politicians, the Big Five lawyers, the unscrupulous, the callous, and the UnAmericans. They are the ones who falsely pretend that this is a bipartisan Convention. What nonsense. This is no bipartisan Convention. This is a Republican-dominated and Big Five Convention.

I know, as I have known since the first day that this Convention appointed a "select committee" that this Convention is determined to expell me. The Convention is not concerned with me as an individual.

If this Convention is to create a sound and healthy Constitution, can it find honest ground for expelling me? If this Convention is to write a Constitution containing the traditional American rights of free speech, which also means freedom to remain silent, can it honestly expel a delegate for exercising that very right?

This Convention has said they will give me an opportunity to "show cause." Show cause for what? Need an American show cause for fighting for American rights and principles? Need a delegate to this Convention need to show cause for his determined fight to defend the very democratic principles which this Convention must write into the Constitution of the State of Hawaii?

Is it wrong that I should believe so sincerely in my responsibility to the people and to my own honest conviction that I should take an action knowing that it holds with it the possibility of imprisonment on false accusations? How easy it would be to get down on my knees and crawl. How easy it would be to fall into the soft web of hoomalimali of the Big Five representatives. How easy to save myself at the expense of principle and justice. But I was not elected to be a delegate in this Convention to take the easy way. I was not elected here to build my own political fences, to sell cheap the principles on which I was elected to my own benefit.

It is because I am a delegate to the Constitutional Convention, not in spite of that fact; it is because I have fought for American principles all my life, on the battlefield and in public and private life; it is because I know that to retreat in the face of a battle is to lose the fight forever; it is because I know the sound of bullets, and the need to go forward without regard for personal life; it is for these reasons that I cannot, I will not, I shall not let the sniping of the public press, the mortars of the radio, the batteries of the Big Five guns turn me back.

I stand squarely on my constitutional rights. Are you going to tell me that I should not do so? Are you going to tell the people that the price of fighting for the rights in our Federal Constitution shall be expulsion from this very Convention which professes to be engaged in writing a Constitution containing those same rights and democratic principles?

Your action here today will stand in history. I face the judgment of time and history; I face the people who elected me, confident and secure in the profound conviction that I have served them well and honestly. Can you here today say with a clear conscience and a free heart that you too can face the people who elected you and the judgment of history?

HEEN: If the delegate who has just spoken has a written form of that statement I would suggest to you, Mr. Chairman, that you ask that that be filed with the Clerk; and following that that mimeographed copies be made immediately for the use of all the delegates here. It's a lengthy statement and we should be in a position to study it carefully before taking final action.

CHAIRMAN: Thank you for your suggestion. I was just about to ask the delegate from Kauai if he wished to place his statement in the record. If he does, please hand it to the Clerk.

C. SILVA: I would just like to make this short statement. I have heard the Big Five mentioned several times. I'd like to inform the delegates to this Convention and the people of the territory that I'm only influenced by two people, that is, my God and my conscience, not by the Big Five.

CHAIRMAN: Before we proceed, what is the pleasure of the committee? Should we have the statement of the delegate from Kauai that has been filed, printed and distributed among the members?

MAU: So moved.

ANTHONY: Second.

CHAIRMAN: It has been moved and seconded that the statement of Delegate Silva be ordered to print and distributed among the committee.

A. TRASK: May I amend that motion to include any other documentary evidence which Delegate Silva desires to submit, anything that he may have with him be included.

CHAIRMAN: Do you accept that amendment?

MAU: I do.

SAKAKIHARA: Point of information. The action which we are about to take is a very, very serious one. This Convention appointed a special committee of eleven to constitute an inquisitorial party to inquire into the qualifications of the gentleman from Kauai. Undoubtedly that committee has a transcript of what has transpired before that special committee. That committee, pursuant to the hearings, numbering some seven meetings, has reported to the Convention with certain findings and recommendations. I was not a member of that committee. I feel in all fairness to myself to sit here in judgment of this man as a jury and as a judge, I would like to inquire of the chairman on the special committee or the vice-chairman of that committee if that transcript could be made available for the information of the members of this Convention.

CHAIRMAN: I'll recognize the chairman of the special committee, delegate from the fourth district. Point of information has been put, Mr. Wist, do you understand the point?

WIST: Yes, we can secure a transcript of that for you. Our secretary has the minutes of the meetings, if that's desired.

CHAIRMAN: The motion that's before the house at present is that the statement of the delegate from Kauai be printed together with all other documentary evidence that he wishes to present.

SAKAKIHARA: I feel that in view of the fact that that transcript is available and being the property of this Convention, I now respectfully move that such transcript be printed and made available for the information of the members of this Convention.

CHAIRMAN: May I ask the delegate from Hawaii whether he is making a further amendment to the original motion?

SAKAKIHARA: I do, sir.

CHAIRMAN: Any second?

MAU: I second the motion.

ANTHONY: I would like to speak to that motion. I don't think the delegate from Hawaii quite appreciates what the order is. That's a huge transcript, only three or four pages of which are relevant. Wouldn't it serve the delegate's purpose if the transcript were brought in here—the Clerk must have it—and read. There are only two or three pages that are pertinent. Wouldn't that meet the delegate's requirements?

CHAIRMAN: The delegate from Hawaii has been asked a question from the floor.

SAKAKIHARA: I am here with an open mind. A fellow American is on trial. I am firmly convinced that in order to give this man a fair and impartial hearing before this Committee of the Whole, that I cannot see myself justified to proceed without this full transcript before us.

CHAIRMAN: May I ask the delegate from Hawaii whether he wants the full transcript of all the hearings of the House UnAmerican Activities [Committee] or does he just want the transcript that relates to the delegate from Kauai?

SAKAKIHARA: Just the transcript relating to the delegate from Kauai.

CHAIRMAN: Just that portion of that - -

SAKAKIHARA: Upon which a report and findings and recommendations have been submitted to this Convention.

FUKUSHIMA: I am inclined to go along with the delegate from Hawaii. The special committee did meet and did come back with the finding of fact that Delegate Frank G. Silva was guilty of contemptuous behavior, and as a result of that finding, the Convention here was asked to vote on the resolution to give him another chance. We did vote. The affirmative vote was sixty. There were two dissents.

Now we come before this Convention today, not following the resolution which we adopted two days ago, and introduce another resolution which says that we should expel the delegate because he is guilty of contempt, and I agree with Delegate Silva that he is not, and the amendment which is proposed by the delegate from the fifth district is a correct one.

I'd like to ask the chairman of the special committee, why we should even have resolved ourselves into a Committee of the Whole to give Mr. Silva another chance when they themselves, a committee of eleven, have made these findings and ask this Convention to vote on those findings and this we did. I am rather puzzled at the procedure.

CHAIRMAN: May I remind the delegate from the fifth district that the resolution that is before the Committee of the Whole is a very same resolution that is incorporated in the committee report. It was the desire of the Convention at the time the resolution was put, in accordance with the committee report, that we resolve into the Committee of the Whole.

FUKUSHIMA: I still have the floor, I believe.

That resolution may be the same, but there has been a finding of fact which is presented to this Convention and on those findings of fact, we voted, and I did vote myself, and now we are here again to ask Mr. Silva to present his side of the case and also to present whatever documentary evidence he has. Then we are to decide as a Committee of the Whole what, if any, findings we should make. There has been a finding and we adopted the findings of the special committee, and I'd like to ask the committee chairman, why is this procedure being followed today if there has been a finding already?

CHAIRMAN: Does the delegate from the fourth district wish to answer?

WIST: I'd like to point out that the special committee did not request that we go into a Committee of the Whole. That was a motion put on the floor of this Convention and acted upon by the Convention. There seems to be a little confusion here, too, with respect to the motion made to provide a transcript. If I understand the motion there, it was to provide the transcript that we had available to us, on the basis of which we made our findings. Is that correct?

CHAIRMAN: That's my understanding.

HEEN: I was the one that moved to resolve the Convention into a Committee of the Whole. It is true that I voted to adopt the report that was presented by the special committee of eleven delegates. Upon further analysis of the contents of that report, I'm not certain in my mind whether or not the finding of facts as reported by that committee is correct, and I wanted to have the privilege of ascertaining the facts for myself; and by resolving ourselves into a Committee of the Whole, we'll have the opportunity to ascertain those facts. There is grave doubt in my mind, that this finding of fact, that Delegate Frank G. Silva is guilty of contempt, is a correct finding of fact. That determination, as to whether or not he is guilty will be determined by Congress and later on by the courts. We are not in a position at this time to say that he has been guilty of contempt of this sub-committee of the House of Representatives of the Congress.

Therefore, I think it is my privilege, and it is the privilege of all the other members of this Convention who were not on that committee, to determine for themselves what the true facts are. We are not bound by the finding of facts made by the committee. Therefore, it seemed to me that this is the method by which we can ascertain those facts or any other facts that might constitute grounds for the explusion of Senator [sic] Frank G. Silva.

CHAIRMAN: As far as the Chair is aware, I have permitted this discussion to go on. There has been no second that I know of to the delegate from Hawaii's further amendment that the transcript that was before the committee and formed the basis for their report be printed and distributed to the members.

MAU: I did second that motion.

CHAIRMAN: I stand corrected, Mr. Mau. We have before the house at this time a motion, original motion that was made, that the statement of Delegate Silva just read to the committee be printed and distributed. It was further amended to include any other documentary evidence he may wish to include with it; and a further amendment that it include the transcript that was before the committee, the special committee, and formed the basis for their - - that is, it was used by them as a basis for their report.

A. TRASK: I want to get this thing straightened out in my mind, prompted by the expression for my fellow colleague from the fifth district. By accepting the report of the special

committee, that is adopting, of course, the findings of that committee—and the only question before the Convention is really the vote on the resolution as indicated at the end of the report—now, is it proper in our proceedings here, to reconsider that acceptance of that report before we proceed with the inquiry, as Judge Heen desires?

I want to say this because as Dean Wist, who was chairman of the special committee, indicated, your committee wrestled with the proposition of whether or not this Convention, it be recommended to resolve itself into a Committee of the Whole or whether it should consider this matter as Convention delegates. After much consideration, we decided that we should throw the whole thing to the Convention as a convention rather than a committee. So I pose a question. Should not, Judge Heen, the acceptance of the report, and therefore the findings therein, be first maybe at this time reconsidered in respect to the procedural order.

CHAIRMAN: May I point out to the delegate from the fifth district, there is some confusion in the report. I do not see in the findings any statement of contempt. Finding No. 4 is simply to the effect "That Frank G. Silva, by his refusal to answer the questions put to him by the House UnAmerican Activities Committee, has forfeited his right to sit in this Convention." However, the resolution that was incorporated in the committee report goes on to state contempt.

LARSEN: May I have the floor. It seems we are missing the point. We are only interested in one thing here, and that is the success of statehood, the success of this conference. The only fear that I've seen in anybody's mind here is the fear that we might not succeed. We have the right to decide whether any one of our members possibly will block that success. It seems to me we're not passing on judgment. This man has a right to belong to any party he wants to. If, however, we feel because he has aligned himself and expressed himself in the terms of certain people who would destroy our great democracy and we, therefore, feel perhaps that might be inimical to statehood, it seems to me we are perfectly in our rights to accept this committee report.

And I know from hearing the members speak how hard they worked to give justice. They tried in every way that American democracy asks for to give this man every chance to become a unit with us in trying for the success of this conference, and it seems to me they are accusing him of nothing here. They merely say, because of his various actions they feel he shouldn't sit with us, and I am inclined to agree with them.

KAWAHARA: I rise to a point of personal privilege.

CHAIRMAN: I'm sorry, the Chair couldn't hear you.

KAWAHARA: I rise to a point of personal privilege.

CHAIRMAN: Very well, state your point.

KAWAHARA: The discussion seems to center around the report made by the special committee appointed by Chairman King. My reason for opposing the report of that particular committee was not because of the fact that I favored or condoned or was in direct favor of the actions of Delegate Silva. My reasons for opposing the report of the special committee was this, that in the event that we do accept the report, it might turn out that somewhere along the line we shall have to go on record as to challenge the qualifications of Mr. Silva, Delegate Silva. I felt that the report itself was insufficient for me to say that Delegate Silva was in the wrong, if you might use that term.

This morning the resolution was handed to me and I signed that resolution which stated that Delegate Silva shall be expelled from this Convention. I did that with no reservation except for this point, that I feel that if we are to sit here as judges of the life of one man, I feel that all the facts pertaining to that man should be presented to us. I don't know that I can sit here and decide for myself whether or not Delegate Silva was in contempt of Congress or not. I feel that perhaps we should wait a little bit more, and wait until a higher body, the Congress of the United States, shall pass and render a decision saying that Delegate Silva acted in contempt of Congress. For that reason I feel that we should further request the findings and the proceedings of the special committee.

A. TRASK: I raised a question as to procedure and order. Will the Chair rule or inform me and the delegates as to what the answer is to that question, whether or not the committee should now reconsider its adoption of this report before we go into a Committee of the Whole? Procedurally, isn't that proper?

CHAIRMAN: We are in a Committee of the Whole.

HEEN: I think Delegate Arthur Trask is technically correct. We did adopt that report and in doing so, we adopted the findings of fact set forth in that report and adopted the recommendation set forth in the report. If we are to reconsider our action in connection with that report, then we will have to resolve ourselves out of the Committee of the Whole and have the Convention itself reconsider the action taken upon that report. However, perhaps in the interest of expediting our work in this connection, perhaps we can waive that for the time being in order to proceed with the hearing to determine what the facts are.

KAUHANE: In view of the fact that many requests have been made for documentary evidence to support Frank Silva, documentary evidence which should be studied by the members of this Convention, since that request has been approved and the documentary evidence and all other documentary evidence that has never been requested and which will be submitted during the course of the hearing to be held by the Committee of the Whole, I move that we take a recess until all of the informative matters are on the desk of each and every delegate sitting here in this Convention.

CHAIRMAN: The Chair would like to remind the committee that there has been no vote taken yet, and the Chair at this time will place the last amended motion that the transcript or that portion of the transcript that was before the special committee be ordered to be printed and distributed to the members. Are you ready for the question?

HEEN: In order to expedite matters, I, as the original movant for the printing of the original document which was amended to include other documents and also pertinent parts of the transcrpit of the testimony, I accept those amendments; then put the motion with those amendments.

CHAIRMAN: Very well, if there is no objection from the floor.

MAU: Point of information. My understanding of the motion by the delegate from Hawaii was that the transcript and all data and minutes of the special committee be made available to the delegates. Am I correct in that?

CHAIRMAN: All minutes, did you say?

MAU: Yes.

CHAIRMAN: I don't recall "minutes" were used. Will the delegate from Hawaii clarify that?

SAKAKIHARA: I made no reference in my motion to any minutes.

CHAIRMAN: That's the Chair's recollection.

SAKAKIHARA: While I am recognized, I would like to call the attention of this Convention - - of the Committee of

the Whole, that under Rule 39 of this Convention it provides thus: "A motion to reconsider any vote must be made before the end of the second convention day after the day on which the vote proposed to be reconsidered was taken and by a delegate who voted in the majority, and the same majority shall be required to adopt the motion to reconsider as was required to take the action to be reconsidered."

CHAIRMAN: May the Chair ask the delegate from Hawaii to what he is referring in the motion to reconsider?

SAKAKIHARA: Referring to the remarks of the delegate from the fifth district, Delegate Arthur Trask.

CHAIRMAN: Well, the Chair understood that the suggestion was made that in order to expedite things, that the technical objection would not be raised.

FUKUSHIMA: I don't believe it's a matter of expediting things. If we are going to do it correctly, for the record, let's do it correctly. If we are going to reconsider the matter, let's reconsider it. So at this time, I move that the Committee of the Whole rise to reconsider the adoption of the resolution which we adopted two days ago.

LEE: Second the motion.

HEEN: The proper motion would be that the committee rise and report progress, and I so move that this committee rise and report progress.

SAKAKIHARA: I second that.

CHAIRMAN: It's been moved - -

KING: I would like to speak in opposition to that motion. The motion that resolved the Convention into the Committee of the Whole was to act on the resolution which was a part of the recommendation of the special committee that discussed and considered the qualifications of Delegate Frank Silva to retain his seat. So far as I know, the findings have not been brought into question until this morning, and the motion of the - - to return to the Convention and reconsider the action on the special committee seems to me ill-timed and unnecessary. The proceedings, in my opinion, should go ahead on the consideration of the resolution.

Now, if the resolution is wrongly phrased, the Committee of the Whole may, by proper motion, adopt an amendment and then rise and report to the Convention the adoption of the resolution introduced this morning in carrying out the recommendations of the special committee with amendment, which may suit the technical point. Unless the Convention wishes to go back to the original finding, which seems to be desired by some members, it seems to me unnecessary to reconsider the action taken the other day in adopting the report of the committee.

I sat in on two hearings of that committee and they made a very exhaustive inquiry into the matter and had before them the transcript of the evidence before the House UnAmerican Activities Committee. Nevertheless, in the finding the committee reported that that was in part extraneous matter, that the issue depended upon the action of Delegate Silva in declining to testify and not with any regard to the evidence that might have been produced in that committee charging him with being a communist, which, of course, he has denied.

Now, he has made his statement in his own defense in this Committee of the Whole. The statement is available, and I presume the Chief Clerk is having it stenciled now so that copies may be made available very soon. I would prefer to suggest that the Committee of the Whole rise to provide for a recess, but not for a reconsideration of the findings of the special committee. I, therefore, suggest that the motion do not carry.

C. SILVA: I think there is a motion on the floor. A motion to go out of the Committee of the Whole into regular session is always in order. That motion has been made and duly seconded.

CHAIRMAN: That's correct. I understand that it is not debatable or amendable.

HEEN: Are you referring to the motion to rise?

CHAIRMAN: That's correct, and report progress.

HEEN: Report progress and ask leave to sit again. I don't think we can recess; it's only the Convention itself that can recess to a later time.

CHAIRMAN: There is before the committee a motion to rise and report progress with leave to sit again. All in favor signify - -

LEE: In order not to preclude any further debate on this subject, since I seconded that motion, I'd be very happy to withdraw the second in favor of any who may desire to speak on this particular motion. It is a rather important subject, particularly in view of the fact that before reconsideration can take effect under the rules, as pointed out by Mr. Sakakihara, two days notice must be given. So should there be any desire by any of the delegates, I'll be very glad to withdraw my second.

CHAIRMAN: The second has been withdrawn.

TAVARES: I thank the delegate for his courtesy. It seems to me that we are being a little over technical in this proceeding. The purpose of a meeting of the Committee of the Whole is informality and the first thing we run into when we get into the Committee of the Whole is a lot of technicalities. Now, it seems to me we are, as I say, over-emphasizing those technicalities.

In the first place, if we have a hearing here and we are convinced at that hearing that some of the facts stated in the resolution or conclusions stated in that resolution were not correct, what is there to prevent this committee as a Committee of the Whole, which cannot take final action, recommending to the Convention that we suspend the rules and reconsider. There is nothing to prevent us from doing that. In the meantime we can become informed on these matters. I think if we go back into the Convention and the formal hearing now, or the formal meeting of the Convention, we will not have the opportunity to be as well informed and as fully informed as we can in this Committee of the Whole.

Now there is one other matter I'd like to suggest and that is, if we are going to wait for a transcript and it is going to take a long time, unless we can take up that time in useful information being given by various members, we ought to then rise and ask leave to sit again for that purpose; and I, for that reason, am opposed to the motion to rise and sit again, if it is for the purpose of reconsidering our action. Because I think this Committee of the Whole can more fully decide whether that is proper in a Committee of the Whole than we can in the Convention sitting formally. But if it's for the purpose of allowing us time to wait for that transcript, then I'm in favor of it.

CHAIRMAN: The Chair would like to state that since the second to the motion to rise has been withdrawn, that the motions that are before the house—and the movant has accepted all the amendments as to the printing of the statement and other documentary evidence, including the transcript—would assist this committee regardless of any ultimate ruling as to whether we are considering purely the resolution or are, as the delegate from the fourth district indicated, going to report back that we reconsider our action on the committee report.

The chairman would like to place that motion on the floor and ask if you are ready for the question. This is the motion to have printed the statement of Delegate Silva and any other documentary evidence he has to offer and the transcript. Are you ready for the question?

NIELSEN: There's one thing that I'm not clear on and possibly it could be handled at the same time, that is, whether we have the right to expel this delegate. I think that if in going into these other things that some legal advice could be given on that, why we would be a whole lot clearer in our thinking regarding this expulsion. Now according to Cushing, why you can only expel after two weeks and we're supposed to follow Cushing when it's not in our own rules, and I'd like that to be considered, too.

CHAIRMAN: Act 334 setting up this Convention specifically puts the usual provision that this body is the sole judge of the qualifications of its members.

AKAU: Will you please tell me what we're voting on? We've gotten so involved with technicalities, I'm not sure if we're voting on the resolution. Are we voting on to have the printing done, or just what? Would you clarify that please?

CHAIRMAN: We are voting on the motion that's been twice amended and accepted by the original movant. First, that the statement read by Delegate Silva just a few moments ago be printed and distributed to the members; and that he be allowed—and the Chair will ask him if the motion is carried—if he wishes, to submit any other documentary evidence, which in turn would be printed and distributed to the members; and thirdly, that the transcript that was available and used by the special committee of this Convention be likewise printed and made available to the members. Is that clear?

HEEN: My understanding of that is that only parts of the transcript be printed.

CHAIRMAN: Only the portion that refers to the testimony of the delegate from Kauai at the UnAmerican Activities Committee. That's correct.

MAU: Let's dispose of the motion before the house as amended. I move the previous question.

CHAIRMAN: Are you ready for the question? All in favor signify by saying "aye." Contrary minded. Carried unanimously. The Clerk is instructed to carry out the provisions of the motion.

I recognize the delegate from the fifth district, but before that I'd like to ask the delegate to yield a moment. I'd like to ask Delegate Silva if he has any other documentary evidence that he wishes to submit. He says there is - - he has nothing further and the Chair would like to point out that his previous press statement has already been distributed to the members. His statement to the special committee has likewise been distributed to the members and a letter pertaining to this matter written by Mr. Hall of the I. L. W. U. has been distributed. So I think we have all the information now.

I'd like to recognize the delegate from the fifth district. I asked him to yield for a moment.

MAU: Although we're sitting informally as a Committee of the Whole, from the discussion past, we are going to make certain findings of fact and go into facts. The delegate in question is on trial. It seems to me proper, and other bodies like this one have rules to provide for it, that the delegate be provided counsel from amongst the delegates in this Convention. I think that is proper to protect his rights. And, therefore, I move that the Chair appoint Delegate William H. Heen and Delegate J. Garner Anthony to act as counsel for Delegate Silva in this Committee of the Whole and in the Convention, if necessary.

SAKAKIHARA: Mr. President.

C. SILVA: Mr. President.

CHAIRMAN: I recognize the delegate from the fourth district.

HEEN: I am in accord with the suggestion made by the previous speaker, but not to the extent that the lawyers who are delegates here represent Mr. Silva. We are going to act upon the resolution or some other resolution in reference to any attempt to expel him from the Convention. I would amend the motion made by the previous speaker that he be allowed to have his own counsel. He's entitled to it.

SAKAKIHARA: Is that a motion to amend?

CHAIRMAN: That's a motion to amend.

MAU: That's acceptable to me, but, of course - -

KING: Before the Convention went into session - - was called to order, I discussed this very question with Delegate Silva and told him that I felt sure that the Convention would be happy to have him represented by counsel of his own choice, if he desired. At that time he said counsel was present in the audience and if he felt he needed it, he would perhaps ask the Chair to permit the counsel to be with him. Delegate Silva just a moment ago was on his feet. I gathered from what he told me that he did not desire counsel. I suggest that he be asked whether he wishes counsel.

CHAIRMAN: I was going to recognize the delegate from Kauai. Do you wish to state anything to the Chair or to the committee on this question?

F. G. SILVA: If I am going to have counsel, I would like to have counsel of my own choosing.

MAU: A point of information. The delegate didn't say whether he wanted counsel. Would you put that question to him?

CHAIRMAN: I asked him whether he wanted - - whether he had anything to say on the question. I'll ask this then. Do you wish to have counsel in this hearing, Delegate Silva? You do? The Chair will rule, however, that any attorney who is a member of the committee is automatically disqualified as he himself will have to pass upon the merits of the proposition.

MAU: I'd like to call your attention to this tradition and procedure, Mr. Chairman. Of course, under our rules, by a majority vote we can suspend our rules which includes Cushing's Manual and all the rules stated therein. Ordinarily in a body like this, counsel is selected from within the group but I am very happy if the delegates will vote so that Delegate Silva will have counsel of his own choosing. I would be for that 100 per cent.

CHAIRMAN: There was a motion before the floor; the Chair overlooked it. There was a motion that was amended to permit Delegate Silva to choose his own counsel and I believe that has been duly seconded.

HEEN: I suggest that he accept that amendment; that the previous speaker accept that amendment. I understood him to say that he would accept the amendment. That is then, that the motion is that Delegate Frank G. Silva be authorized to choose his own attorney to represent him in this hearing before the Committee of the Whole.

CHAIRMAN: Then the Chair's remarks will be considered out of order. Are you ready for the question? All in favor signify by saying "aye." Contrary minded. The Chair informs you, Delegate Silva, that you are free to select an attorney of your own choosing.

HEEN: I now renew my motion that this committee rise, report progress and ask leave to sit again.

SAKAKIHARA: I second that motion.

CHAIRMAN: It's been moved and seconded that this committee rise, report progress with leave to sit again. Are you ready for the question? All in favor say "aye." Contrary minded. We will now recess as a Committee of the Whole.

Afternoon Session

CHAIRMAN: The Committee of the Whole is now in session. The purpose of the Committee of the Whole, as you all know, is to consider the resolution which is on the floor of the Convention. At the time that we reported our partial, or made a partial report before the noon recess, the Chair ordered that all the documentary evidence, statements of the delegate from Kauai, and the pertinent portions of the transcript be printed. I'll ask the Clerk if that has been done.

CLERK: That has been done and it has been distributed.

CHAIRMAN: And distributed. At that time the Chair likewise asked the delegate from Kauai if he had any further documentary evidence to submit and he said no. At this time the Chair would like to ask the delegate from Kauai if he has anything further to submit to the Committee of the Whole.

F. G. SILVA: I haven't anything more to submit, but I would like to notify the Chairman that my counsel is Mr. Myer Symonds and Harriet Bouslog.

CHAIRMAN: Will the record note that fact. Then I think under our rules, which incorporate Cushing's Parliamentary Procedure, it's proper at this time that the delegate from Kauai withdraw from any further deliberations of the committee. If there is no opposition to that statement of the Chair, the Chair will request that the delegate from Kauai withdraw from the further deliberations of this committee.

HEEN: Is it clear in the record at the present time that the delegate from Kauai, whose seat in the Convention is under question at the present time, has no further evidence to present?

CHAIRMAN: That is the Chair's understanding. I asked the delegate from Kauai that question and he said he had nothing further to present but he wished to notify the Chair that his counsel was the firm of Bouslog and Symonds. Is that correct, Mr. Silva?

HEEN: I would like to ask whether or not the delegate in question has any further statements to make.

CHAIRMAN: The Chair will direct that question to the delegate from Kauai. Do you have any further statements you wish to make to this committee? The delegate from Kauai has replied in the negative.

MAU: May I inquire if the delegate's counsel is present? We'd like to proceed with the business.

CHAIRMAN: The delegate from Kauai has indicated that his counsel is present, I assume in the assembly hall somewhere.

ANTHONY: I would like to make a statement in connection with the debate on the resolution and address myself particularly to the one statement of law contained in the report of the special committee; and since I must read from several documents, I'd like to request the permission of the Chair to sit down.

CHAIRMAN: You may, but before we proceed to that, will the gentleman of the fourth district yield the floor for a moment. I have asked the Convention, if there is no objection to the statement of the Chair, that it is proper under parliamentary rules of procedure that the delegate whose seat is questioned to remove himself from any further deliberations of the committee. There being no objection I'll ask the delegate from four - - from Kauai to absent himself from any further deliberations of the committee.

I will now recognize the gentleman from the fourth district who yielded to the Chair.

KING: May I make a point of order? I think the delegate from Kauai, Mr. Silva, should withdraw, not only refrain from participating in the discussion, but as I understand the rules of order, he should leave the assembly.

CHAIRMAN: Well, that was my understanding. I used the term "absent" but I meant it in the term of withdrawing from the assembly. Will the - -

MAU: I'm wondering whether or not facilities - - physical facilities shouldn't be arranged so that the delegate and his counsel could be right in front of this Convention. I think that ought to be offered to them.

CHAIRMAN: Are you questioning the parliamentary procedure?

MAU: No, no; I'm just saying that a space should be set aside, a table set up and chairs there where they can sit.

KING: Another point of order. That's not the ordinary procedure for a parliamentary body or a legislative body. The gentleman whose qualifications are being questioned has stated that he has no further evidence or testimony or statement to make and he is requested to withdraw from the assembly. He may take a seat in the audience and his counsel is present, they can advise him, but they are not going to argue a court case. This is a case of a legislative organization deciding as to the qualifications of one of its members.

CHAIRMAN: I think your point is well taken. That's my understanding of parliamentary procedure. The statements on behalf and all the evidence on behalf of the delegate under question have been submitted to this committee.

SAKAKIHARA: I have a resolution at this time which I desire to offer.

CHAIRMAN: Oh, perhaps I was in error in recognizing the gentleman from Hawaii as Mr. Anthony had yielded the floor to the Chair at the outset. So at this time the Chair will recognize the delegate from the fourth district.

ANTHONY: May I sit down?

ASHFORD: I rise to a point of order.

KING: I still make the point of order that the gentleman from Kauai has not withdrawn from the assembly.

CHAIRMAN: Oh, I thought he had.

F. G. SILVA: In order to make use of my attorney, I believe that I should be sitting next to my attorney.

CHAIRMAN: You have that privilege, Mr. Silva, but under our rules and the rules that were adopted by this Convention, the rule is that the member whose qualifications are challenged is to remove himself after he has made and presented to the committee all of the evidence he has to offer. He is to remove himself from deliberations of the assembly.

FUKUSHIMA: I rise to a point of order. If we are to do this correctly, I think we should follow Cushing's Rules of Parliamentary Practice. It does not make it mandatory for the member to withdraw. He may be asked to withdraw - - I withdraw that. If he does not do so of his own accord, then the delegation here may ask him to withdraw, but if he makes an offer, he may be permitted to remain. If that is explained to the Convention, I think we could do it expediously and do it correctly.

CHAIRMAN: I would like to read from Cushing the proposition that the Chair bases its ruling on. Page 5, Section 8. "Question of membership. When a question arises involving the right of a member to his seat, such member is entitled to be heard on the question and he is then to withdraw from the assembly until it is decided. But if, by indulgence of the assembly, he remains in his place during the discussion, he ought never to take any further part of it." I prefaced my remarks by asking whether there was any objection to the Chair's statement. There being none at the time, I requested the delegate from Kauai, having completed his statements and his evidence, to withdraw. I will now recognize the delegate from the fourth district.

ANTHONY: To bring this issue to a head, apparently there is some difference of opinion among the delegates. I see no objection to Mr. Silva retaining his seat but taking no part in the deliberations of this Convention, and I so move. If he wants to bring a chair in for his counsel, let him bring a chair in.

NIELSEN: I second the motion.

SAKAKIHARA: I second it.

CHAIRMAN: It's been moved and seconded that by indulgence of this Convention, or this committee that the delegate from Kauai be allowed to remain on the Convention floor accompanied by counsel. Are you ready for the question?

FONG: Point of information. As I understand it, the delegate from Kauai has already submitted everything that he desires to be submitted to this Committee of the Whole. Is that right?

CHAIRMAN: That's correct.

FONG: He has submitted all his documents. He has no further statement to make. Is that right?

CHAIRMAN: He was so asked, and he declined - - stated that he had no further statement.

FONG: Well, if that is so, then in my mind it seems now that the deliberations are only the deliberations as far as we are concerned. We are now sitting as jury or as judge upon this man who has already been given his day in court. I see no purpose could be accomplished by allowing him and his attorney to sit before us here, because he has already said his say, he has been given all opportunity to say what he wants to say. He has been given an opportunity to be represented by counsel and he has nothing further to say and there is nothing accomplished by having him remain here with his counsel.

ANTHONY: I think the point is well taken and I'll withdraw the motion.

F. G. SILVA: Point of order. I was asked if I wanted counsel. I have brought my counsel here with me. I have no more written statements to add, but if you want to hear legal arguments, my attorneys are here.

CHAIRMAN: Well, I wish to point out also that is not customary parliamentary procedure except by permission of the Convention - - of the legislative body so-called. No one other than a delegate is permitted to speak on the floor except by invitation or consent of the Convention. However - -

KING: Point of information. The motion that was originally put by Mr. Anthony was wrongly phrased by the Chair, I believe. The motion was that the delegate in question, the delegate from Kauai be allowed to sit in the assembly with his attorneys but take no part. Now the difference between the assembly and the audience is a matter of a railing there. It seems to me there is no point in having the delegate seated on the floor of the Convention with his attorneys if they are refrained from taking any part of it. This is not a court of law and there is not going to be any arguments pro or con. The delegates are going to discuss among themselves the qualifications of this delegate to be seated, Since Delegate Anthony has withdrawn his motion, it seems to me the business before the Convention is to have the delegate from Kauai leave the floor of the assembly.

SAKAKIHARA: I have a very important resolution here which I would like to see acted upon.

CHAIRMAN: In the meantime I will have to ask the - - since there is no objections to the Chair's statement of Cushing, I'll have to ask the delegate from Kauai to leave the assembly floor.

Mr. Anthony, the delegate from the fourth district, will you yield for the purpose of this resolution? I've asked you many times to yield in the course of what was going on here and I feel that you should be heard first if you so desire.

ANTHONY: I would like to, Mr. Chairman, because I think, I know what is in the resolution and I don't think it's necessary. If I may proceed.

CHAIRMAN: The Chair, Mr. Sakakihara, in line with its previous rulings feels that Mr. Anthony had the floor first and yielded to the Chair. I assure you, Mr. Sakakihara, that you will have the floor next for your resolution.

KAUHANE: I rise to a point of information. It seems that the delegate from the fourth district knows everything that is contained in the resolution that the delegate from the first district intends to introduce here. If that is somewhat of a closed and a two man affair, then I think the rest of us who sit here as delegates to decide the question should not be present and let him, the delegate from the fourth district, decide everything. Let us hear what the delegate from the first district has to offer in his resolution.

ANTHONY: I yield. Let's get along with the business.

CHAIRMAN: Do I understand the delegate from fourth district to yield his position? Very well. Clerk, will you read the resolution?

CLERK:

Resolution. Resolved by the Hawaii State Constitutional Convention that the attorney general of the Territory of Hawaii is hereby requested to render an opinion as soon as possible as to whether the delegates assembled in Convention have the power to expel a fellow delegate under the provisions of Section 2, Act 334, Session Laws of Hawaii 1949.

SAKAKIHARA: I respectfully move the adoption of the resolution.

HEEN: I move that we defer action upon this resolution at the present time. After the deliberation on the part of the Convention, based upon the evidence that has been presented to it, it may not be necessary to ask for the advice of the attorney general. After we have acted upon the original resolution, if there is any question as to the authority of the Convention to punish the delegate from Kauai, then I think it would be proper time then to ask for the opinion of the attorney general. Therefore, I move that we defer action until later on in the proceedings on the resolution that has just been read.

SAKAKIHARA: May I offer an amendment to the resolution?

CHAIRMAN: There has been no second.

SAKAKIHARA: Instead of an opinion to be rendered as soon as possible, and in lieu thereof, that the attorney general is hereby requested to attend the meeting of the Committee of the Whole forthwith.

GILLILAND: We have two former attorney generals here. What more do -- Why do we want another one?

CHAIRMAN: I take it that was a point of information from the gentleman from the fifth district.

CROSSLEY: I second the motion to defer.

CHAIRMAN: It's been moved and seconded that we defer action on the resolution. Are you ready for the question? All in favor say "aye." Contrary minded. It appears to the Chair that the ayes have it. The resolution be deferred.

Now, Mr. Anthony, the Chair will recognize the delegate from the fourth district.

ANTHONY: Thank you, Mr. Chairman.

Fellow delegates, in the first place I think we all should appreciate the very heavy responsibility that rests with this body in these deliberations, and I think a particularly heavy responsibility rests upon those members of the body who are members of the bar. I would like to explain the legal situation in regard to the right that Delegate Silva has asserted before the House UnAmerican Activities Committee, not to testify upon the ground that it might tend to incriminate him. And in that connection, I would like to call the committee's attention to a statement in the report of the special committee on page 2. That statement that I wish to call attention to reads as follows:

> No witness who testifies before the House UnAmerican Activities Committee can be prosecuted for any crime which his testimony may divulge save and except the crime of perjury committed in the course of such testimony.

Now, I would like to call the Convention's attention to the privileged section of the Criminal Code of the United States which is Title 18, Section 3486, which reads:

> No testimony given by a witness before either House, or before any committee of either House, or before any joint committee established by a joint or concurrent resolution of the two Houses of Congress, shall be used as evidence in any criminal proceeding against him in any court, except in a prosecution for perjury committed in the giving such testimony. But an official paper or record produced by him is not within such privilege.

What I would like to call to the attention of the delegates is this, that the immunity that is granted by the section that I have just read is not an absolute immunity. In other words, if there is in that committee hearing, the UnAmerican Activities Committee hearing, evidence produced which might lead to the introduction or the discovery of further evidence that the witness before that committee is guilty of a crime, that might be an avenue for the discovery of a criminal act and yet that would not be using his testimony. In other words, there may be some basis for the contention of Mr. Silva that he is within his constitutional rights in declining to testify on the ground that it would incriminate him. That is the question which I would like to have very clearly in mind before this committee votes on his qualifications.

Now there is one other thing. You are all familiar with the so-called Hollywood Ten Cases. Those cases involved those persons in the moving picture industry in Hollywood who were summoned to appear before this same committee and declined to give any testimony but said they would remain silent, standing on their rights guaranteed to them under the First Amendment, which is free speech. That particular case went to the Court of Appeals of the District of Columbia, that contempt case, and the conviction of contempt was affirmed. Certiorari was denied in the Supreme Court of the United States.

There in no doubt about the validity of the constitution of the UnAmerican -- House UnAmerican Activities Committee. There is also no doubt that they can compel testimony, but the precise issue that is raised by Delegate Silva has not been adjudicated by the courts. In fact, there is a decision rendered in the Ninth Circuit Court of Appeals, on the fourth day of February 1950, in which a witness was asked the same question, whether or not he was, or is, or ever was a communist, in a grand jury proceeding, and he declined to answer that question on the grounds that it mind tend to incriminate him. His refusal to so testify was affirmed by the Ninth Circuit Court of Appeals.

Now the basis of the position of such persons refusing to testify is simply this. They contend that in view of the trial of the communists in New York under the Sedition Act, any person who will admit membership in the Communist Party, or who will disclose evidence that he may have been a member of the Communist Party, is liable to prosecution under the Smith Act. So the precise question that is now raised by Delegate Silva has not been passed upon by the courts. My own view is that the probabilities are that he would have a privilege if he answered the question.

There is one other thing that has not been brought out. A witness claiming a privilege can testify, he can give certain answers, and then he can interrupt his testimony at any point he chooses, and say then at that point, "I decline to testify further." But I think the important thing to bear in mind in these deliberations is that there is a possibility that the very question that was propounded of Mr. Silva may be a privileged question. In other words, it may be in violation of the Fifth Amendment which prohibits the compulsion of testimony tending to incriminate persons.

Therefore, it is entirely possible that if Mr. Silva later be cited for contempt by the House committee, the same Ninth Circuit Court of Appeals might hold that in view of its decision in the Alexander case, which I just referred to, this particular question was privileged; and therefore, the finding of contempt cannot stand under the Constitution. That is the reason why I took up with the President this morning the matter which has been the subject of some discussion here, because the statement in the committee report was a dogmatic statement of the law which I do not believe, after careful examination of the authorities, I care to subscribe to.

There is the further question, however, whether or not the conduct of Mr. Silva, he as a delegate to this house now engaged in the business of trying to draft a constitution for the State of Hawaii, is such that, such a contumacious conduct that he is now disqualified from sitting as a member in this body.

On the question that is the subject matter of the delegate from Hawaii's request for an opinion, I doubt very much if that is necessary. Act 2, the last sentence, creating this very Convention provides the Convention shall be the judge of the election returns and qualifications of the delegates. It doesn't make any difference whether or not this is in fact contempt, whether or not this committee in the future does cite him, whether a court will find him guilty, we are the sole judges of the qualifications of our members. That is not only true under the statute but is true as a matter of general law.

But the thing I did want to bring home to the body, all the delegates who are going to vote on this problem, is that his refusal to testify cannot be brushed off as just sheer recalcitrance on the part of Delegate Silva. It may be that he has a valid constitutional position, and I think that in our deliberations we should remember that. The reason that I am bringing this to the attention of the Committee of the Whole is that I am persuaded that we should follow the meticulous and scrupulous care, affording this man every reasonable opportunity and a fair trial in this matter.

That's all I have to say, Mr. Chairman.

CHAIRMAN: I recognize the delegate from the fifth district.

AKAU: Thank you. I wondered, pursuant to the delegate from the fourth district's statement, if I might make a short statement which is in line also with the resolution submitted by the special committee.

CHAIRMAN: Proceed.

AKAU: Today this Convention is on trial. Delegate Frank Silva is a conscience of this Convention. Repeating Mr. Anthony's statement, this Convention is the sole judge of the qualifications of its members, but once it designates itself as judge, it must automatically bear a judge's responsibility. As an American judge sitting in the case of Frank Silva, this Convention is bound to observe and follow the simple rules of American justice and procedure.

The question is, it seems to me, is Frank Silva guilty at this point? I say, no. Every person is presumed to be guilty until he has proven himself innocent. It doesn't say that, it says just the opposite. Then the trial begins. Who must prove the case? The defendant? No. The burden of proving a man guilty falls upon the prosecutor and the accuser. In Russia, Delegate Silva would be purged without a fair hearing and trial. Of what is Frank Silva guilty? Is he guilty of contempt of Congress? How many delegates know that Frank Silva is only liable for contempt of Congress and is not guilty of contempt? How many delegates know that a majority of the members of Congress must vote yes on the committee's resolutions to indict Delegate Silva before he can be indicted? How many of you realize that if indicted, Mr. Silva must be on trial in a local federal court of law, before a jury? How many of you know that only proper and admissible evidence may be submitted to the court? The question is, is Delegate Silva now at this moment guilty of contempt of Congress? In my lay mind, I say not legal, in my lay mind, I say no.

Delegate Silva was recently presented with a Convention ultimatum to either purge himself of contempt before the committee or take the consequences. I ask you, delegates, what contempt? There is no contempt. Is Mr. Silva guilty of perjury? In my lay mind, no. How has he perjured himself? Delegate Frank Silva is guilty of no felony or misdemeanor, no violation of law or qualifications. Is he guilty of anything? Why does this Convention then, without actual proof, without admissible evidence, continue to persecute and falsely accuse him of guilt? I keep asking, guilty of what? It is the peak of irony to realize that this Convention while attempting to write an American Bill of Rights into its Constitution, if you please, now totters dangerously on the fatal brink of being the first to violate its own Bill of Rights.

Again it is admitted that this Convention is the sole judge of Delegate Silva's qualifications. But I ask, what are those qualifications? If you have read Act 334, the first qualification is that a delegate must be elected by a majority of the votes cast within his election area. Delegate Silva has fulfilled this particular qualification. The citizens of his community elected him to be their delegate to the Convention. The only other major qualification cited in Act 334, which all of us -- each of us have received, is that he sign a loyalty oath. This he did just as you and I did. He has subsequently reaffirmed this oath in writing, verbally, and in the press. Does Act 334 state that each delegate must, as a qualification, appear before the UnAmerican Activities if he is requested to do so? Does Act 334 require as a qualification that each delegate must answer the questions of the committee? Does Act 334 state that a refusal to answer or to speak before this committee amounts to a disqualification? What is the purpose of Act 334? What are laws for in America? Can an elective body, such as this Convention, legally or morally move outside of the scope of the specific powers granted to it by law? In my lay mind, I say no. Frank Silva is, and has been qualified, to sit and participate in this Convention. And why? Because he meets the qualifications set forth in Act 334. Beyond this act it's my personal feeling, and I'm not a lawyer, that the Convention cannot go.

If this Convention, on its own accord, is permitted to conjure up false and arbitrary qualifications of delegacy outside of Act 334, then every delegate seat in this Convention is in jeopardy—yours and yours and yours. What do the people of Hawaii want us to do in the case of Delegate Silva? The man or the woman in the street? The worker in the cane field? Or the pineapple field? My good friends, this is the supreme test of the Convention. If we fail in this test, then this Convention, it seems to me, is but an empty gesture. We all know in our hearts as good delegates, what the majority of the people really want us to do.

I want to quote just a short statement from the Bible. "Judge not, that ye be not judged. For with whatsoever judgment ye judge, ye shall be judged."

A. TRASK: I presume that by now the delegates have reviewed the transcript, pertinent parts of which the delegate from Hawaii had requested. I think they are all on the desks. I think the delegates have read the last letter from Mr. Silva.

I move at this time in view of all the evidence before this body, this committee, that the resolution before this committee be amended to read as follows: At the end of the first line after the words "by reason of his," insert the following words, "contumacious conduct and recommended citations for." Again, the amendment is as follows: After the word "his" on the first line, insert "contumacious conduct and recommended citations for."

The reason for the amendment is to afford the members, in view particularly of Mr. Anthony's remarks, that we have perhaps not a legally justifiable contempt as considered as such according to the law books. We have, however, as judge, and it is our responsibility without fear to judge, irrespective of quotations from the Bible. Our courage has been attacked. We are all supposed to be hoomalimali artists of the Big Five. We are supposed to be assisting in the sniping by the public press. We are motivated by fear and hatred. We are "plotters, politicians, Big Five lawyers, unscrupulous, callous and unAmerican." We are fearful of facing the Big Five. These sundry remarks in the last statement of Mr. Silva makes him persona non grata before this body.

We are here to consider, not so much as a court of law, whether or not he is in fact guilty of contempt before this committee; but we are to consider broadly all the evidence in hand and then to pose the question, is this person in truth a person who could aid us in our fight and determination for statehood. Obviously not. He is defying by his conduct the very Congress to which we are beseeching, recommending, working night and day in our entire history, 50 years of working for this one moment of admission at the bar of Congress. And in our midst we have a person who defies the power of that very body. I say, therefore, that we should use the broad base, and I move the amendment.

CHAIRMAN: Any second to that?

CASTRO: Point of information.

CHAIRMAN: State your point.

CASTRO: Relating to the suggested amendment of the delegate from the fifth district, the words "recommended citations for." The information I seek is, have the recommendations for citations been made by the House committee?

CHAIRMAN: I'll ask the gentleman from the fifth district to answer the question.

A. TRASK: I think President King could answer that.

CHAIRMAN: Mr. President, do you wish to answer that?

KING: Frankly, I am unable to answer that as a matter of absolute fact. Merely the press report that the House Committee on UnAmerican Activities said they were going to cite Mr. Silva for contempt of court.

CHAIRMAN: Does that answer your question?

CASTRO: I believe in view of that answer and my own knowledge of the situation that the recommendations have not yet been made by the Congressional body in question, I would like to suggest—although I am hardly in accord with the spirit of the amendment—that the delegate to the fifth district consider a rewording, in view of that fact.

HEEN: In order to act intelligently upon the amendment proposed by the delegate from the fifth district, I would suggest that that resolution as amended be written out in full so that we can study it and analyze it to see whether or not it's going to meet the situation as it appears in the evidence at the present time.

It is my understanding from listening to the delegates who have already spoken upon this subject that the Convention will not use as a ground for punishment, whether it be by way of expulsion or some lesser method of punishment, will not consider the question as to whether or not Delegate Frank G. Silva has committed contempt. I think some time this morning during a meeting of this committee I pointed out the fact there has been no finding of guilt of contempt up to this stage of the proceedings. It may be that he has been cited or will be cited to answer a charge of contempt, but certainly there has been no finding of contempt. Eventually there may be a finding that he is not guilty of contempt.

Now, have we in the evidence here before us any facts which might constitute grounds for expulsion or some lesser method of punishment? It would seem to me that we should analyze the evidence now before this committee to determine and find from the evidence those facts which might constitute grounds for punishment. It may be that the charge that he has made reflecting upon the integrity, the honesty of the members of this Convention, that those charges might constitute grounds for some form of punishment.

I refer particularly, Mr. Chairman and members of this committee, to the statement made by Delegate Frank G. Silva appearing on page 5 of the written statement that he presented to the Convention, or rather to this committee this morning. The third paragraph on that page, "There are those in this Convention who are not motivated by fear." It may refer to me, it may refer to you, I don't know to whom he refers to particularly; but there is this charge that is a cloud upon every member of this Convention. "They." Who? The members of this Convention. It may be you, it may be me. There's no specification who they are. "They are motivated by hatred." Then he says again, "They"—the members of this Convention—"are the ones who have blacklisted me since my youth." Speaking for myself, I have never blacklisted Frank G. Silva. I did not know him before he came to this Convention. But there must be others, in view of that statement, delegates of this Convention who have blacklisted Delegate Frank G. Silva since his youth, that is at the time when "I was first fired out of the plantation for union activities." "They"—the delegates of the Convention, who they are I don't know—"They are the ones who would blacklist anyone who would dare to stand up and speak on behalf of the working people, the majority of the people of Hawaii." "They." Who are they? Every member of this Convention is placed under a cloud because he says, "They are the plotters, the politicians." All the members of the legislature who sit here in this Convention, all the members of this Convention who were at one time members of the legislature, they are placed under a cloud because every person who is a member of the legislature very often is called a politician. There are all kinds of politicians. Some are good, some not so good, some are peanut politicians. "The Big Five lawyers, the unscrupulous." They, the delegates of this Convention are "unscrupulous, callous and unAmerican." "They are the ones"—the delegates here—"who falsely pretend that this is a bipartisan Convention. What nonsense. This is no bipartisan Convention. This is a Republican dominated and Big Five Convention." Therefore, all the members of this Convention are under a cloud. We are here under the domination of the Republican Party, and I deny that, speaking for myself. And that we are dominated by the Big Five, and as to that, speaking for myself again, I deny that.

That is to me the picture in a nutshell as to whether or not, if we find that he has been loose in the use of his language in placing a cloud upon every member of this Convention with language such as he has used, those constitute grounds for punishment. Then I say, let us proceed, and determine that question.

ASHFORD: May I read in connection with the remarks made by the delegate at large from the fourth district some of the statements made in writing and submitted to the special committee and again through that special committee submitted to the Convention.

CHAIRMAN: You may.

ASHFORD: Presented by Frank Silva in person.

CHAIRMAN: You may and you may resume your seat for ease of reading, if you wish.

ASHFORD: If you please. On the second page of the mimeographed statement attached to the report.

> 2. That my request to testify before the committee would be a recognition that the committee is conducting the hearings for a valid purpose, whereas it is obvious that:
>
> a) The hearings were timed by Governor Stainback and Big Five interests to coincide with the Convention hearings in order to defeat statehood;
>
> b) The hearings are for the purpose of destroying the I. L. W. U.

It has always been my position, it still is, that the real reason for the disqualification of Frank Silva to sit as a delegate in this Convention is that he is contemptuous of the very forces of order, the very operations, duly organized legislative organizations and governmental organizations for which he is here to write the basic law. I fully concur with what the delegate from the fourth district has said about the charges concerning this Convention itself. If we were the attorneys for the Big Five, a lot of us would like to see the color of the retainer.

I, too, would like to quote from scripture. "Render unto Caesar that which is Caesar's and unto God that which is God's."

AKAU: I'm not refuting any arguments and I'm not making apologies for Mr. Silva. As I told you the other day, I never saw him before the first day of the Convention. In answer to the delegate from the fourth district, the delegate at large, I simply offer this. That some of us have had an opportunity for more formal education, some of us have been fortunate in having university training and that sort of thing. The rest of us may not have had that. In the writing of a statement it isn't always easy for a man who has gotten his education the hard way to put it down just as somebody who has had attorney training, law training or educational what-have-you. I'm simply interpreting that the words that have been used—and again I say, I'm not apologizing—that

they may have been collective, that they may have been used quite innocently or unintentionally. And again I say, it may be due to not so much formal education. Thank you.

SHIMAMURA: May I be permitted to address myself to a point of law raised by a previous speaker, Mr. Chairman?

CHAIRMAN: You may.

SHIMAMURA: The speaker stated that we are proceeding under Section 2, Act 334 of the Session Laws of 1949. I submit that we are proceeding under that section, "The Convention shall be the judge of the elections, returns and qualifications of the delegates." And as the members here know, similar provision is found in our Organic Act and also in Article 1 of the Constitution of the United States, which I believe is Section 5. "Each house shall be the judge of the elections, returns and qualifications of its own members." Under those provisions, as many members of the Convention here know, the courts have held that the convention or the house, as the case may be, is the sole and final judge of the qualifications of its members. And further, that the power for removal and expulsion had by the house under such a provision remains throughout the convention or throughout the session of the legislature.

On that point, *49 American Jurisprudence*, page 252, states as to the position and power of the legislature. "The legislature, or each branch thereof, usually has complete control over the conduct of its members, which includes the right to remove them. . . Such body has the power also to expel a member, and on such expulsion his privilege from arrest on mesne process ceases." In short, the authority of the legislature—speaking of the legislature, that is,—"in such a matter is well nigh absolute and the courts have no power to control, direct, supervise or forbid its exercise by either branch of the legislative department."

I'd like to emphasize the fact, as I've already stated, that the power of this body to control its members, that is to inquire into the qualifications of its members, remains throughout the session of the Convention and does not cease by merely seating the member at the inception of the session.

PHILLIPS: I have sat here all afternoon and a great deal of the morning, and I've heard uncountable law cases and everything else quoted, but I can't help but say that when I came here to this Convention I came with a love of government. It is government that I came here for, and I was hoping that we would continue with government. We have already carefully shown that the delegate is not eligible to a chair on at least one count, and that count I will state in my motion later, but I say this that the object of this Convention is to produce a state constitution. I think we have wandered terrifically far from our track. I might even say that I remember recently where I read that the most remarkable thing about the Federal Constitution was the amount of time that the 55 delegates who put it together took, and they didn't'have $40,000 worth of clerks either.

I might say at this time that we do not need the law, we are here for government, we are here to let the Convention run. This man, if—and it's all been so well adduced by everybody, Delegate Ashford, the delegate from the fourth district, and other delegates—that the individual has shown his incapacity to work with this Convention, has shown that he does not care to work with this Convention, or he would not entertain in his heart the thoughts that he was careful enough to put on paper.

Therefore, I move that in view of the attitude demonstrated by Delegate Silva that he be removed from the Convention on the grounds that his own accusations against us could not possibly permit him to work toward the Constitution we have all dedicated ourselves.

CHAIRMAN: Will the delegate from the fourth district kindly repeat his motion in full? Have you that in writing?

PHILLIPS: Yes, I have.

CHAIRMAN: I've asked the delegate to repeat his motion for the benefit of the entire floor. I don't think that they heard it in full.

ANTHONY: I was going to make the suggestion that we recess in order that any other delegates that have similar ideas may -- recess until the call of the chairman --

MAU: I second the motion.

ANTHONY: -- and present that to the Chair.

CHAIRMAN: The Committee of the Whole, as I understand it, cannot recess. We can again rise and report progress.

ANTHONY: My parliamentarian tells me otherwise, Mr. Chairman.

KING: A point of order. I think the Committee of the Whole can recess. It carries out the regular rules of the Convention and may not recess beyond a day, but it may recess for a few minutes. I'll second Delegate Anthony's motion that we recess to the call of the Chair.

C. SILVA: I think in courtesy to the person who made a motion first, you should give time to anyone wanting to second the motion. If there isn't any second, then you should recess right after that. I think that some of the members jumped the gun. There's a motion made that --

CHAIRMAN: The Chair asked the movant to repeat his motion because it came in the body of a speech and I don't think that all of us understood when the motion began. Before we entertain the motion to recess, I will ask the delegate from the fourth district to please repeat his motion in full so that the members can grasp the significance of it.

PHILLIPS: I apologize for being so rapid. I move that in view of the attitude demonstrated by Delegate Silva that he be removed from the Convention on the grounds that his own accusations against us could not possibly permit him to work toward the Constitution we have all dedicated ourselves.

CHAIRMAN: There is a motion before the house to recess, then to consider the two motions that have been put, one of them by the delegate of the fifth district and one by the delegate of the fourth district. Are you ready for the question? All in favor say "aye." Contrary minded. We will stand at recess subject to the call of the Chair.

(RECESS)

CHAIRMAN: The committee will reconvene. At the recess there were two motions pending before the committee, one offered by the delegate from the fifth district, the other offered by the delegate of the fourth district. At this time the Chair will recognize the delegate from the fifth district as to his motion.

A. TRASK: At this time I desire to amend the resolution and strike everything after the word "Resolved" and have the Chief Clerk read the following.

CHAIRMAN: Have you submitted the written amendment to the Chief Clerk?

A. TRASK: I have, that's correct.

CHAIRMAN: Miss Clerk, will you read the amendment, the resolution in total, as amended.

CLERK:

Resolved, that Frank G. Silva, by reason of his contumacious conduct before and toward the UnAmerican Activities Committee of the House of Representatives and this Constitutional Convention of Hawaii of 1950, is hereby declared disqualified and unfit to sit as a member of this Convention and that he be and is hereby expelled; that his seat be declared vacant; and the governor be requested to fill the vacancy in the manner provided by law.

GILLILAND: I move that the resolution as amended be adopted by this Convention.

PHILLIPS: Second the motion.

CHAIRMAN: Where is the second? Will you please rise?

NIELSEN: Before voting on that I think that possibly we should ask Mr. Silva if he wishes to make any further statement, as this resolution reads entirely different than the original. I so move.

CHAIRMAN: It's been moved that Delegate Silva be given an opportunity to speak before this committee acts upon the amendment.

A. TRASK: I second that motion.

CHAIRMAN: There was a second; two or three seconds. It's been duly moved and seconded that the delegate from Kauai, Mr. Silva, be given an opportunity to address this committee before the committee acts upon the main motion amending the resolution. Are you ready for the question?

MAU: Do I understand that in the event that this committee does not pass the resolution as amended that the committee members still desire to have a statement made at this time?

CHAIRMAN: That was the Chair's feeling, that perhaps the motion to have the delegate from Kauai present is premature as there is no change at the present time until there is a vote taken on the motion to amend.

MAU: Well, maybe we need not get that technical. I'd like to amend the motion to include the words "and/or his attorney." I make that as an amendment.

TAVARES: A point of order. Until we have voted on the amendment, that question as to a change of the original wording of the resolution is not before the house. And therefore, the proper time to make this second motion is after we have adopted a motion, if we do, to adopt the amendment.

MAU: That's what I thought. I'll yield to that.

CHAIRMAN: That is the court's feeling, too. Will the delegate from Hawaii withdraw his motion?

NIELSEN: I'll withdraw the motion at this time.

CHAIRMAN: Very well, We have before the committee a motion to amend the original resolution in the language read by the Clerk. If anyone has any question as to the language, I'll ask the Clerk to read it again. There being no questions on that point, the motion has been duly seconded. Are you ready for the question? All in favor say "aye." Contrary minded. The Chair feels that the ayes have it.

MAU: This morning the Convention had passed a motion consenting that Delegate Silva be represented by counsel. I believe that when we were in Committee of the Whole and the chairman asked Delegate Silva to leave the floor he had remarked that he would like to have his counsel speak. The Chair ruled that that was not the usual procedure in such bodies as this, but that that could be done upon invitation or with the consent of the committee. If no opportunity is given to the delegate to have his counsel address this committee, I believe that the motion made this morning that he be given the privilege of representation by counsel will mean nothing.

We heard a very excellent statement of the propositions of law involved in this case by Brother Anthony. I believe, in my opinion, that to be a correct statement of the law in the case. However, counsel for Delegate Silva may deem otherwise or counsel for Delegate Silva may wish to make a summation of the facts.

Now we come with an amended charge including contumacious conduct before this body, the Convention itself. It seems to me fair and proper that Delegate Silva or his counsel be given an opportunity to address this committee. I would like to move that we permit Delegate Silva or his attorney to address this Convention on this new charge.

NIELSEN: I second the motion.

CASTRO: I would like to amend that motion by adding "for a period not to exceed one-half hour."

PHILLIPS: Second the motion.

CHAIRMAN: The motion has been made and duly seconded for an amendment that the time limit of one-half hour be made. Was there a second to the amendment? There was a second.

MAU: Many times during the Convention and in this committee the statement has been made that we are faced with a very serious problem, and it is serious. Let's not hamper the proceedings, let's not be over-technical. If they have cause to use more than a half-hour to present their case, let them do so. We cannot shut off anything that the members of this Convention or the members of this committee could properly receive as a part of this case. I am strongly opposed to the limitation of time suggested by the motion to amend my motion.

CASTRO: I withdraw my motion but I must say - -

CHAIRMAN: Do you withdraw your amendment?

CASTRO: I withdraw my amendment but it was made in all good faith, not as an attempt to gag anyone but merely to try to get the argument out of the way and possibily to hear whoever else might want to speak. The hour gets late.

CHAIRMAN: The motion to amend has been withdrawn. The motion before the floor is - -

KING: I'd like to speak in opposition to that motion. It seems to me that the case is closed. The gentleman from Kauai, Delegate Silva, has had his opportunity, has had his day in court, and the Convention, the committee has been sitting on the evidence and has brought in a resolution, or at least an amendment to the pending resolution. I see no occasion to be addressed by an attorney, especially for an unlimited time. The facts have been pretty well defined by members of this committee, and I will say that the special committee went very thoroughly through the whole circumstances and did so on one occasion when Delegate Silva was represented by counsel. On another occasion, counsel did not accompany him but that was of his own choice. He could have had counsel there had he wished.

The new language in the resolution does not necessarily depend upon the statement made this morning but can refer to the press release and to the further statement submitted to the special committee on the afternoon of the day before yesterday when Mr. Silva last appeared before that special committee. So I feel that the motion to grant a proceeding that is out of all order and out of all parliamentary procedure, to be addressed by counsel for an unlimited length of time, is not called for at all.

It has been said we have been leaning over backwards in this case, and I would say that we have been leaning so far

over backwards that we're likely to fall on the back of our heads. It seems to me it's time to close the case and vote on the resolution already made, and I would like to make a motion that the last motion be tabled.

CROSSLEY: I second the motion to table.

CHAIRMAN: It's been moved and seconded that the motion to invite the delegate from Kauai or his attorney to speak to the committee be tabled. Does everybody understand the motion that's before the house? Are you ready for the question?

PORTEUS: Ayes and nays.

CHAIRMAN: Pardon? Ayes and noes? All those who wish the ayes and noes raise their hands, please. More than ten have requested the ayes and noes. Clerk, will you call the ayes and noes on the motion to table the motion to invite Delegate Silva or his attorney to further address the committee.

Ayes, 19 (Apoliona, Cockett, Crossley, Dowson, Fong, Fukushima, Gilliland, Hayes, Kanemaru, Kauhane, Kido, King, Larsen, Ohrt, Phillips, Porteus, Smith, White, Woolaway). Noes, 42. Not voting, 2 (Luiz, F. Silva).

CROSSLEY: I now amend the motion that the time limit be a half-hour to the representation or the time given to Mr. Silva or his counsel to speak.

CHAIRMAN: The Chair didn't have an opportunity to announce that the motion to table failed, so the original motion is still on the floor. It has now been moved that that be amended to provide a time limit of a half-hour. Any second?

CASTRO: I second the motion.

CHAIRMAN: It's been moved and seconded that the time limit of a half-hour be imposed upon the privilege of the delegate from Kauai or his attorney for addressing the house.

HEEN: I don't think it's in order to amend the motion that's already been carried. It should be a new motion all together.

CHAIRMAN: The vote was just taken on the motion to table. The original motion is still before the floor.

ANTHONY: I want to speak on the matter of the limitation of time.

CHAIRMAN: Proceed.

ANTHONY: I am opposed to limiting the time. It's more important that we do this with care and fairness than we sit 15 minutes or a half-hour or any other time. I, therefore, think the motion to invite counsel and Mr. Silva should be left within the future sound discretion of this body without limit as to time.

NIELSEN: I move that the motion to table be tabled.

CHAIRMAN: Do I understand the gentleman from Hawaii that you move that the motion to limit the time be tabled?

NIELSEN: Correct.

J. TRASK: I second the motion.

CHAIRMAN: It's been moved and seconded that the motion to limit the time is tabled.

TAVARES: A point of information.

CHAIRMAN: State your point.

TAVARES: It's my understanding that the rules now limit speeches by any one person—and I would presume that would mean a person in their behalf—to 15 minutes. So the half-hour motion actually gives them 15 minutes more than the rules allow, I think. It's actually an extension of the time now permitted. And if they need more time they can ask unanimous consent or ask consent of this Convention for more time.

CASTRO: Call for the previous question.

AKAU: I'd like to go along with the former speaker of the fourth district. I think this is a very serious matter and I think while we've been most generous, the whole body here has been very generous and always leaning backwards as I said before.

CROSSLEY: Point of order.

AKAU: I have the floor, Mr. Crossley.

CHAIRMAN: Just a moment, please. Mr. Crossley, state your point of order.

CROSSLEY: The motion to table is not debatable.

CHAIRMAN: That's correct. The motion to table is not debatable.

AKAU: I'm not debating on the motion to table, I was just making a statement of information.

CHAIRMAN: There is a motion to table before the committee and that takes precedence. Are you ready for the question? The motion is a motion to table the amended motion - - the motion to amend the original motion fixing a time limit. If the motion to table carries, the original motion inviting the delegate from Kauai or his attorney to address the committee is still on the floor. If the motion to table fails, then we still have to vote on the amendment as to time limit. Are you ready for the question? Is there a request for the ayes and noes? All in favor say "aye." Contrary minded. Carried.

NIELSEN: I now move for the previous question.

MAU: Second the motion.

C. SILVA: I move that we allow Mr. Silva or his counsel a half an hour and upon the expiration of a half-hour he be notified and if necessary another half an hour be given to him until the Convention - - in other words, the power would be left to this Convention.

CHAIRMAN: Any second to that? I can't hear you.

HAYES: I second that motion.

CHAIRMAN: You second that motion?

HAYES: Mr. Silva's motion.

CHAIRMAN: That is a motion to amend the original motion again.

MAU: I rise to a point of order. There was a motion for the previous question. It was seconded. I don't believe the amendment is in order.

C. SILVA: Your previous question needs two-thirds vote. I just want to know - -

CHAIRMAN: I can't - - We can't hear you, Mr. Silva, unless - -

C. SILVA: You have to have a 31 vote in this Convention - - a 32 vote in this Convention for the previous question?

CHAIRMAN: Mrs. Clerk, was the motion for the previous question seconded?

CLERK: Yes, Sir.

CHAIRMAN: I will then rule the motion out of order.

CROSSLEY: Point of order. The motion for the previous question was put by the gentleman from Hawaii; you then

recognized another gentleman from Hawaii, who made a motion, without having recognized a second to the motion.

CHAIRMAN: The Chair has ruled that the motion for the previous question prevails. Are you ready for the question?

J. TRASK: Will you state the question, please?

CHAIRMAN: The question is the original motion that the delegate from Kauai or his attorney be invited to address this committee. Presumably the rules of the Convention, which likewise apply to the committee, as to time limit will apply. Are you ready for the question? All in favor say "aye." Contrary minded. The ayes have it.

Mr. Bailiff, will you -- Mr. Sergeant at Arms—I can't get out of the court atmosphere—Mr. Sergeant at Arms, will you invite the delegate from Kauai to appear and address the committee if he so wishes, or his attorney.

May I ask the delegate from Kauai whether if it's his wish to address the Convention or does he wish his attorney to speak on his behalf?

F. G. SILVA: I want my counsel to speak first, and then I would like to speak for not more than five minutes.

CHAIRMAN: Proceed. Will you let your counsel use the microphone that's attached to your desk. You now have the floor, Mr. Symonds.

HEEN: A point of information. I would like to inquire whether or not counsel has been furnished with a copy of the amended resolution? Why I ask for that information, he might then confine himself towards talking upon the resolution as amended.

SYMONDS: Yes, Mr. Chairman. However, I would like the privilege of sitting in the chair that you now occupy in order to say what I have to say to this body.

CHAIRMAN: I didn't realize, Mr. Symonds, that you were going to sit down to speak. You can assume this chair if you so wish.

DELEGATES: No! No! No!

SYMONDS: What I want to say I have to face everybody. I can't - -

CHAIRMAN: What are the wishes of the committee?

DELEGATES: No!

CHAIRMAN: I might advise counsel that unfortunately these microphones have to be held fairly close to the mouth, so if you wish to be heard by all, why bring the microphone closer.

SYMONDS: I, of course, Mr. Chairman and delegates of the Convention, wish like every lawyer, that I had ample time within which to prepare to speak upon what I consider to be a most serious and important question. However, I realize that the delegates have devoted all of the afternoon session to the matter of Frank Silva. Of course, correctly stated, it would be "devoted the afternoon to correcting a grave injustice and error admitted by this Convention."

However, I also realize that the hour is late; that the Convention must move on with its business, and therefore while the special committee was in recess, I drafted some notes and from them I want to make clear my views and those of my partner Harriet Bouslog and those of Frank Silva.

I was asked approximately a week ago by Frank to appear with him before the special committee set up by this body. I did so appear and I noticed that there were approximately four or five lawyers sitting on the committee of eleven. I informed that subcommittee that Mr. Silva had a constitutional right to do what he did before the UnAmerican Activities Committee. I placed them on notice at that time. They were lawyers. They are presumed to know the law. I was indeed shocked when Mr. Silva brought to me Special Committee Report No. 3, in which I noticed in the "Findings," two statements on page 2, and I quote, "No witness who testifies before the House UnAmerican Activities Committee can be prosecuted for any crime which his testimony may divulge save and except the crime of perjury committed in the course of such testimony." I had informed the subcommittee that that statement of law was not true. I might also say that Mr. Anthony this afternoon in reading from the Alexander decision by the Ninth Circuit Court at San Francisco only two months ago, which decision is binding upon any court in this Territory - - A copy of that decision had been given by me to every one of the witnesses that I represented before the House UnAmerican Activities Committee, and I told them to read that decision and then be guided themselves as to what they wanted to do. The decision by the Ninth Circuit is squarely contrary to the statement I find in the "Findings." Also, "That Frank G. Silva, by his refusal to answer the questions put to him by the House UnAmerican Activities Committee, has forfeited his right to sit in this Convention."

I told Frank that in my opinion it was an injustice for any group that was elected to draft a Constitution to say to him that because he stood on his constitutional grounds, that he therefore had forfeited his right to sit in this Convention.

I then noticed the recommendations. "1. That Delegate Frank G. Silva be given to and including Wednesday, April 19, 1950, within which to purge himself of contempt of the House UnAmerican Activities Committee or to show cause, if any, he has why this Convention should not vote on his qualification to hold his office as a delegate." And then I observed the form of the resolution that this body was going to pass upon in the event he did not do as directed. "Resolved that Frank G. Silva, by reason of his contempt of the House UnAmerican Activities Committee in the recent proceedings of said committee conducted at Iolani Palace, Honolulu, Hawaii, is hereby declared disqualified to sit as a member of this Convention, and that he be and is hereby expelled by this Convention, that his seat be declared vacant, and the governor be requested to fill the vacancy in the manner provided by law."

Why am I reviewing this special committee report? Because it leads up to the letter which Frank Silva wrote to this Convention this morning. When I read that resolution I told Frank that it was an injustice to him; that it was not true that by reason of his contempt of the House UnAmerican Activities Committee, that there had been no contempt; that first of all, the subcommittee had to get the approval of the full committee in Washington, that then the recommendation of the full committee had to go to the floor of Congress, and each and every one of the 39 who were going to be cited for contempt must each have their case taken up separately, and that then and only then after the House of Representatives, if it so decides to hold him or cite him for contempt, would pass the matter on to the United States Attorney General who would then refer it to the local Attorney General and then he would then have his day in court, and that I was satisfied that the case would be thrown out, if it ever got that far. But the statement, "that by reason of his contempt," was wrong. I didn't know what else to say to Frank. I knew there were four or five of what I have been informed were outstanding attorneys in the Territory sitting on the subcommittee. I was shocked, I was unable to understand the language. I am sure the resolution was drafted by a lawyer who heard my statement and there was nothing else for me to do but to say, "Frank, you are being taken to slaughter. The resolution is erroneous as a matter of law, the findings are erroneous as a matter of law and they have absolutely no right legally on the basis put forth in this committee re-

port to do what they are doing to you." What would your reaction be, if you were Frank Silva, to the situation?

Frank Silva, in my opinion, had a flash-back, he had a flash-back to about ten years ago when he had another situation confronting him which is very similar to that which we are dealing with here today. At that time he was blacklisted for union activities on the Island of Kauai. He took his case to Governor Poindexter under the provisions of law provided for such situations. Governor Poindexter being absent, Acting Governor Charles Hite, after a committee report, recommended that Frank Silva be reinstated to his job with back pay. Mr. Silva then went to see Mr. Waterhouse, President of Alexander and Baldwin, who told him that the law could make all the findings it wanted to, he wasn't going to have his job back.

Gentlemen, if you were Frank Silva and you had that experience with the law and then in the iterim you had served almost five years in the Army, three of which were served in active participation in campaigns in the South Pacific, and if you came out of the war a staff sergeant, and you had participated in two of the most vital invasions of the war, and you then returned to your home town and found you were still blacklisted; and the people you have known since childhood elect you as a delegate to the Convention and when you come down to the Convention to serve and you are confronted with a stacked deck of cards by this special committee report and that is exactly what the situation was. Mr. Anthony admitted it this afternoon. What Mr. Anthony said to you this afternoon in his statement of law is identical with what I was going to say to you, had I been given the privilege of taking the floor. Mr. Anthony said in the exact words what I would have said to you. And so what happened, after making what amounts to a confession that this august body was doing Mr. Silva an injustice, then it becomes necessary to save face.

Mr. Silva, after being informed by me of what I thought of Special Committee Report No. 3, then drafted a letter. That letter in draft form was brought to me in my office this morning. It seemed rather lengthy and garbled. At about twenty minutes of eleven I telephoned to the Sergeant at Arms of this body and asked him to confer with Mr. King and say that Mr. Silva was with me and that he would be up to the convention hall no later than 11:30. The reason was I wanted to go over that statement. About two minutes later I received this reply. "Mr. King says the order of business will go on as stated at eleven o'clock." Now gentlemen, what kind of a statement is that? And that is the reason you had the letter probably in the form you got it. You will notice that the letter has spaces at the bottom of various pages. When I received such a rude report on such a serious matter, I got the three secretaries in my office and I said, "Take this as is; each of you take so many pages and write it." I ran, I did not walk, I ran to the garage where I had my automobile; I got my automobile and I brought Frank Silva to this Convention at exactly eleven o'clock. I did not read the letter on the way over, I was driving the car.

That, gentlemen, is the situation. What about the letter? I think it is in bad taste. But, gentlemen, you share more responsibility for that letter than does Mr. Silva. The treatment that Mr. Silva has received at the hands of this body was sufficient to provoke him to most anything. He has been persecuted and those lawyers who are sitting here who have committed one error, at least should recognize the situation regarding provocation and say to the other delegates, "The law recognizes provocation as a basis for leniency." If you vote to expel Mr. Silva from this Convention, you are in effect placing upon him the hardest and harshest penalty that you can inflict for something that you provoked. That is the situation, gentlemen.

I notice in the resolution the word "contumacious." I don't have a dictionary present, but I assume that means he acted disrespectfully, not toward the UnAmerican Activities Committee—and incidentally one of the delegates said that by his statement in his letter this morning that he had shown he was unfit to sit—not only because of his attack upon this body, but because of his attack upon the House UnAmerican Activities Committee.

Now Mr. Silva was told to either purge himself or to show cause. Though some of you present may say, "Well, he should have explained to us under the order to show cause provision why he did not purge himself." But Mr. Silva, in his statement which he read or had read to this body yesterday, showed cause at that time and Delegate Trude Akau also showed cause for him.

There was nothing further left for him to do. He showed cause at that time and if in face of his statement which came from the bottom of his heart and the courageous statement of Trude Akau, this body voted 60 to two for the resolution, then it was obvious Frank Silva either went before the committee and said "Gentlemen, I bare my breast, beat me to death," or he wouldn't sit in this Convention as a delegate. The decision was that clear, that concise, and you gentlemen admitted this afternoon that you had no right to say that to Frank Silva. Mr. Anthony made that quite clear and that is why we have the resolution in its present form.

I am through now, but I want to leave this thought with you. You have as much guilt on your shoulders for the adoption of the resolution as Mr. Silva may have on his shoulders for having presented a letter which was not very tactful. And I say to you in conclusion, bear that in consideration, that you must share that responsibility and that you must not inflict the supreme penalty of expelling him from the Convention, but that you must follow the ordinary rules of law, and recognizing your own provocation and your own persecution, show leniency to Mr. Silva.

CHAIRMAN: Delegate Silva. You indicated to the Chair before your counsel began that you wished to conclude the remarks with a few of your own. Do you still wish to do so?

F. G. SILVA: Yes, Mr. Chairman. Delegates, to me this is one of the most important things of my life, whether I sit here as a member of this Convention or not. I don't want to apologize for my actions, but I'm willing to go this far; and I say, if the committee is willing to withdraw its illegal action, I am willing to withdraw my attacks upon the committee.

ANTHONY: Mr. Chairman.

CHAIRMAN: I recognize the delegate from the fourth district.

KING: Mr. Chairman, may I interrupt on a point of personal privilege?

CHAIRMAN: Mr. Anthony, will you yield the floor? I recognize the delegate from the fifth district.

KING: The counsel for Delegate Silva has referred to me and my rude reply to his request for an extension of time. The Sergeant at Arms told me shortly before 11 o'clock that Delegate Silva's counsel had requested the convening of the Convention a half an hour late. Frankly, that wasn't possible without inconveniencing all the members of the Convention. I had no desire to be rude, no desire to rush the proceeding, but I simply sent the word back by the Sergeant at Arms that the Convention would meet on time, that a certain amount of business would come before the Convention prior to the time when, under special orders, Delegate Silva's case and the pending resolution would come up.

Now, I'd like to say further that the committee that was appointed to review this case consisted not only of lawyers

but of other persons of character, integrity, standing in this community. The chairman was Mr. Benjamin C. Wist, delegate from the fourth district. The vice-chairman was J. Garner Anthony, one of our prominent attorneys. Another member was Miss Marguerite Ashford, an attorney who has served as attorney of the Senate of the territorial legislature. Another member was Mr. Alexander Castro; another member, Mr. Luiz, an official of the I. L. W. U. representing a local from the island of Hawaii; another member, Mr. Chuck Mau, a liberal Democrat and an attorney; another member, Mr. Frederick Ohrt, who has a long number of years back of him of splendid public service; another member, Mr. Tom T. Okino, an attorney, county attorney of the island of Hawaii for many years, a man of outstanding character and respectability in his own district; another member, Mr. Harold S. Roberts, a student of government and political philosophy, a university professor; another member, Mr. Arthur K. Trask, another attorney, Democrat, and perhaps also a liberal; another member, Mr. Arthur D. Woolaway, of Maui, a businessman and respected in his community.

That committee of eleven did not attempt to persecute or prosecute Mr. Silva. I sat in at two meetings of that committee, all of one afternoon when Mr. Symonds was present and also all of one evening when neither Mr. Symonds nor Delegate Silva were present. On that first meeting, Delegate Silva was assured that the committee was very friendly, that the committee desired to get at the root of the matter and find every occasion for treating Mr. Silva with consideration. At that time, Mr. Symonds made the statement that his advice to Mr. Silva, should he refuse to testify before the House UnAmerican Activities Committee, was because he would be prosecuted for perjury and probably found guilty in the state of hysteria in the world or in America today. I challenged that statement and Mr. Symonds immediately modified it and brought it down in a more moderate tone. But the first statement, I understood him to say, was that he did not feel that Delegate Silva, if he had testified before the UnAmerican Activities Committee, would get justice in the courts of Hawaii or the United States.

Furthermore, Mr. Silva had an opportunity under the point of personal privilege to submit to this house, when the original proposition was brought, a personal statement. He submitted his press release, made immediately after he was subpoened as a witness before the UnAmerican Activities Committee and very evidently prepared beforehand. A copy of that release was signed by him and is on file in this proceeding, and that release says in one paragraph, "As an elected official of the I. L. W. U., it seems clear to me that the UnAmerican Committee is in Hawaii at the request of elements who want to destroy our union"—his union. "I am certainly not going to aid them in that purpose. The second purpose of the committee's investigation is to kill statehood, despite all their protestations to the contrary. As a native born resident of this Territory, I am concerned about this attempt . . ."

Now in the afternoon meeting that I did not attend, Mr. Silva handed in a written statement, if the Convention will bear with me, I'll find it. Statement of Frank Silva, dated April 17. "This subcommittee has asked me to consider three matters." The subcommittee or special committee had asked him to consider whether as a matter of protection of the reputation of this Convention and of this territory and the efforts we are going through now to draft the Constitution that will be accepted by the people of Hawaii and by the Congress of the United States, he might not resign. If he felt that he could not testify before the UnAmerican Activities Committee on certain grounds, constitutional grounds, he had involved this Convention into his private difficulties and problems, and we asked him if he wouldn't consider resigning. And, if I remember correctly, that suggestion came as a suggestion only and not as a recommendation from Mr. Chuck Mau. He was further asked that would he not purge himself by going before the committee and saying, "I want to testify that I'm not a communist, never have been a communist, don't intend to be a communist."

In this letter of April 17, he declined to take any of those suggestions and he said in here, statements that I consider have rendered him disqualified and unfit to sit with this body. "The hearings were timed by Governor Stainback and Big Five interests to coincide with the Convention hearings in order to defeat statehood." That's sub-paragraph a of paragraph 2. "b. The hearings are for the purpose of destroying the I. L. W. U. No further proof of this statement is necessary than the revival of the 'Dear Joe' letters in the Advertiser. Everything I have accomplished in life I owe to the union, through the I. L. W. U. I have acquired dignity as a human being, something I never have acquired from any company on Kauai, all of whom blacklisted me."

Now, we asked him in this committee meeting, in which I attended as an ex officio member without a vote, if he didn't feel that his obligation to Hawaii, to this Convention, to the United States, wasn't higher that his obligation as an official of the I. L. W. U. Apparently he doesn't think so. He has spoken about the people who had elected him to office. He was elected with a narrow majority over his competitor in one zone district of Kauai.

I told Frank in my office, I have a great deal of consideration for him as a human being. I believe that he's wrongly advised and wrongly directed by his counsel and by those who are giving him advice. I told him then, I said, "Don't forget, Frank, that besides the people who have voted for you, you're representing the people who didn't vote for you; you're representing the people who voted for your opponent; you're one of six representatives from the island of Kauai; you're representing all the people on Kauai; and you're representing the people of Hawaii, the 550—or 540,000 people of Hawaii; and indirectly you are representing the people of the United States because we are aspiring to draft a constitution that will admit us into the Union as a sovereign state," and Frank didn't seem to consider that a point.

Now, in regard to the statement this morning, maybe it was hurried. Maybe some of the language in there was not intended. Nevertheless, it was a statement prepared for him by his counsel and submitted to this Convention and the language in that is, I say, most contumacious. But that hasn't been included in this resolution. This resolution refers to the data before this Convention prior to the statement and to the data before the special committee. And that special committee rendered a unanimous report. There were some who desired a stronger report. There were some who might have desired a less strong report. Nevertheless, there was a meeting of mind and those eleven gentlemen, ten gentlemen and one lady, signed that report and submitted it to this Convention as their considered judgment.

Now, I fail to see where Delegate Silva has not received a square deal from this Convention. We've leaned over backwards, as I said a moment ago, when I made a motion to table the other —maybe that motion was not called for, maybe what we've heard here will help the Convention come to a good decision—but, nevertheless, that resolution is very simple, "Resolved, that Frank G. Silva by reason of his contumacious conduct before and toward the UnAmerican Activities Committee of the House of Representatives." Don't you believe this press release is contumacious conduct? I don't listen to the radio very often—I've been too busy with the affairs of this Convention—but, nevertheless, I've heard the same and stronger statements have gone over the air during the past few days. Don't you believe that this other statement that he made on April 17 is contumacious conduct both toward this Convention and toward the Committee on UnAmerican Activities of the United

States Congress? And this resolution goes on further and says, "toward the UnAmerican Activities Committee of the House of Representative and this Constitutional Convention of Hawaii, 1950." I consider that the two statements that he made to this committee is contumacious conduct towards this Convention. We almost begged him to come clean.

There was another witness that was accused, wrongfully or rightfully, who went up there and took the oath and said, "I am not a communist and have never been a communist." Now if he has committed perjury, he can be tried for it or not, but certainly he cannot be taken back to Congress, with the request that he be cited for the contempt of Congress, and this young man has done that.

Now, Mr. Chairman, I don't want to take up too much time. I'm speaking on the point of personal privilege but I'm also speaking to the adoption of this resolution. I certainly haven't been rude to Mr. Symonds or to Mr. Silva. The Convention has a fixed hour. It was fixed yesterday. I have no right to postpone it, and we met at 11 o'clock, and if he had not been ready, I'm sure that somebody on the floor of this Convention would have moved for a recess. As a matter of fact, I told the Sergeant at Arms that possibly such might happen. But I didn't feel that it was up to me to say, "Yes, we'll hold the Convention up a half an hour while you complete your statement." And don't forget in the recommendations to this committee, he was allowed something like 48 hours to prepare his reason to show cause why he did not consider he had to purge himself of contempt.

That completes my statement, Mr. Chairman. As far as I'm concerned, I would like to move the previous question but I will not do it if others wish to speak. I hope that the Convention will realize that my aggressiveness is through no animosity toward that young man. I think he's the most unfortunate young man, who in his devotion to labor has allowed himself to become tainted by his association. I would say this, that in this United States of America today, we have communists infiltrating the labor movement to serve the purposes of the Communist Party. And we have loyal and well-meaning labor men being infiltrated or being indoctrinated and engulfed by the communist movement in their desire to further the cause of labor. I would like to see the labor leaders disassociate themselves from those who are tainted with communism and stand for, swear as labor men only with no affiliations and no associations that are inimical to the safety of the United States.

Thank you.

ANTHONY: Inasmuch as counsel for Mr. Silva has directed his remarks principally toward the report of the special committee, I want to say here and now that the members of that committee, and Mr. Silva himself, will realize that that committee extended to Mr. Silva every possible courtesy, every possible hearing, that could be extended to any person. When Mr. Symonds first came to the special committee, he came there in a belligerent attitude. It was not until the deliberation had progressed for quite sometime before we even heard Mr. Silva. I believe that it was at my insistence that we heard Mr. Silva rather than hear his attorney, because Mr. Silva was the delegate under question, not Mr. Symonds.

Now as to the statement that he has charged that we have corrected an error. I don't consider there is any legal error in the committee report. I was the one that was responsible for raising this issue early this morning for the reason that I wanted the members of this body to make sure that the question that Mr. Silva was raising here before the House UnAmerican Activities Committee was not the identical question that was in the Lawson case. When Mr. Symonds says that the recent decision in the Ninth Circuit Court of Appeals is on all fours with the conduct of Mr. Silva before the House UnAmerican Activities Committee, he is not just telling the truth as to what that decision is. That decision involved a grand jury proceeding. It did not involve the right of a Congressional committee to interrogate witnesses. Persons summoned to appear before a grand jury will have no immunity. Persons who are summoned to appear before a committee of a Congress have a statutory immunity.

It is true there is still an open question whether or not he could assert this constitutional privilege. But it is my firm conviction that the only thing that Mr. Frank Silva could be tried and convicted of is perjury in the course of that proceeding and that was the only issue raised by my brother Symonds when he appeared before the special committee. In other words, he was saying, just as your President had related, that people were in such hysteria here, no person, in the event of a perjury indictment, could get a fair trial in our courts.

I believe that the committee has been fair to him. I believe that the conduct is contempt and it doesn't make any difference whether it has been adjudicated as such or not or even if the Congress of the United States elects to forego it. If a member of this house were guilty of bribery, it would make no difference whether the criminal courts of this Territory would so find him guilty. We would be perfectly within our powers to oust him for that misconduct if proved.

As I see it, the sole issue before the body is whether or not his conduct before the House UnAmerican Activities Committee, and not before this body, is of such contumacious nature that would warrant us adopting this resolution. I, for one, would not vote on any resolution that would oust Mr. Silva from this Convention by reason of the things that he has said and done in the heat and battle of his defense. That is a privilege of every defendant. That is the privilege of Mr. Silva. I know it's in bad taste, it's erroneous; we're not a bunch of stooges for anybody. We're here trying to do a job for these islands and the people of Hawaii. I resent it deeply, but nevertheless I would not vote on that basis for his expulsion.

CHAIRMAN: Clerk, is there a motion on the floor?

CROSSLEY: I'd like to speak on the motion. I believe there is a motion on the floor.

CHAIRMAN: I just want to clear the record. Is there a motion pending before the floor, Miss Clerk, on the amendment to the resolution?

KING: Point of information. Did not the introducer of the resolution move its adoption?

A. TRASK: No, not as yet. I thought there, as much discussion should be allowed the membership until we come to it. I might at this time say, for the benefit of the membership, the word "contumacious" has to do - - Do you yield, Mr. Crossley? Thank you. The word contumacious, I'd like to give you the dictionary meaning of the word. It's "disregard of the requirements of rightful authority." That's one definition. Another definition is "intentional disobedience to a rule or order of court or legislature." "Insolent and stubborn perverseness; incorrigible obstinancy." There is no further discussion.

CHAIRMAN: The Chair is not clear whether the motion for the amendment of the resolution was seconded or whether it's on the floor.

A. TRASK: I would like to move at this time for the adoption of the amended resolution.

CROSSLEY: I'd like to second that.

CHAIRMAN: Just a moment, I recognize the delegate from Kauai.

CROSSLEY: I'd like to speak on personal privilege.

C. SILVA: Will you second the motion first, or what is it?

CHAIRMAN: Will you yield for a second to the motion for adoption?

C. SILVA: I yield. Was the motion seconded for adoption?

CHAIRMAN: The delegate from Kauai has yielded the floor to the delegate from Hawaii for the purpose of seconding the motion.

J. TRASK: Mr. Chairman, I second the motion.

CHAIRMAN: Will you yield to that?

CROSSLEY: I yield to that, then I can speak on the motion.

CHAIRMAN: Very well.

CROSSLEY: Or under personal privilege, either one.

C. SILVA: I rise to a point of order.

CHAIRMAN: The gentleman is speaking on the point of personal privilege.

C. SILVA: Point of order first, Mr. Chairman.

CHAIRMAN: What is your point of order?

C. SILVA: Point is this Convention as seated cannot adopt the resolution. It can recommend that when we go out of committee that it be adopted.

CHAIRMAN: I believe that point is well taken. You will amend your motion?

A. TRASK: Yes, I'll accept the correction.

CHAIRMAN: The Chair will now recognize the gentleman from Kauai on the point of personal privilege.

CROSSLEY: I have sat through a number of days of debate, a number of evenings of discussion on this subject; I have read all of the exhibits that have been forced upon us; and when I got up a while ago to limit, to first of all prohibit counsel from coming in, it was because I had in mind that the counsel would continue the same sort of an attack on this body as had been underway for some time. I then wanted to limit the debate for the same reason. I had no desire to shut off Frank Silva from stating, as has been well indicated here.

I listened to the letter this morning. I've heard lots of letters like that, but there is one statement in particular on page 2 of Mr. Silva's statement to the committee during its deliberations. He says under paragraph b, "Through the I. L. W. U. I have acquired dignity as a human being, something I would never have acquired from any company on Kauai, all of whom blacklisted me because of union activity before and after my three years of combat duty as an infantryman." That is a deliberate misstatement of fact. I have a company on Kauai. Frank Silva has never applied to me for a job nor has he ever been blacklisted. I asked another delegate from Kauai, who conducts a business there, if he had ever turned Mr. Silva down or had he ever had a request from him for a job. He stated that he had not. It's just such all inclusive statements as this, the all inclusive statements that have put us all under a cloud, as so ably presented by the delegate at large from the fourth district.

Someone in his behalf said, "Well, he's a self-educated man." I asked what education he had had, and then I recalled in the testimony before the UnAmerican Activities Committee they had asked him had he ever attended the California Labor School and he refused to answer, but in a press release he admitted to having had that education, whatever it is. I resent deeply the implications that have been cast upon me as an employer on Kauai and upon this body, and it is for that reason that I would like to state for the records, that the statement made under section b is not a true statement.

CHAIRMAN: It has been moved and seconded that - -

HEEN: According to the language of this amended resolution, it says, "That Frank G. Silva by reason of his contumacious conduct, before and toward the UnAmerican Activities Committee of the House of Representatives and this Constitutional Convention is hereby declared disqualified."

What disturbs me is this. Have we here in evidence, any showing of any conduct towards the Convention itself that might be regarded as being contumacious. My impression is, Mr. Chairman and members of the committee, that when this investigation was started, it started on the basis of his conduct before the UnAmerican Activities Committee. I take it that the investigation that was conducted by this special committee was made upon that basis. I would like to have someone here point out, not only to me but to the other members of this committee, what in the evidence is there of anything that makes him guilty of contumacious conduct towards the Convention itself.

I know that every delegate here would like to be fair in this very serious matter. I know that it is very serious in the mind of Delegate Frank G. Silva. Therefore, we should not be too hasty in coming to a conclusion on what we should do in regards to this amended resolution. If there is any evidence showing contumacious conduct on the part of the delegate that can be used as a basis, that is, contumacious conduct towards the Convention itself, that these can be used as the basis for this resolution, I'd like to be shown.

Now, it is true that this morning I discussed these statements made by the delegate in his written statement and oral statement which cast a reflection upon every member of this Convention. But we are not trying him on those statements, we are trying him on something else altogether. So that, if we are going to set aside what he did before the UnAmerican Activities Committee, then I say that we have, I believe, grounds for charging him now in the light of what he has said in his written statements while attempting to defend himself, that he is guilty of casting a cloud upon every member of this Convention where he is no longer fit to remain as a delegate to the Convention.

C. SILVA: I'll even go beyond that. As far as I'm concerned I'm willing to forgive Mr. Silva's charges against myself as probably a stooge of the Big Five or anybody else. I'm even willing to forget that point. What I would vote upon is this, upon Mr. Silva's failure as a delegate to testify to the satisfaction of the UnAmerican Activities Committee. He was then asked by this Convention to return before that same body to clear the suspicions created by his actions. Failing as a delegate to do so, in my opinion, is sufficient reason to suspend him indefinitely.

CHAIRMAN: It has been moved and seconded that this Committee of the Whole recommend to the Convention that the resolution as amended and as read by the Clerk be adopted.

H. RICE: I think the motion should read that when this committee rises, it reports recommending the passage of the resolution in amended form.

CHAIRMAN: In amended form? Will you accept that amendment, delegate from the fifth district?

SERIZAWA: Delegate Anthony has stated in his last statement that he did not agree with certain qualifications in this resolution before us. I believe he had implied that the section reading, "unfit to sit as" - - no, I'm sorry, "and this Constitutional Convention of Hawaii of 1950." I believe you made a qualifying statement there. Mr. Anthony

is an attorney. I'm a layman. I have no knowledge as to what constitutes legal statements and I believe earlier today delegate from Hawaii made a motion, or was it a resolution, that we have the attorney general here for his opinion on various phases. I, myself, because of my lack of knowledge of legal terminology, I would like to have the advice of an attorney as to what is legal here and what is not. The attorneys here can proceed on their own knowledge with confidence, but I'm afraid I cannot, and I would like to point that out to other laymen in this delegation.

CHAIRMAN: The Chair will call upon the delegate from the fourth district to see if he can clear up that point, Mr. Anthony.

ANTHONY: To bring the matter to a head, what Brother Heen has been talking about, or Delegate Heen, rather, has been talking about is the charges against his offenses against this Convention. I stated in the course of my remarks that I, for one, would not vote for it by reason of that, however bad taste it is and however unfounded. And therefore, I think we should confine ourselves to his failure to appear before the House UnAmerican Activities Committee. He had a duty to speak if he felt anything for this Convention or for the people of Hawaii. His loyalty was to the people of Hawaii in this Convention.

To bring the matter to a head, I move that the amended resolution be further amended by the deletion of the word, "and this Constitutional Convention of Hawaii of 1950." So after the amendment the resolution would read:

> Resolved, that Frank G. Silva, by reason of his contumacious conduct before and toward the UnAmerican Activities Committee of the House of Representative is hereby declared disqualified.

BRYAN: I wish to second that motion.

C. SILVA: That is the point. I wish Mr. Anthony could put it in the words I'd like to say. I have no reference to Mr. Silva's first appearance before the UnAmerican Activities Committee. The reference that I had is when this Convention requested him to return to the UnAmerican Activities Committee. That was the request by the Convention. Failure to do so is reason sufficient to unseat Mr. Silva, indefinitely. Not the first appearance before the Convention -- before the committee; it was after. This Convention had requested that he appear before the committee. Failure to do so is sufficient reason. I just don't know just exactly how you would put that in the resolution.

CHAIRMAN: There is a motion before the House.

HEEN: I would suggest that this committee rise, report progress and ask leave to sit again. We are so involved here as to what language should be used, and we are not too certain in our own minds what the reasons are for holding that he has been contumacious towards the UnAmerican Activities Committee. If the last amendment offered is adopted, that the reference to contumacious conduct towards the Constitutional Convention is eliminated, then the only thing we have left would be that he was guilty of contumacious conduct towards the UnAmerican Activities Committee, to another body altogether, not towards this body. I am not certain in my own mind that we can use the conduct of a delegate towards another body as being the grounds for the expulsion of a delegate from this Convention. That's why I think that we ought to take time out and give this problem a little more serious consideration because it is a serious problem.

BRYAN: Mr. Chairman.

CHAIRMAN: I recognize -- Have you completed --

HEEN: No, I have not. I started by saying that I would suggest that the committee rise. In order to bring that point to an issue, I now move that this committee rise at this time, report progress and ask leave to sit again.

CHAIRMAN: Is there a second to that?

NIELSEN: I second the motion.

SAKAKIHARA: Before this motion is put to rise and report progress and beg leave to sit again, I have a grave doubt in my mind as to the power of this Convention under Act 334 to expel any member. I have a resolution lying on the table of the Clerk. I would like to ask that this Convention act on that resolution so that we may obtain an official opinion from the attorney general on that question.

CHAIRMAN: Are you asking the senator -- the delegate from the fourth district to yield on this motion?

SAKAKIHARA: Will Senator Heen yield to that motion?

CHAIRMAN: The motion to --

SAKAKIHARA: Then we may act on your motion to rise and report progress and leave to sit again.

HEEN: I am willing to yield but I think it's premature at the present time to ask the attorney general that particular question. I have no particular objection to it. If the committee would like to act on it at this time, I will withdraw my motion for that purpose.

SAKAKIHARA: I now move that the resolution which is now on the Clerk's desk be adopted.

CHAIRMAN: I'll ask the Clerk --

NIELSEN: Point of order. Won't that have to be adopted in the regular session and not in the Committee of the Whole?

CHAIRMAN: Where is the resolution? I believe the point of order is well taken. The resolution is by the Hawaii State Constitutional Convention.

NIELSEN: I think now it's in order to move to the previous question to recess and ask to sit again.

CHAIRMAN: The delegate from the fourth district had withdrawn. Do you renew your motion?

HEEN: I now renew my motion that this committee rise, report progress and ask leave to sit again.

CHAIRMAN: It's been moved and seconded that this committee rise, report progress and ask leave to sit again. Are you ready for the question? All in favor say "aye." Contrary minded. Roll call has been demanded.

KAUHANE: But, Mr. Chairman, haven't you arrived at the decision before you put the question for roll call?

CHAIRMAN: Pardon?

KAUHANE: Are you debating as to whether the ayes or the noes prevail?

CHAIRMAN: I saw at least ten hands go up demanding roll call.

KAUHANE: No, prior to that. The vote was put. The ayes had spoken, the nays have spoken. Are you deliberating as to whether or not the nays prevailed or are you somewhat in doubt?

CHAIRMAN: I'm in doubt.

AKAU: Point of information. Could you tell me, please, what the value would be in the Committee of the Whole; or not in the Committee of the Whole, for this next action. I'd like that explained. Perhaps I'm naive.

CHAIRMAN: I'm sorry. I don't quite understand your question.

AKAU: What value, I'd like to just have some clarification, what value would it be one way or another to sit as a Committee of the Whole or not. I don't understand why. I'd like to know why.

CHAIRMAN: We've already progressed in considering this matter and we're not in a position to make a report to the Convention, a complete report, because there has been discussion about considering the amendments offered to the resolution. Clerk will call the roll on the motion to rise and report progress and ask leave to report again.

Ayes, 18 (Ashford, Doi, Heen, Ihara, Kage, Kawahara, Kawakami, Lee, Mau, Mizuha, Nielsen, Sakakihara, Serizawa, C. Silva, St. Sure, J. Trask, Yamamoto, Yamauchi. Noes, 43. Not voting, 2 (Luiz, F. Silva).

CHAIRMAN: The motion to rise, report progress and beg leave to sit again, or in other words, the motion to recess has been defeated.

WOOLAWAY: As a delegate of this Convention, it seems to me that the sole question before this body is nothing more than whether Mr. Silva as a delegate to this assembly has placed this body in disrepute with the body of the Congress of the United States whom we will ask to ratify the Constitution of the forty-ninth state and therefore, I move the previous question.

HEEN: I rise to a point of information. It seems to me that we have a motion pending, a motion made by Delegate Anthony to the effect that the amended resolution be further amended by deleting from that amended resolution the words, "and this Constitutional Convention of Hawaii of 1950." That offer to amend along those lines was seconded. Therefore, there is a motion pending.

KING: I rose to a point of information. Was Mr. Anthony's motion seconded?

CHAIRMAN: The Chair is not clear on that. Mrs. Clerk, was that motion to amend seconded?

KAM: I admire Mr. Garner Anthony's remarks, but Mr. Silva's refusing to testify before the UnAmerican Activities has done this Convention a great harm; and I believe that by refusing to testify has done each and every delegate a great harm. I, therefore, amend Garner Anthony's motion - - to table his motion.

CHAIRMAN: You move to table the motion to amend?

KAM: That's right.

CHAIRMAN: Incidentally, the Chair in the meantime has ascertained that that motion to amend offered by the delegate from the fourth district, Mr. Anthony, was duly seconded.

KING: I second the motion to table the amendment. I'd like to state the reason. It is not often a good idea to second a motion to table, but it seems to me the resolution does embody the two thoughts, some of the delegates lay more stress on one than on the other. Some of the delegates feel that the behavior of Mr. Silva before the UnAmerican Activities Committee was sufficient grounds or is sufficient grounds to disqualify him from holding a seat in this Convention. Others feel that his attitude towards this Convention may be the prevailing factor. This resolution embodies both conditions, and those who would vote for it on one ground and not the other may do so with a clear conscience, and the other, the corollary is true. Those who did not wish to support one stand are free to support the others. It seems to me the resolution as drafted embodies the sentiment of this Convention and I believe the amendment should not be accepted.

HEEN: I'd like to ask the delegate who has just spoken whether or not he will yield to a question.

KING: Yes, of course.

HEEN: The question is this. I would like to have you point out in the record whether or not there is anything in the evidence tending to show that Delegate Frank G. Silva has been guilty of conduct contumacious towards the Convention itself.

C. SILVA: I rise to a point of order.

HEEN: In other words - -

CHAIRMAN: I recognize the delegate from Kohala.

C. SILVA: There's a point there, Senator Heen. A motion has been made and seconded to table. Unless Mr. King withdraws his motion to second, I'm afraid we can't have any debate.

HEEN: I don't think there was any second.

C. SILVA: Mr. King seconded the motion.

KING: I seconded the motion, but I - -

HEEN: To table?

CHAIRMAN: The Chair's understanding was that the delegate from the fifth district yielded for the purpose of a question.

KING: I withdraw my second temporarily in order to yield for a question. If the delegate from the fourth district has completed his query, may I ask him, may I reply by asking the question, does he include in that question the remarks of or the statement of Delegate Silva submitted to this Convention or this committee this morning?

HEEN: No, I do not. All the statements that he made in defense of himself are not the grounds that were considered by the Convention or by this special committee as grounds for his expulsion. I would like to satisfy my own mind as to whether or not there is evidence to the effect that he has been guilty of conduct contumacious to the Convention itself. If someone can state those facts, I think it would then support the final action to be taken by the Convention if that action is to expel the delegate.

KING: If I may answer the question since it was directed to me. I consider the second statement made by Delegate Silva to the committee and submitted to the Convention by the committee as an appendix of its report is contumacious towards this Convention. That statement reads in several instances, language which I consider contumacious towards this Convention. Now if that does not satisfy Senator Heen, I would suggest that the statement he made this morning, and he has been given a second opportunity to be heard since that statement was made, is very contumacious to this Convention.

May I state while I have the floor, I feel that we should not lose ourselves in legal technicalities. The resolution is based on the circumstances as outlined by Delegate Woolaway, and I, therefore, feel that the amendment is unnecessary and would like to remake my second to Mr. Kam's - - Delegate Kam's motion that the amendment be tabled.

ANTHONY: I must disagree with the President as to the statements made by Mr. Silva in the heat and blood and battle of his defense. I don't think that cuts any ice on the issue that's before us. What I do think is important is, here he is an officer of this territory, a delegate to this Convention. We have got to go - -

CASTRO: Point of order.

ANTHONY: I'm answering the question that was propounded by - -

CASTRO: There is second to - -

CHAIRMAN: I'll recognize the delegate from the fourth district, Mr. Castro. State your point.

CASTRO: There was a second to Mr. Kam's motion, and I have not heard that the seconder has yielded to my colleague, the delegate.

CHAIRMAN: There is a motion before the floor to table the motion to amend, and that takes precedence. The point is well taken.

ANTHONY: Will the second yield to an explanation of Senator Heen's position?

KING: In order not to prevent anybody from speaking, I am willing to yield. But I would like to say the question was directed to me and not to the delegate from the fourth district, Mr. Anthony, and I answered the question as well as I could. Now, if Delegate Anthony wishes to complete the answer for the satisfaction of Senator Heen - - Delegate Heen, it's perfectly agreeable to me and I withdraw my amendment temporarily.

CHAIRMAN: Withdraw your second?

KING: My second.

CHAIRMAN: Very well, Mr. Anthony, you have the floor.

ANTHONY: That's what I would like to endeavor to do. The delegate to my left here wants to know what is the contumacious conduct before the House UnAmerican Activities Committee. It is simply this. We are drafting a Constitution. This committee is duly authorized by the laws of the United States to conduct an investigation. It has come down here to conduct an investigation on the charges of alleged subversive activities. He, as a witness, has been subpoenaed duly to testify before that committee and he has refused to do so. That, in my judgement, casts a shadow over this Convention. That is bringing this Convention in ill-repute throughout the nation. That is sufficient basis for our dear friend Senator Butler to announce in the headlines of the afternoon paper that this is a communist infested community. In other words, his very conduct in failing to appear before that UnAmerican Activities Committee is bringing us in disrepute. It is jeopardizing the very thing that we are set out to do here, and I say that alone is sufficient for us to hold him guilty of contumacious conduct.

Now, he has chosen to stand on what may, after a legal battle, turn out to be his constitutional rights, but he has some obligations in addition to his constitutional rights, and those obligations are to the people of this community. I think that if he places his loyalty to his I. L. W. U. and his insistence upon his own constitutional rights above the welfare of this entire community, so that he has brought us in public disgrace, so to speak, that that is a basis for this resolution. That alone.

CHAIRMAN: Does the Chair understand Mr. Anthony, that he is now withdrawing his amendment?

KING: No, Delegate Kam made an amendment and I seconded that amendment - -

CHAIRMAN: No, I meant the - -

KING: - - I second the motion to table Delegate Anthony's amendment.

CHAIRMAN: Well, I'm asking Mr. Anthony if by his statement he is now withdrawing his motion to amend the amended resolution.

ANTHONY: I am not.

CHAIRMAN: Very well.

ANTHONY: I want to put it on the single ground of his conduct. I don't care what the language is that you use, but he has been charged with what he did before or failed to do before the House UnAmerican Activities Committee, not what he's done here.

CHAIRMAN: Thank you, Mr. Anthony.

KING: I've yielded twice, Mr. Chairman. It seems to me that we should continue the procedure - -

CHAIRMAN: Do you now second the motion - -

KING: I now second Mr. Kam's motion to table the amendment offered by Delegate Anthony.

FUKUSHIMA: May I ask the President to yield a third time?

KING: I'm unable to deny my colleague, Delegate Fukushima's request and I do withdraw the amendment temporarily, withdraw the second.

CHAIRMAN: You yield again?

KING: Yes, sir.

CHAIRMAN: Mr. Fukushima, you have the floor.

FUKUSHIMA: I'm also inclined to agree with Delegate Heen and Delegate Anthony. I feel that the conduct of Delegate Silva is contumacious conduct before and towards the UnAmerican Activities Committee. However, I do not feel that his conduct towards this Convention is such a conduct as to authorize this Convention to expel him. Whatever he said before this Convention in the heat of battle, as has been aptly put, would have been done by any of us put to a defense. All these remarks about we being the stooges of the Big Five, et cetera, has no bearing whatsoever before this Convention, and if we know for ourselves deep in our conscience that we are not, what shadow of clouds did he put upon us. I ask at this time from the delegate from the fifth district to withdraw his motion to table.

CASTRO: Would the President yield further?

CHAIRMAN: I should have recognized the President first.

KING: May I state this is the last time I'm going to yield.

CHAIRMAN: This is the last time.

KING: Yes.

CASTRO: In my estimation, with all due respect to the attorneys of great ability here, the debate in the last few moments is the jabberwocky of jurisprudence. I submit to you this one final point. On April the eighteenth at approximately half past eleven in the morning, the Convention adopted the report of this special committee wherein the schedule of its further activities was clear to all, including Mr. Silva and the public. The plea on the part of Mr. Silva's counsel that this statement which has been put in our hands this afternoon has been written in the heat of battle, and the sad story about the running and the driving of the automobile, I, as an individual with very little background in the laws of evidence, find very hard to believe, because I am aware, as I think every delegate in this room is, that Mr. Silva has been in contact with his counsel in all of the waking hours of the 48 since the time that this report was accepted by the Convention. I submit then, that the contumacious conduct towards this Constitutional Convention, if the gentlemen find it difficult to find in any other document, is found here in this last document, this last statement. Now I believe this as an individual who is more interested possibly than many in seeing that Frank Silva gets a break. But I would like to see us get to the heart of this problem and quit quibbling. I would like to have the President now second and call for the vote.

KING: I now second the motion of Delegate Kam.

CHAIRMAN: It has been moved and seconded that we table the motion to amend the amended resolution. The effect of the motion to amend the amended resolution offered by the delegate from the fourth district, Mr. Anthony, is to delete from the amended resolution any contemptuous conduct towards the Constitutional Convention of Hawaii of 1950.

DELEGATE: Roll call.

CHAIRMAN: Roll call has been demanded. How many desire the roll call?

WIST: Point of order. Did you state that correctly? As I got it you stated it exactly opposite of the delegate from fourth's position.

CHAIRMAN: The delegate from the fourth, as I understand it, moved to amend the amended resolution by deleting therefrom the words, "and this Constitutional Convention of Hawaii of 1950," which means that the resolution would show no contumacious conduct towards this Convention. The motion to table, if carried, would defeat that amendment. If defeated, we will then vote on the amendment. Is that clear?

The ayes and noes have been demanded. Mrs. Clerk, will you call the roll?

DELEGATE: Aye is to table?

CHAIRMAN: Aye is to table.

Ayes, 33. Noes, 28 (Akau, Anthony, Ashford, Bryan, Doi, Fukushima, Heen, Ihara, Kage, Kam, Kawakami, Kellerman, Lee, Mau, Mizuha, Nielsen, Noda, Okino, Roberts, Sakai, Sakakihara, Serizawa, Shimamura, C. Silva, St. Sure, J. Trask, Yamamoto, Yamauchi). Not voting, 2 (Luiz, F. Silva).

CHAIRMAN: The motion to table is carried.

We now have before the committee the amended resolution which has been duly moved and seconded, the motion being that we rise, when we rise to report, we recommend the passage of the resolution in the amended form, which I will now ask the Clerk to read before we proceed to the question.

CLERK: Resolution.

Resolved, that Frank G. Silva, by reason of his contumacious conduct before and toward the UnAmerican Activities Committee of the House of Representatives and this Constitutional Convention of Hawaii of 1950, is hereby declared disqualified and unfit to sit as a member of this Convention and that he be and is hereby expelled; that his seat be declared vacant; and the governor be requested to fill the vacancy in the manner provided by law.

CHAIRMAN: You have heard the motion; it's been duly seconded. Are you ready for the question?

WIST: I'd like to call attention to one sentence that appears on page 3 of the report submitted by Frank G. Silva to the special committee and which was in the hands of this body yesterday before it acted on the resolution or on the report of this special committee. And that sentence is, "Every member who votes to refuse me the right to serve those who elected me will live to regret this action." I raise the question as to whether that is or is not contumacious.

C. SILVA: Maybe I won't live that long, so I'm not too worried about that.

ANTHONY: I am addressing myself to the resolution. The question is whether or not the resolution shall be recommended out by this committee, as I understand it.

CHAIRMAN: In the amended form, as just now read by the Clerk.

ANTHONY: In the amended form. What I want to call to the attention of this body is the fact that Frank G. Silva is not being tried here by reason of his misbehavior in this house. He has said a lot of things; he said it to the committee, and I might say he was very bitter to the committee at times, despite our impartiality and fair treatment of him. But the simple fact remains is that we have not charged him with that. Now, are you going to vote on something that the man has never been charged with? All you've heard is the statement of his lawyer to the effect that - -

C. SILVA: I rise to a point of order.

CHAIRMAN: State your point.

C. SILVA: There is nothing before the house as yet. That question has been answered; those that voted no agreed with Mr. Anthony; those that voted aye have a different point of view. I would just like to - -

ANTHONY: Am I out of order, Mr. Chairman? If so, I'll sit down.

CHAIRMAN: I believe you are.

ANTHONY: Mr. Chairman, is debate on this resolution foreclosed?

MAU: Absolutely.

CHAIRMAN: I understood you to be debating on the question that the house has just voted on, namely, your amendment.

ANTHONY: Not at all. I am addressing myself as to whether or not the resolution should pass.

CHAIRMAN: Very well.

ANTHONY: Those who may have voted against my amendment may still vote against this resolution.

CHAIRMAN: Proceed, then.

ANTHONY: What I am calling attention to now, is what I consider a basic defect in the charge. Now you can say all you want that this is legal mumbo-jumbo, but under our system of law, a man is charged with certain definite things. You don't - -

KAUHANE: I rise to a point of order.

CHAIRMAN: State your point.

KAUHANE: I believe that the question now raised by the delegate from the fourth district has been answered, that is, by the vote that has already been taken. If I am correct, the same subject matter cannot be brought up again once it's been defeated by a vote that was taken. Therefore, the delegate from the fourth district is not in proper order at this time to repeat or have any inference to the vote that was taken which defeated the purpose of his amendment.

CHAIRMAN: Unfortunately the question, the subject matter of the delegate's argument, applies to both. As he stated, those that felt that it should have been amended may now feel that they shouldn't vote for the resolution in the amended form. I will rule that Mr. Anthony is still in order.

ANTHONY: If I may continue then without further interruption for a minute.

CHAIRMAN: I can't guarantee that, but proceed.

ANTHONY: The difficulty with voting on this resolution is that Frank Silva has never been charged with any misbehavior before this house. He has been charged by this house of doing something outside of this house, and I say, therefore, we should not adopt this resolution having as our basis something that is done within the house, something that he's never been charged with, he's never even had a hearing on that.

KAUHANE: I again rise with a point of order.

CHAIRMAN: State your point of order.

KAUHANE: My point has been stated heretofore, and Mr. Anthony is still repeating the statement where a vote was already taken in defeat of the amendment that he had offered.

CHAIRMAN: He is now trying to defeat the resolution.

KAUHANE: He is now trying to take up and devolve himself around the subject matter that has already been acted upon by a vote.

TAVARES: Point of order.

CHAIRMAN: The question is moot. Mr. Anthony has yielded the floor. I now recognize the delegate from the fourth district, Mr. Tavares.

TAVARES: It seems to me that the delegate from the fourth district rose in opposition to the motion now, is in error. If, as he contends, this resolution in this form charges Mr. Silva with something more than the conduct before the UnAmerican Activities Committee, then he is thereby admitting that it is a charge against Mr. Silva for the other activities before this Convention. Yet in the same breath, he says we haven't charged him. He says we have charged him for one purpose but we haven't charged him for another. I submit that that is an inconsistent statement in itself. If it is two charges, Mr. Silva was given a second opportunity to answer them and through his counsel and he has availed himself of that opportunity. So that if there are two charges here, he has had the American opportunity to defend himself against both charges; and, therefore, he has had everything coming to him. I submit that the objections of the delegate are not well taken.

PHILLIPS: I would like to speak in support of what the delegate from the fourth district just said, insofar as Frank Silva made the statement to the Convention that if they were to apologize - - I mean if they would put him back in the Convention, then he would apologize for having said what he said.

A. TRASK: I am wrestling with the thoughts that Mr. Anthony and Judge Heen have issued, but it comes down again to what has been in my mind for some time, namely, this. Frank Silva is in a very unhappy position. He is seeking to serve two masters. He is an official of the I. L. W. U. on one hand; he is a government official on the other. It's a question of a choice, and he's made his choice.

What is contumacious conduct but disregard of the requirements of rightful authority. Is the Congress of the United States rightful authority? The right for legislative committees to investigate to promote the welfare of the people is a time-honored right and it won't be loosely disregarded by any sane and respectable citizen. If Frank Silva were not an official of this Convention, we would not be concerned with him, would we? It is only as he has official capacity as a governmental representative that we are concerned. We are mightily concerned; we are gravely concerned; we are critically concerned. We ask him, as the delegate from Kohala said, to go before the committee and purge himself. He has defied the order of this rightfully constituted body. He persists in his defiance of authority. He is in a difficult position. He cannot serve two masters. He should make up his mind and if he doesn't make up his mind, it's our grave responsibility to make up his mind for him. But he did say, all that he is and all that he hopes to be he owes to the union. The people of Hawaii, as far as he is concerned, in his official capacity to obey lawful authority, may be altogether disregarded. We do not feel that his conduct is such that it can be condoned and condoned any longer.

And so I say, that this intentional disobedience to the suggestion and order of this Convention to purge himself before the UnAmerican Activities Committee is a defiance of this Convention and certainly we shall not tolerate this; we shall not stand and have another delegate attack the integrity of this body [and subject it] to public odium and ridicule. Throughout the nation this Convention is in the spotlight of ridicule and odium. We shouldn't delay action on such a vital issue. I move the question.

MAU: I want to know so that I can vote on this last motion on the floor concerning this resolution. The second delegate at large from the fourth district did not say outright whether there are two charges in this resolution, but he did state that if there are two charges, that an opportunity had been given to Delegate Frank Silva to answer it this afternoon. As a lawyer, many times he has asked for time to prepare his case. If there are two charges in this resolution, then have we given the man due process, given him enough time to prepare? We gave him a half-hour on this charge. Is that sufficient? If you say there are two charges in this resolution, and I believe as drafted there are two charges, contumacious conduct before the UnAmerican Activities Committee and the same type of conduct mentioned against this Convention. So there are two charges, in my judgment, and I want to know, if that is so, whether or not we have afforded the delegate who is in question a fair opportunity to defend himself on the second charge.

TAVARES: I don't like to speak too long but since the question has been addressed to me, I'm glad to answer it. As I understand it, the amended resolution was amended before Mr. Silva spoke, before he and his counsel had the opportunity to speak. They were shown the charge, they had the opportunity to read it, and as I recall, the attorney for Mr. Silva addressed himself as if there were two charges. He actually defended his client against both charges, so that he had that opportunity to do that.

Now, the delegate says that the charge is not - - apparently he says it's ambiguous. But if the delegate wants to be technical, then the first charge is defective also. If the first charge is good enough to vote on by reason of his contumacious conduct before and towards the UnAmerican Activities Committee, without specifying it, why isn't the charge that his contumacious conduct before this Convention is also sufficient. There was no misunderstanding of what was meant as far as Mr. Silva and his counsel were concerned. They addressed themselves to every possible charge that could be raised and defended themselves against it. So that I say that they have had their day in court, they have fully defended themselves against all possible charges that we have raised on this floor. And therefore, I think when we vote we are not depriving him of any opportunity to be heard.

ASHFORD: May I add my five cents worth of free advice which is usually worth just what's paid for it. If Mr. Silva had appeared without counsel, I would be wholeheartedly in accord with the delegate at large from the fourth district whose motion to delete a part of the resolution was defeated. I was opposed to the form of the resolution before the appearance of Mr. Silva and his counsel. But his counsel appeared and made no objection upon that grounds and if there was any objection, it was clearly waived.

CHAIRMAN: There is a motion - -

KAM: I second Delegate Trask's motion.

CHAIRMAN: On the previous question?

KAM: That's right.

CHAIRMAN: It has been moved, the previous question. Are you ready for the question? Does everybody understand the motion that is before the house? All in favor say "aye." Contrary minded.

The motion, that when we rise and report progress we recommend the adoption of the resolution in the amended form, it has been carried.

The Chair will now entertain a motion to - -

PORTEUS: I rise for a point of information. Did not the motion to the previous question carry?

CHAIRMAN: That's correct.

PORTEUS: And is not now the motion before the house to rise, report progress, etc. ?

CHAIRMAN: The Chair is getting groggy up here. I correct myself. Are you ready now for the question?

H. RICE: The motion was that when we rise we recommend the passage of the resolution. Right?

CHAIRMAN: That's the motion that's now before the - -

H. RICE: We recommend the passage of the resolution.

CHAIRMAN: That's correct, and that's the motion that's now before the house. Are you ready for the question? All in favor say "aye." Contrary minded. It's carried by ayes.

The Chair will now entertain a motion to rise and report.

DELEGATE: I so move.

DELEGATE: Second it.

CHAIRMAN: All those in favor say "aye." Contrary minded. Carried.

Appendix

COMMITTEE PROPOSAL NO. 3

RELATING TO BILL OF RIGHTS

[The draft of the proposal included in the Journal (*Proceedings*, Volume I, p. 165) was RD1, not the original draft.]

SECTION 1. All political power of this State and the responsibility for the exercise thereof is inherent in the people and all government herein is founded on this authority.

SECTION 2. All persons are born free from political oppression and remain equal in their inherent rights. Among these inherent and inalienable rights are life, liberty and the pursuit of happiness and the right of acquiring and possessing property.

SECTION 3. No citizen shall be disenfranchised, or deprived of any of the rights or privileges secured to other citizens, unless by the law of the land.

SECTION 4. No person shall be deprived of life, liberty, or property without due process of law, nor be denied the equal protection of the laws.

SECTION 5. No law shall be passed respecting the establishment of religion, or prohibiting the free exercise thereof.

SECTION 6.

SECTION 7. No law shall be passed abridging the freedom of speech or of the press.

SECTION 8. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

SECTION 9. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall any person be compelled in any criminal case to be a witness against himself.

SECTION 10.

SECTION 11. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the judicial circuit wherein the crime shall have been committed, which judicial circuit shall have been previously ascertained by law; or of such other judicial circuit to which the prosecution may be removed with the consent of the accused in accordance with law; to be informed of the nature and cause of the accusation; to be confronted with witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

SECTION 12. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. Witnesses shall not be unreasonably detained or confined.

SECTION 13. There shall be no imprisonment for debt and a reasonable amount of the property of individuals may be exempted from seizure or sale for payment of any debt or liabilities.

SECTION 14. The privilege of the writ of habeas corpus shall not be suspended, nor shall the laws or the execution of the laws be suspended, unless in case of rebellion or invasion the public safety requires it, and then only in such manner as shall be prescribed by the legislature.

SECTION 15. A well regulated State Militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

SECTION 16. No soldier or member of the State Militia shall, in time of peace, be quartered in any house, without the consent of the owner or occupant, nor in time of war, except in a manner prescribed by law.

SECTION 17. The military power shall be in strict subordination to the civil power.

SECTION 18. Treason against the State shall consist only in levying war against the same, or in adhering to the enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

SECTION 19. The right of the people peaceably to assemble, and to petition the government, or any department thereof, shall never be abridged.

SECTION 20.

SECTION 21. The power of the State to act in the general welfare shall never be impaired by the making of any irrevocable grant of special privileges or immunities.

SECTION 22. The right to marry shall not be denied or abridged because of race, nationality, creed or religion.

SECTION 23. Private property shall not be taken for public use without just compensation.

SECTION 24. The rights and privileges hereby secured shall not be construed to justify acts inconsistent with the peace or safety of this State.

SECTION 25. This enumeration of rights and privileges shall not be construed to impair or deny others retained by the people.

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